



# SUGGESTED STATE LEGISLATION

2014 Volume 73

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Developed by the  
Committee on Suggested State Legislation  
The Council of State Governments





**SUGGESTED  
STATE  
LEGISLATION  
2014  
Volume 73**

Developed by the  
Committee on Suggested State Legislation

**The Council of State Governments**  
Lexington, Kentucky

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# **The Council of State Governments**

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# Sharing Capitol Ideas

Founded in 1933, The Council of State Governments is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

## CSG's Mission

CSG champions excellence in state governments to advance the common good.

## CSG's Values

To achieve this mission, CSG will:

- Pursue the priorities of its member states

Be nonpartisan and inclusive

- Engage leaders from all three branches of state government
- Have a regional focus, a national presence and a global reach
- Be a respected and trusted source for best practices and policy expertise
- Convene leader to leader interactions and foster leadership development
- Facilitate multistate solutions
- Zealously advocate for the states in our federal system of government
- Adhere to the highest ethical standards
- Respect diversity and act with civility
- Partner and collaborate with others

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# Foreword

The Council of State Governments (CSG) is pleased to offer the **2014 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation about topics of importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation and CSG staff. The entries in this book were selected from hundreds of submissions. Most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these drafts are presented.

The Council of State Governments  
Lexington, Kentucky

David Adkins  
Executive Director CEO

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# Introduction

**“A single state’s experience in a new field frequently leads to the adoption of similar action in other states, *if the problem is general, the approach is well conceived, and other states can be made aware of the action.*”**

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of ***Suggested State Legislation***. For more than 70 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers about a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to U.S. security. The result was ***A Legislative Program for Defense***. That group reconvened following the nation’s entry into World War II in order to develop a volume of ***Suggested State War Legislation***. That publication was succeeded by ***Suggested State Legislation***, an annual volume of draft legislation about topics of major governmental interest. Today, SSL Committee members represent all regions of the country. They are generally legislators and legislative staff.

Traditionally, SSL volumes were the culmination of a yearlong process in which legislation was received and reviewed by members of the SSL Committee in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. The SSL Committee now produces SSL volumes electronically in parts, one part after every committee meeting. Each part is published on-line approximately three to four months after a meeting. The electronic parts are then combined into a book that CSG publishes at the end of the SSL Cycle.

The SSL Committee considers legislation submitted by state officials and staff, CSG Associates and CSG staff. It will consider legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

Throughout the SSL solicitation, review and selection processes, members of the Committee employ a specific set of criteria to determine which items will appear in the volume:

- Is the issue a significant one currently facing state governments?
- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill or Act represent a practical approach to the problem?
- Does the bill or Act represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill or Act logically consistent?
- Are the language and style of the bill or Act clear and unambiguous?

All items selected for publication in SSL are presented in a general format as shown in

the following ***Suggested State Legislation*** Style Manual and Sample Act. However, beginning with the 1997 volume, items presented in ***Suggested State Legislation*** volumes more closely reflect the style and form as they were submitted to the program. Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed from their submitted format.

Revisions in the headings and numbering and other modifications are often necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions. Thus, readers should note that ***Suggested State Legislation*** drafts typically do not duplicate actual state legislation. SSL draft entries list the originating states and bill numbers to enable readers to compare SSL drafts with the state bills the drafts are based on.

A “Statement” might appear in a volume in lieu of a draft Act when the SSL Committee has reviewed and approved a piece of legislation, but its length and/or complexity preclude its publication in whole or in the standard SSL format. “Notes” also may be used when the Committee is particularly interested in highlighting and summarizing a variety of legislative actions undertaken by the states in a particular area.

State officials and staff, CSG Associates, and CSG staff are encouraged to submit at any time legislation which is likely to be of interest and relevance to other states. In order to facilitate the selection and review process, it is particularly helpful for respondents to provide information on the current status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation that may have been undertaken.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, Lexington, Kentucky 40511, (859) 244-8000, fax (859) 244-8001, or [ssl@csg.org](mailto:ssl@csg.org).

Readers should keep in mind that neither the consideration by the SSL Committee nor the dissemination of legislation in the annual SSL volume constitutes an endorsement by CSG. CSG does not advocate for the enactment of any SSL legislation in any member jurisdictions. Rather, the entries are offered as an aide to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

Interested readers can find out more about SSL by visiting the SSL pages at CSG’s Internet Web site at [www.csg.org](http://www.csg.org).

# SSL Process

The Committee on Suggested State Legislation guides the SSL Program. SSL Committee members represent all regions of the country and many areas of state government. Members include legislators, legislative staff, and other state government officials.

SSL Committee members meet several times a year to consider legislation. The items chosen by the SSL Committee are published online at [www.csg.org](http://www.csg.org) after every meeting and then compiled into annual Suggested State Legislation volumes. The volumes are usually published in December.

SSL Committee members, other state officials, and their staff, CSG Associates and CSG staff can submit legislation directly to the SSL Program. The SSL Committee also considers legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates.

It takes many bills or laws to fill the dockets of one year-long SSL cycle. Items should be submitted to CSG at least eight weeks in advance to be considered for placement on the docket of a scheduled SSL meeting. Items submitted after that are typically held for a later meeting. Beginning with the 2008 SSL Cycle, the SSL Committee will set exact deadlines for submitting bills for each docket. The Committee adopted this policy because of an increase in recent years in the number of bills submitted to SSL Committee dockets too late to enable the committee members to thoroughly review those bills before those were considered in an SSL Committee meeting.

Committee members prefer to consider legislation that has been enacted into law by at least one state. Legislation that addresses a single, specific topic is preferable to omnibus legislation that addresses a general topic or references many disparate parts of a state code. Occasionally, committee members will consider and adopt uniform or proposed “model” legislation from an organization, or an interstate compact. In this case, the committee strongly prefers to examine state legislation that enacts the uniform or model law, or compact.

In order to facilitate the selection and review process on any submitted legislation, it is particularly helpful to include information on the status of the legislation, an enumeration of other states with similar provisions, and any summaries or analyses of the legislation.

## SSL Criteria

- Does the issue have national or regional significance?
- Are fresh and innovative approaches available to address the issue?
- Is the issue of sufficient complexity that a bill drafter would benefit from having a comprehensive draft available?
- Does the bill or Act represent a practical approach to the problem?
- Does the bill or Act represent a comprehensive approach to the problem or is it tied to a narrow approach that may have limited relevance for many states?
- Is the structure of the bill or Act logically consistent?
- Are the language and style of the bill or Act clear and unambiguous?

The word “Act” as used herein refers to both proposed and enacted legislation. Attempts are made to ensure that items presented to committee members are the most recent versions. However, interested parties should contact the originating state for the ultimate disposition in the state of any docket entry in question, including substitute bills and amendments. Furthermore, the Committee on Suggested State Legislation does not guarantee that entries presented on its dockets or in a ***Suggested State Legislation*** volume represent the exact versions of those items as enacted into law, if applicable.

# Suggested State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. *Suggested State Legislation* drafts generally follow the same style. However, beginning with the 1997 volume, items presented in *Suggested State Legislation* more closely reflect the style and form as they were submitted to the program. The word “Act” refers to proposed and enacted bills. Attempts are made to ensure that items presented to committee members are the most recent versions. Interested parties should contact the originating state for the ultimate disposition in the state of any item in question, including substitute Acts and amendments.

## Introductory Matter

The first component in a *Suggested State Legislation* draft is an abstract. Abstracts provide a brief description of the Act, highlight unique features, and provide background about other states, if applicable. SSL abstracts are typically compiled from the bill summaries in legislation that is submitted and approved for inclusion in SSL volumes, or from the originating state’s legislative staff analysis. Copies of other state bills or laws referenced in abstracts or in SSL Notes can be obtained by contacting the states directly.

## Submitted As

This component indicates the state, title, bill number or legal citation and adoption date of the original bill or law as submitted to the Suggested State Legislation Program. Readers should be aware that although legislation presented in *Suggested State Legislation* is based on state bills and laws, the Committee on Suggested State Legislation does not guarantee that items presented on its dockets or in *Suggested State Legislation* volumes represent the exact versions of those items as enacted by a state.

## Standardized Sections and Form

Items presented in this and future *Suggested State Legislation* volumes will retain, to the extent possible, the same enumeration as the bill or Act as submitted by a state. This includes sections, subsections and, paragraphs. However, modifications such as adding: “Severability,” “Repealer,” and “Effective Date,” will be made to the draft as necessary.

Often it also is necessary in draft legislation to indicate a state alternative to the name of an agency, the number of members on a committee, punishment for an offense, etc. In these cases brackets are used instead of parentheses.

Entries from the National Conference of Commissioners on Uniform State Laws are rarely changed.

# Criminal Rehabilitation Research (Sample Act)

This draft Act enables a state to facilitate research, including controlled experiments, in criminal sentencing and rehabilitation methods in order to determine the most effective and humane means of deterring crime and rehabilitating delinquent and criminal offenders.

The criminal justice system neither deters nor rehabilitates as effectively as possible. Sentencing and treatment decisions continue to be handicapped by lack of scientific experience. New treatment programs are developed haphazardly, if at all, and their relative effectiveness is rarely evaluated. The results are wasted lives, needless public expenditures, and increased crime. Dissatisfaction with existing correctional institutions has increased and the demand for reform has intensified, but reform to be meaningful must be based on facts.

Submitted as:

State:

Act/Bill Number

Status:

## Suggested State Legislation

(Title, enacting clause, etc.)

1       Section 1. [*Short Title.*] This Act may be cited as the “Criminal Rehabilitation Research  
2 Act.”

3  
4       Section 2. [*Definitions.*] As used in this Act:

5       (1) “Commission” means the [rehabilitation research commission].

6       (2) “Commissioner” means a member of the [rehabilitation research commission].

7       (3) “Offender” means a person adjudicated delinquent or convicted of a criminal offense  
8 under the laws and ordinances of the state and its political subdivisions.  
9

10       Section 3. [*Rehabilitation Research Commission.*]

11       (A) A [rehabilitation research commission] is established to review, approve, and facilitate  
12 research directed at the rehabilitation of delinquent and criminal offenders and to disseminate the  
13 results of that research to correctional officials and other interested people and agencies.

14       (B) The commission shall consist of [10] members appointed by the [governor] with the  
15 advice and consent of the [Senate].  
16

17 \*\*\*  
18

19       Section ... [*Severability.*] [Insert severability clause.]  
20

21       Section ... [*Repealer.*] [Insert repealer clause.]  
22

23       Section ... [*Effective Date.*] [Insert effective date.]

# 911 Good Samaritan Immunity

This Act provides immunity, with certain exceptions, from arrest and criminal prosecution for a person who, in good faith, reports an emergency drug or alcohol overdose. The immunity applies to the person reporting the overdose and the person suffering the overdose. The person who reports must remain at the scene of the event until law enforcement or emergency medical personnel arrive. They must also identify themselves to, and cooperate with, the law enforcement officer or emergency medical responder.

Submitted as:

Colorado

[SB 20](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Good Samaritan Immunity Act.”

2  
3 Section 2. [*Legislative Findings.*]

4 (A) The [general assembly] hereby declares that this state has a strong interest in preventing  
5 deaths that result from the use of drugs and alcohol.

6 (B) The [general assembly] further declares that:

7 (1) The creation of a safe haven provision within the state’s criminal statutes for a  
8 person who reports in good faith an emergency drug or alcohol overdose event serves the state’s  
9 interest in preventing further deaths from the use of drugs and alcohol; and

10 (2) By creating such a safe haven provision, the [general assembly] intends to  
11 encourage people who otherwise would be reluctant to report such an event due to a fear of criminal  
12 prosecution to do so without delay and people who abuse alcohol or drugs to seek treatment and  
13 assistance as necessary to obtain a safer, healthier lifestyle.

14  
15 Section 3. [*Immunity for People Who Suffer or Report an Emergency Drug or Alcohol*  
16 *Overdose.*]

17 (A) A person shall be immune from criminal prosecution for an offense described in  
18 subsection (3) of this section if:

19 (1) the person reports in good faith an emergency drug or alcohol overdose event to a  
20 law enforcement officer, to the 911 system, or to a medical provider;

21 (2) the person remains at the scene of the event until a law enforcement officer or an  
22 emergency medical responder arrives, or the person remains at the facilities of the medical provider  
23 until a law enforcement officer arrives;

24 (3) the person identifies himself or herself to, and cooperates with, the law  
25 enforcement officer, emergency medical responder, or medical provider; and

26 (4) the offense arises from the same course of events from which the emergency drug  
27 or alcohol overdose event arose.



(B) The immunity described in subsection (1) of this section also extends to the person who suffered the emergency drug or alcohol overdose event if all of the conditions of subsection (1) are satisfied.

(C) The immunity described in subsection (1) of this section shall apply to the following criminal offenses:

(1) unlawful possession of a controlled substance, as described in [insert citation];

(2) unlawful use of a controlled substance, as described in [insert citation];

(c) unlawful possession of two ounces or less of marijuana, as described in [insert citation]; or more than two ounces of marijuana but no more than six ounces of marijuana, as described in [insert citation]; or more than six ounces of marijuana but no more than twelve ounces of marijuana or three ounces or less of marijuana concentrate as described in section [insert citation];

(3) open and public display, consumption, or use of less than two ounces of marijuana as described in [insert citation];

(4) transferring or dispensing two ounces or less of marijuana from one person to another for no consideration, as described in [insert citation];

(5) Use or possession of synthetic cannabinoids or salvia divinorum, as described [insert citation];

(6) possession of drug paraphernalia, as described in [insert citation]; and

(7) illegal possession or consumption of ethyl alcohol by an underage person, as described in [insert citation].

(D) nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in subsection (3) of this section or to limit the ability of a district attorney or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (1) of this section to investigate and prosecute an offense other than an offense listed in subsection (3) of this section.

(E) as used in this section, unless the context otherwise requires, "emergency drug or alcohol overdose event" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance, or of alcohol, or another substance with which a controlled substance or alcohol was combined, and that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

#### Section4. [*Unlawful use of a controlled substance.*]

A. Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate in [insert citation], a person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs, commits a class 2 misdemeanor.

B. Except as described in [insert citation], a person who possesses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

C. Except as described in [insert citation], a person who openly and publicly displays, consumes, or uses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and, notwithstanding the provisions of [insert citation], by fifteen days in the county jail.

#### Section 5. [*Possession of drug paraphernalia - penalty.*]



- 1 (1) Except as described in [insert citation], a person commits possession of drug paraphernalia if  
2 he or she possesses drug paraphernalia and knows or reasonably should know that the drug  
3 paraphernalia could be used under circumstances in violation of the laws of this state.  
4

5 Section 6. [*Illegal possession or consumption of ethyl alcohol by an underage person; definitions.*]  
6

- 7 1. Except as described in [insert citation], a person under twenty-one years of age who  
8 possesses or consumes ethyl alcohol anywhere in the state of [insert state] commits illegal  
9 possession or consumption of ethyl alcohol by an underage person. Illegal possession or  
10 consumption of ethyl alcohol by an underage person is a strict liability offense.  
11 2. An underage person and one or two other persons shall be immune from criminal prosecution  
12 under this section if they establish he or she establishes the following:  
13 a. One of the underage person called 911 and reported in good faith that another  
14 underage person was in need of medical assistance due to alcohol consumption;  
15 b. The underage person who called 911 and, if applicable, one or two other persons  
16 acting in concert with the underage person who called 911 provided each of their  
17 names his or her name to the 911 operator;  
18 c. The underage person and, if applicable, one or two other persons acting in concert  
19 with the underage person who made the 911 call remained on the scene with the  
20 underage person in need of medical assistance until assistance arrived and cooperated  
21 with medical assistance and or law enforcement personnel on the scene.  
22

23 Section 7. [*Unlawful acts – exceptions.*]  
24

- 25 1. An underage person and one or two other persons shall be immune from criminal prosecution  
26 under paragraph (b) or (c) of paragraph (1) of this section if he or she establishes the  
27 following:  
28 a. One of the underage persons called 911 and reported that another underage person  
29 was in need of medical assistance due to alcohol consumption;  
30 b. The underage person who called 911 and, if applicable, one or two other persons  
31 acting in concert with the underage person who called 911 provided each of their  
32 names his or her name to the 911 operator;  
33 c. The underage person and, if applicable, one or two other persons acting in concert  
34 with the underage person who made the 911 call remained on the scene with the  
35 underage person in need of medical assistance until assistance arrived and cooperated  
36 with medical assistance and or law enforcement personnel on the scene.

37 Section 8. [*Severability.*] Insert severability clause.  
38

39 Section 9. [*Repealer.*] Insert repealer clause.  
40

41 Section 10. [*Effective Date.*] Insert effective date.

# Acceleration Options in Public Education

The Act provides eligible public school students educational options that offer academically challenging curriculum or accelerated instruction. It requires school districts to adopt policies for early graduation upon the completion of 24 credit hours, the creation of career-themed training courses, and it revises provisions relating to articulated acceleration mechanisms and dual enrollment programs. The Act also requires a comprehensive student progression plan to include information on accelerated educational options.

Submitted as:

Florida

[HB 7059](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act may be cited as the “Academically Challenging Curriculum to Enhance Learning (ACCEL) Act.”

Section 2. [*Academically Challenging Curriculum to Enhance Learning.*]

(1) ACCEL options.—

(a) Academically Challenging Curriculum to Enhance Learning (ACCEL) options are educational options that provide academically challenging curriculum or accelerated instruction to eligible public school students in kindergarten through grade 12.

(b) At a minimum, each school must offer the following ACCEL options: whole-grade and midyear promotion; subject-matter acceleration; virtual instruction in higher grade level subjects; and the Credit Acceleration Program [insert citation]. Additional ACCEL options may include, but are not limited to, enriched science, technology, engineering, and mathematics (STEM) coursework; enrichment programs; flexible grouping; advanced academic courses; combined classes; self-paced instruction; curriculum compacting; advanced-content instruction; and telescoping curriculum.

(2) eligibility and procedural requirements.—

(a) Principal determined eligibility requirements.—

1. Each principal must establish student eligibility requirements for virtual instruction in higher grade level subjects. Each principal must also establish student eligibility requirements for whole-grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration occurs within the principal’s school.

2. If a school offers enriched STEM coursework, enrichment programs, flexible grouping, advanced academic courses, combined classes, self-paced instruction, curriculum compacting, advanced-content instruction, telescoping curriculum, or an alternative ACCEL option established by the principal, the principal must establish student eligibility requirements.

(b) School district determined eligibility and procedural requirements. A school district must establish student eligibility requirements and procedural requirements for any whole-grade promotion, midyear promotion, or subject-matter acceleration that would result in a student attending a different school. Student eligibility requirements and procedural

requirements established by the school district must be included in the school district's comprehensive student progression plan under [insert citation].

(3) student eligibility considerations.—When establishing student eligibility requirements, principals and school districts must consider, at a minimum:

(a) The student's performance on a locally determined assessment, a statewide assessment, or a statewide, standardized assessment administered pursuant to [insert citation].

(b) The student's grade point average.

(c) The student's attendance and conduct record.

(d) Recommendations from one or more of the student's teachers in core curricula courses as defined in [insert citation].

(e) A recommendation from a guidance counselor if one is assigned to the school in which the student is enrolled.

(4) ACCEL requirements.—

(a) Each principal must inform parents and students of the ACCEL options available at the school and the student eligibility requirements for the ACCEL options established pursuant to paragraph (2)(a).

(b)1. Each principal must establish a process by which a parent may request student participation in whole-grade promotion, midyear promotion, and subject-matter acceleration when the promotion or acceleration occurs within the principal's school; virtual instruction in higher grade level subjects; or an alternative ACCEL option established by the principal. If the parent selects one of these ACCEL options and the student meets the eligibility requirements established by the principal pursuant to paragraph (2)(a), the student must be provided the opportunity to participate in the ACCEL option.

2. Each school district must establish a process by which a parent may request student participation in whole-grade promotion, midyear promotion, or subject-matter acceleration that would result in a student attending a different school. If the parent selects one of these ACCEL options and the student meets the eligibility and procedural requirements set forth in the district's comprehensive student progression plan, as required under paragraph (2)(b), the student must be provided the opportunity to participate in the ACCEL option.

(c) If a student participates in an ACCEL option pursuant to the parental request under subparagraph (b)1., a performance contract must be executed by the student, the parent, and the principal. At a minimum, the performance contract must require compliance with:

1. Minimum student attendance requirements.

2. Minimum student conduct requirements.

3. ACCEL option requirements established by the principal, which may include participation in extracurricular activities, educational outings, field trips, interscholastic competitions, and other activities related to the ACCEL option selected.

(d) If a principal initiates a student's participation in an ACCEL option, the student's parent must be notified. A performance contract, pursuant to paragraph (c), is not required when a principal initiates participation but may be used at the discretion of the principal.

Section 3. [*State college system boards of trustees; powers and duties.*]

(a) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.

(b) Each board of trustees shall govern admission of students pursuant to [insert citation] and rules of the State Board of Education. A board of trustees may establish additional admissions criteria, which shall be included in the dual enrollment articulation agreement developed according

1 to [insert citation], to ensure student readiness for postsecondary instruction. Each board of trustees  
2 may consider the past actions of any person applying for admission or enrollment and may deny  
3 admission or enrollment to an applicant because of misconduct if determined to be in the best  
4 interest of the [insert state] College System institution.

5  
6 Section 4. [*State college system institution presidents; powers and duties.*]

7 (a) The president is the chief executive officer of the [insert state] College System institution,  
8 shall be corporate secretary of the [insert state] College System institution board of trustees, and is  
9 responsible for the operation and administration of the [insert state] College System institution.

10 (b) Each [insert state] College System institution president shall:

11 1. Develop and implement jointly with school superintendents a dual enrollment  
12 articulation agreement, for the students enrolled in their respective school districts and  
13 service areas pursuant to the provisions of [insert citation].  
14

15 Section 5. [*K-12 student and parent rights.*]

16 Parents of public school students must receive accurate and timely information regarding  
17 their child's academic progress and must be informed of ways they can help their child to succeed in  
18 school. K-12 students and their parents are afforded numerous statutory rights including, but not  
19 limited to, the following:

20 (a) instructional materials.—

21 1. Dual enrollment students.—Instructional materials purchased by a district school  
22 board or [insert state] College System institution board of trustees on behalf of public school  
23 dual enrollment students shall be made available to the dual enrollment students free of  
24 charge, in accordance with the provisions of [insert citation].  
25

26 Section 6. [*Home education programs.*]

27 Home education students may participate in dual enrollment programs in accordance with  
28 [insert citation].  
29

30 Section 7. [*District school board operation and control of public K-12 education within the*  
31 *school district.*]

32 (a) District school boards are constitutionally and statutorily charged with the operation and  
33 control of public K-12 education within their school district. The district school boards must  
34 establish, organize, and operate their public K-12 schools and educational programs,  
35 employees, and facilities. Their responsibilities include staff development, public K-12  
36 school student education including education for exceptional students and students in  
37 juvenile justice programs, special programs, adult education programs, and career education  
38 programs. Additionally, district school boards must:

39 (1) Provide for the proper accounting for all students of school age, for the attendance and  
40 control of students at school, and for proper attention to health, safety, and other matters relating to  
41 the welfare of students in the following fields:

42 (i) Parental notification of acceleration options.—At the beginning of each school  
43 year, notify parents of students in or entering high school of the opportunity and benefits of  
44 advanced placement, International Baccalaureate, Advanced International Certificate of  
45 Education, dual enrollment, and Florida Virtual School courses and options for early or  
46 accelerated high school graduation under ss. 1003.4281 and 1003.429.  
47

48 Section 8. [*General requirements for middle grades promotion.*]

(1) Promotion from a school composed of middle grades 6, 7, and 8 requires that:

(a) The student must successfully complete academic courses as follows:

1. Three middle school or higher courses in English. These courses shall emphasize literature, composition, and technical text.

2. Three middle school or higher courses in mathematics. Each middle school must offer at least one high school level mathematics course for which students may earn high school credit. Successful completion of a high school level Algebra I or geometry course is not contingent upon the student's performance on the end-of-course assessment required under [insert citation] 2.a.(I). However, beginning with the [insert year] school year, to earn high school credit for an Algebra I course, a middle school student must pass the Algebra I end-of-course assessment, and beginning with the [insert school year]. school year, to earn high school credit for a geometry course, a middle school student must pass the geometry end-of-course assessment.

3. Three middle school or higher courses in social studies, one semester of which must include the study of state and federal government and civics education. Beginning with students entering grade 6 in the [insert year] school year, one of these courses must be at least a one-semester civics education course that a student successfully completes in accordance with [insert citation] and that includes the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States.

4. Three middle school or higher courses in science. Successful completion of a high school level Biology I course is not contingent upon the student's performance on the end-of-course assessment required under [insert citation]. However, beginning with the [insert year] school year, to earn high school credit for a Biology I course, a middle school student must pass the Biology I end-of-course assessment.

5. One course in career and education planning to be completed in 6th, 7th, or 8th grade. The course may be taught by any member of the instructional staff; must result in a completed personalized academic and career plan for the student; must emphasize technology or the application of technology in career fields; and, beginning in the [insert year] academic year, must include information from the Department of Economic Opportunity's economic security report as described in [insert citation]. The required personalized academic and career plan must inform students of high school graduation requirements, high school assessment and college entrance test requirements, state university and [insert state] College System institution admission requirements, and programs through which a high school student can earn college credit, including Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, career academy and career-themed course opportunities, and courses that lead to national industry certification.

A student with a disability, as defined in [insert citation], for whom the individual education plan team determines that an end-of-course assessment cannot accurately measure the student's abilities, taking into consideration all allowable accommodations, shall have the end-of-course assessment results waived for purposes of determining the student's course grade and completing the requirements for middle grades promotion. Each school must inform parents about the course curriculum and activities. Each student shall complete a personal education plan that must be signed by the student; and the student's parent. The Department of Education shall develop course frameworks and professional development



materials for the career and education planning course. The course may be implemented as a stand-alone course or integrated into another course or courses. The Commissioner of Education shall collect longitudinal high school course enrollment data by student ethnicity in order to analyze course-taking patterns.

Section 9. [*General requirements for high school graduation; revised.*]

(1) The 24 credits may be earned through applied, integrated, and combined courses approved by the Department of Education. The 24 credits shall be distributed as follows:

(a) Beginning with students entering grade 9 in the [insert year] school year, at least one course within the 24 credits required in this subsection must be completed through online learning. However, an online course taken during grades 6 through 8 fulfills this requirement. This requirement shall be met through an online course offered by the [insert state] Virtual School, an online course offered by the high school, or an online dual enrollment course. A student who is enrolled in a full-time or part-time virtual instruction program under [insert citation] meets this requirement.

Section 10. [*Early high school graduation.*]

(1) The purpose of this section is to provide a student the option of early graduation if the student has completed a minimum of 24 credits and meets the graduation requirements set forth in [insert citation]. For purposes of this section, the term “early graduation” means graduation from high school in less than 8 semesters or the equivalent.

(2) Each district school board shall adopt a policy that provides a high school student the option of early graduation. Each school district shall notify the parent of a student who is eligible to graduate early. A school district may not prohibit a student who meets the requirements of this section from graduating early.

(3) A student who graduates early may continue to participate in school activities and social events and attend and participate in graduation events with the student’s cohort, as if the student were still enrolled in high school. A student who graduates early will be included in class ranking, honors, and award determinations for the student’s cohort. A student who graduates early must comply with district school board rules and policies regarding access to the school facilities and grounds during normal operating hours.

(4) For purposes of this section, a credit is equal to 1/6 FTE. A student may earn up to six paid high school credits equivalent to 1 FTE per school year in grades 9 through 12 for courses provided by the school district. High school credits earned in excess of six per school year in courses delivered by the school district are unpaid credits.

Section 11. [*Acceleration options.*]

(1) Each high school shall advise each student of programs through which a high school student can earn college credit, including Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, and early admission courses, career academy courses, and courses that lead to national industry certification, as well as the availability of course offerings through virtual instruction. Students shall also be advised of the early and accelerated graduation options under [insert citation].

(2) The Credit Acceleration Program (CAP) is created for the purpose of allowing a student to earn high school credit in a course that requires a statewide, standardized end-of-course assessment if the student attains a specified score on the assessment. Notwithstanding [insert citation], a school district shall award course credit to a student who is not enrolled in the course, or who has not completed the course, if the student attains a passing score on the corresponding statewide, standardized end-of-course assessment. The school district shall permit a student who is

not enrolled in the course, or who has not completed the course, to take the standardized end-of-course assessment during the regular administration of the assessment.

Section 12. [*Definition of credit.*]

(a) For the purposes of requirements for high school graduation, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards. One full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for purposes of meeting high school graduation requirements in a district school that has been authorized to implement block scheduling by the district school board. The State Board of Education shall determine the number of postsecondary credit hours earned through dual enrollment pursuant to [insert citation] that satisfy the requirements of a dual enrollment articulation agreement according to [insert citation] and that equal one full credit of the equivalent high school course identified pursuant to [insert citation].

Section 13. [Middle and high school grading system.]

The grading system and interpretation of letter grades used to measure student success in grade 6 through grade 12 courses for students in public schools shall be as follows:

(1) Grade “A” equals 90 percent through 100 percent, has a grade point average value of 4, and is defined as “outstanding progress.”

(2) Grade “B” equals 80 percent through 89 percent, has a grade point average value of 3, and is defined as “above average progress.”

(3) Grade “C” equals 70 percent through 79 percent, has a grade point average value of 2, and is defined as “average progress.” (4) Grade “D” equals 60 percent through 69 percent, has a grade point average value of 1, and is defined as “lowest acceptable progress.”

(5) Grade “F” equals zero percent through 59 percent, has a grade point average value of zero, and is defined as “failure.”

(6) Grade “I” equals zero percent, has a grade point average value of zero, and is defined as “incomplete.”

For the purposes of class ranking, district school boards may exercise a weighted grading system pursuant to [insert citation].

Section 13. [*Career and Professional Education Act.*]

The Career and Professional Education Act is created to provide a statewide planning partnership between the business and education communities in order to attract, expand, and retain targeted, high-value industry and to sustain a strong, knowledge-based economy.

(1) The primary purpose of the Career and Professional Education Act is to:

(a) Improve middle and high school academic performance by providing rigorous and relevant curriculum opportunities;

(b) Provide rigorous and relevant career-themed courses that articulate to postsecondary-level coursework and lead to industry certification;

(c) Support local and regional economic development;

(d) Respond to the state’s critical workforce needs; and

(e) Provide state residents with access to high-wage and high-demand careers.

(2) Each district school board shall develop, in collaboration with regional workforce boards, economic development agencies, and postsecondary institutions approved to operate in the state, a strategic 3-year plan to address and meet local and regional workforce demands. If involvement of a regional workforce board or an economic development agency in the strategic plan development is not feasible, the local school board, with the approval of the [insert state agency], shall collaborate with the most appropriate regional business leadership board. Two or more school districts may

collaborate in the development of the strategic plan and offer career-themed courses, as defined in [insert citation], or a career and professional academy as a joint venture. The strategic plan must describe in detail provisions for the efficient transportation of students, the maximum use of shared resources, access to courses aligned to state curriculum standards through virtual education providers legislatively authorized to provide part-time instruction to middle school students, and an objective review of proposed career and professional academy courses and other career-themed courses to determine if the courses will lead to the attainment of industry certifications included on the Industry Certified Funding List pursuant to rules adopted by the State Board of Education. Each strategic plan shall be reviewed, updated, and jointly approved every 3 years by the local school district, regional workforce boards, economic development agencies, and state-approved postsecondary institutions.

(3) The strategic 3-year plan developed jointly by the local school district, regional workforce boards, economic development agencies, and state-approved postsecondary institutions shall be constructed and based on:

(a) Research conducted to objectively determine local and regional workforce needs for the ensuing 3 years, using labor projections of the United States Department of Labor and the [insert state agency];

(b) Strategies to develop and implement career academies or career-themed courses based on those careers determined to be high wage, high skill, and high demand;

(c) Strategies to provide shared, maximum use of private sector facilities and personnel;

(d) Strategies that ensure instruction by industry-certified faculty and standards and strategies to maintain current industry credentials and for recruiting and retaining faculty to meet those standards;

(e) Strategies to provide personalized student advisement, including a parent-participation component, and coordination with middle schools to promote and support career-themed courses and education planning as required under [insert citation].

(f) Alignment of requirements for middle school career planning under [insert citation], middle and high school career and professional academies or career-themed courses leading to industry certification or postsecondary credit, and high school graduation requirements;

(g) Provisions to ensure that career-themed courses and courses offered through career and professional academies are academically rigorous, meet or exceed appropriate state-adopted subject area standards, result in attainment of industry certification, and, when appropriate, result in postsecondary credit;

(h) Plans to sustain and improve career-themed courses and career and professional academies;

(i) Strategies to improve the passage rate for industry certification examinations if the rate falls below 50 percent;

(j) Strategies to recruit students into career-themed courses and in career and professional academies which include opportunities for students who have been unsuccessful in traditional classrooms but who are interested in enrolling in career-themed courses or a career and professional academy. School boards shall provide opportunities for students who may be deemed as potential dropouts to enroll in career-themed courses or participate in career and professional academies;

(k) Strategies to provide sufficient space within academies to meet workforce needs and to provide access to all interested and qualified students;

(l) Strategies to implement career-themed courses or career and professional academy training that lead to industry certification in juvenile justice education programs;



1 (m) Opportunities for high school students to earn weighted or dual enrollment credit  
2 for higher-level career and technical courses;

3 (n) Strategies to ensure the review of district pupil-progression plans and to amend  
4 such plans to include career-themed courses and career and professional academy courses  
5 and to include courses that may qualify as substitute courses for core graduation  
6 requirements and those that may be counted as elective courses;

7 (o) Strategies to provide professional development for secondary guidance counselors  
8 on the benefits of career and professional academies and career-themed courses that lead to  
9 industry certification; and

10 (p) Strategies to redirect appropriated career funding in secondary and postsecondary  
11 institutions to support career academies and career-themed courses that lead to industry  
12 certification.

13 (4) The State Board of Education shall establish a process for the continual and uninterrupted  
14 review of newly proposed core secondary courses and existing courses requested to be considered as  
15 core courses to ensure that sufficient rigor and relevance is provided for workforce skills and  
16 postsecondary education and aligned to state curriculum standards.

17 (a) The review of newly proposed core secondary courses shall be the responsibility  
18 of a curriculum review committee whose membership is approved by the [insert workforce  
19 agency] as described in [insert citation], and shall include:

20 1. Three certified high school guidance counselors recommended by the [insert  
21 state] Association of Student Services Administrators.

22 2. Three assistant superintendents for curriculum and instruction,  
23 recommended by the [insert state] Association of District School Superintendents and  
24 who serve in districts that operate successful career and professional academies  
25 pursuant to [insert citation] or a successful series of courses that lead to industry  
26 certification. Committee members in this category shall employ the expertise of  
27 appropriate subject area specialists in the review of proposed courses.

28 3. Three workforce representatives recommended by the Department of  
29 Economic Opportunity.

30 4. Three admissions directors of postsecondary institutions accredited by the  
31 [Southern Association of Colleges and Schools], representing both public and private  
32 institutions.

33 5. The [Commissioner] of Education, or his or her designee, responsible for K-  
34 12 curriculum and instruction. The [commissioner] shall employ the expertise of  
35 appropriate subject area specialists in the review of proposed courses.

36 (b) The curriculum review committee shall review newly proposed core courses  
37 electronically. Each proposed core course shall be approved or denied within 30 days after  
38 submission by a district school board or regional workforce board. All courses approved as  
39 core courses for purposes of middle school promotion and high school graduation shall be  
40 immediately added to the Course Code Directory. Approved core courses shall also be  
41 reviewed and considered for approval for dual enrollment credit. The Board of Governors  
42 and the [Commissioner] of Education shall jointly recommend an annual deadline for  
43 approval of new core courses to be included for purposes of postsecondary admissions and  
44 dual enrollment credit the following academic year. The State Board of Education shall  
45 establish an appeals process in the event that a proposed course is denied which shall require  
46 a consensus ruling by the Department of [Economic Opportunity] and the [Commissioner] of  
47 Education within 15 days.

48  
49 Section 14. [Industry-certified career education programs.]

1 (1) Secondary schools offering career-themed courses, as defined in [insert citation], and  
2 career and professional academies shall be coordinated with the relevant and appropriate industry to  
3 prepare a student for further education or for employment in that industry.

4 (2) The State Board of Education shall use the expertise of [workforce agency], to develop  
5 and adopt rules pursuant to [insert citation] for implementing an industry certification process.  
6 Industry certification shall be defined by the Department of [Economic Opportunity], based upon the  
7 highest available national standards for specific industry certification, to ensure student skill  
8 proficiency and to address emerging labor market and industry trends. A regional workforce board  
9 or a school principal may apply to [workforce agency], to request additions to the approved list of  
10 industry certifications based on high-skill, high-wage, and high-demand job requirements in the  
11 regional economy. The list of industry certifications approved by [workforce agency], and the  
12 Department of Education shall be published and updated annually by a date certain, to be included in  
13 the adopted rule.

14 (3) The Department of Education shall collect student achievement and performance data in  
15 industry-certified career education programs and career-themed courses and shall work with  
16 [workforce agency], in the analysis of collected data. The data collection and analyses shall examine  
17 the performance of participating students over time. Performance factors shall include, but not be  
18 limited to, graduation rates, retention rates, additional educational attainment, employment records,  
19 earnings, industry certification, and employer satisfaction. The results of this study shall be  
20 submitted to the President of the Senate and the Speaker of the House of Representatives annually by  
21 [insert date].

22  
23 Section 15. *[Career and professional academies and career-themed courses.]*

24 (1)(a) A “career and professional academy” is a research-based program that integrates a  
25 rigorous academic curriculum with an industry-specific curriculum aligned directly to priority  
26 workforce needs established by the regional workforce board or the Department of [Economic  
27 Opportunity]. Career and professional academies shall be offered by public schools and school  
28 districts. The [insert state] Virtual School is encouraged to develop and offer rigorous career and  
29 professional courses as appropriate. Students completing career and professional academy programs  
30 must receive a standard high school diploma, the highest available industry certification, and  
31 opportunities to earn postsecondary credit if the academy partners with a postsecondary institution  
32 approved to operate in the state.

33 (b) A “career-themed course” is a course, or a course in a series of courses, that leads to an  
34 industry certification identified in the Industry Certification Funding List pursuant to rules adopted  
35 by the State Board of Education. Career-themed courses have industry-specific curriculum aligned  
36 directly to priority workforce needs established by the regional workforce board or the Department  
37 of [Economic Opportunity]. School districts shall offer at least two  
38 career-themed courses and each secondary school is encouraged to offer at least one career-themed  
39 course. The [insert state] Virtual School is encouraged to develop and offer rigorous career-themed  
40 courses as appropriate. Students completing a career-themed course must be provided opportunities  
41 to earn postsecondary credit if the credit for the career-themed course can be articulated to a  
42 postsecondary institution approved to operate in the state.

43 (2) The goals of a career and professional academy and career-themed courses are to:

44 (a) Increase student academic achievement and graduation rates through integrated  
45 academic and career curricula.

46 (b) Prepare graduating high school students to make appropriate choices relative to  
47 employment and future educational experiences.

48 (c) Focus on career preparation through rigorous academics and industry certification.

(d) Raise student aspiration and commitment to academic achievement and work ethics through relevant coursework.

(e) Promote acceleration mechanisms, such as dual enrollment or, articulated credit, so that students may earn postsecondary credit while in high school.

(f) Support the state's economy by meeting industry needs for skilled employees in high-skill, high wage, and high-demand occupations.

(3)(a) Career-themed courses may be offered in any public secondary school.

(b) Existing career education courses may serve as a foundation for the creation of a career and professional academy. A career and professional academy may be offered as one of the following small learning communities:

1. A school-within-a-school career academy, as part of an existing high school, that provides courses in one or more occupational clusters. Students who attend the school are not required to attend the academy.

2. A total school configuration that provides courses in one or more occupational clusters. Every student who attends the school also attends the academy.

(4) Each career and professional academy and secondary school providing a career-themed course must:

(a) Provide a rigorous standards-based academic curriculum integrated with a career curriculum; consider, multiple styles of student learning; promote learning by doing through application and adaptation; maximize relevance of the subject matter; enhance each student's capacity to excel; and include an emphasis on work habits and work ethics.

(b) Include one or more partnerships with postsecondary institutions, businesses, industry, employers, economic development organizations, or other appropriate partners from the local community. Such partnerships with postsecondary institutions shall be delineated in articulation agreements and include any career and professional academy courses or career-themed courses that earn postsecondary credit. Such agreements may include articulation between the secondary school academy and public or private 2-year and 4-year postsecondary institutions and technical centers. The Department of Education, in consultation with the Board of Governors, shall establish a mechanism to ensure articulation and transfer of credits to postsecondary institutions in this state. Such partnerships must provide opportunities for:

1. Instruction from highly skilled professionals who possess industry certification credentials for courses they are teaching.

2. Internships, externships, and on-the-job training.

3. A postsecondary degree, diploma, or certificate.

4. The highest available level of industry certification.

5. Maximum articulation of credits pursuant to [insert citation] upon program completion.

(c) Provide instruction in careers designated as high-skill, high-wage, and high-demand high growth, by the regional workforce development board, the chamber of commerce, economic development agencies, or the Department of Economic Opportunity.

(d) Deliver academic content through instruction relevant to the career, including intensive reading and mathematics intervention required by [insert citation], with an emphasis on strengthening reading for information skills.

(e) Offer applied courses that combine academic content with technical skills.

(f) Provide instruction resulting in competency, certification, or credentials in workplace skills, including, but not limited to, communication skills, interpersonal skills, decision-making skills, the importance of attendance and timeliness in the work environment, and work ethics.

(5) All career courses offered in a career and professional academy and each career-themed course offered by a secondary school must lead to industry certification or college credit. If the passage rate on an industry certification examination that is associated with the career and professional academy or a career-themed course falls below 50 percent, the 3-year strategic plan must be amended to include specific strategies to improve the passage rate of the academy or career-themed course.

(6) [insert workforce agency], shall serve in an advisory role and offer technical assistance in the development and deployment of newly established career and professional academies and career-themed courses.

Section 16. *[Middle school career and professional academy courses and career-themed courses.]*

(1) Beginning with the [insert year] school year, each district school board, in collaboration with regional workforce boards, economic development agencies, and state-approved postsecondary institutions, shall include plans to implement a career and professional academy or a career-themed course, as defined in [insert citation], in at least one middle school in the district as part of the strategic 3-year plan pursuant to [insert citation]. The strategic plan must provide students ensure the opportunity to transfer from a middle school career and professional academy or a career-themed course to a high school career and professional academy or a career-themed course currently operating within the school district. Students who complete a middle school career and professional academy or a career-themed course must have the opportunity to earn an industry certificate and high school credit and participate in career planning, job shadowing, and business leadership development activities.

(2) Each middle school career and professional academy or career-themed course must be aligned with at least one high school career and professional academy or career-themed course offered in the district and maintain partnerships with local business and industry and economic development boards. Middle school career and professional academies and career-themed courses must:

(a) Lead to careers in occupations designated as high-skill, high-wage, and high-demand in the Industry Certification Funding List approved under rules adopted by the State Board of Education;

(b) Integrate content from core subject areas;

(c) Integrate career and professional academy or career-themed course content with intensive reading and mathematics pursuant to [insert citation];

(d) Coordinate with high schools to maximize opportunities for middle school students to earn high school credit;

(e) Provide access to virtual instruction courses provided by virtual education providers legislatively authorized to provide part-time instruction to middle school students. The virtual instruction courses must be aligned to state curriculum standards for middle school career and professional academy courses or career-themed courses, with priority given to students who have required course deficits;

(f) Provide instruction from highly skilled professionals who hold industry certificates in the career area in which they teach;

(g) Offer externships; and

(h) Provide personalized student advisement that includes a parent participation component.

(3) Beginning with the [insert year] school year, if a school district implements a middle school career and professional academy or a career-themed course, the Department of Education

1 shall collect and report student achievement data pursuant to performance factors identified under  
2 [insert citation] for students enrolled in an academy or a career-themed course.

3 (4) The State Board of Education shall adopt rules to identify industry certifications in  
4 science, technology, engineering, and mathematics offered in middle school to be included on the  
5 Industry Certified Funding List and which are eligible for additional full-time equivalent  
6 membership under [insert citation].  
7

8 Section 17. [*College System institutions; admissions of students.*]

9 Each [insert state] College System institution board of trustees is authorized to adopt rules  
10 governing admissions of students subject to this section and rules of the State Board of Education.  
11 These rules shall include the following:

12 (1) Admission to associate degree programs is subject to minimum standards adopted by the  
13 State Board of Education and shall require:

14 (a) A standard high school diploma, a high school equivalency diploma as prescribed  
15 in [insert citation], previously demonstrated competency in college credit postsecondary  
16 coursework, or, in the case of a student who is home educated, a signed affidavit submitted  
17 by the student's parent or legal guardian attesting that the student has completed a home  
18 education program pursuant to the requirements of s. 1002.41. Students who are enrolled in a  
19 dual enrollment or early admission program pursuant to [insert citation] are exempt from this  
20 requirement.

21 Each board of trustees shall establish policies that notify students about, and  
22 place students into, adult basic education, adult secondary education, or other instructional programs  
23 that provide students with alternatives to traditional college-preparatory instruction, including  
24 private provider instruction. A student is prohibited from enrolling in additional college-level  
25 courses until the student scores above the cut-score on all sections of the common placement test.  
26

27 Section 18. [*Articulated acceleration mechanisms.*]

28 (1) It is the intent of the Legislature that a variety of articulated acceleration mechanisms be  
29 available for secondary and postsecondary students attending public educational institutions. It is  
30 intended that articulated acceleration serve to shorten the time necessary for a student to complete  
31 the requirements associated with the conference of a high school diploma and a postsecondary  
32 degree, broaden the scope of curricular options available to students, or increase the depth of study  
33 available for a particular subject. Articulated acceleration mechanisms shall include, but are not be  
34 limited to, dual enrollment and early admission as provided for in [insert citation], advanced  
35 placement, credit by examination, the International Baccalaureate Program, and the Advanced  
36 International Certificate of Education Program. Credit earned through the [insert state] Virtual  
37 School shall provide additional opportunities for early graduation and  
38 acceleration. Students of [insert state] public secondary schools enrolled pursuant to this subsection  
39 shall be deemed authorized users of the state-funded electronic library resources that are licensed for  
40 the State College System institutions and state universities. Verification of eligibility shall be in  
41 accordance with rules established by the State Board of Education and regulations established by the  
42 Board of Governors and processes implemented by the State College System institutions and state  
43 universities.  
44

45 Section 19. [*Dual enrollment programs.*]

46 (1) The dual enrollment program is the enrollment of an eligible secondary student or home  
47 education student in a postsecondary course creditable toward high school completion and a career  
48 certificate or an associate or baccalaureate degree. A student who is enrolled in postsecondary



1 instruction that is not creditable toward a high school diploma may not be classified as a dual  
2 enrollment student.

3 (2) For the purpose of this section, an eligible secondary student is a student who is enrolled  
4 in a public secondary school or in a private secondary school which is in compliance with [insert  
5 citation] and provides a secondary curriculum pursuant [insert citation]. Students who are eligible for  
6 dual enrollment pursuant to this section may enroll in dual enrollment courses conducted during  
7 school hours, after school hours, and during the summer term. However, if the student is projected to  
8 graduate from high school before the scheduled completion date of a postsecondary course, the  
9 student may not register for that course through dual enrollment. The student may apply to the  
10 postsecondary institution and pay the required registration, tuition, and fees if the student meets the  
11 postsecondary institution's admissions requirements under [insert citation]. Instructional time for  
12 dual such enrollment may vary from 900 hours; however, the school district may only report the  
13 student for a maximum of 1.0 FTE, as provided in [insert citation]. Any student so enrolled as a dual  
14 enrollment student is exempt from the payment of registration, tuition, and laboratory fees.  
15 Vocational-preparatory instruction, college-preparatory instruction, and other forms of pre-collegiate  
16 instruction, as well as physical education courses that focus on the physical execution of a skill  
17 rather than the intellectual attributes of the activity, are ineligible for inclusion in the dual enrollment  
18 program. Recreation and leisure studies courses shall be evaluated individually in the same manner  
19 as physical education courses for potential inclusion in the program.

20 (3) Student eligibility requirements for initial enrollment in college credit dual enrollment  
21 courses must include a 3.0 unweighted high school grade point average, and the minimum score on a  
22 common placement test adopted by the State Board of Education which indicates that the student is  
23 ready for college-level coursework. Student eligibility requirements for continued enrollment in  
24 college credit dual enrollment courses must include the maintenance of a 3.0 unweighted high school  
25 grade point average and the minimum postsecondary grade point average established by the  
26 postsecondary institution. Regardless of meeting student eligibility requirements for continued  
27 enrollment, a student may lose the opportunity to participate in a dual enrollment course if the  
28 student is disruptive to the learning process such that the progress of other students or the efficient  
29 administration of the course is hindered. Student eligibility requirements qualifications for initial and  
30 continued enrollment in career certificate dual enrollment courses must include a 2.0 unweighted  
31 high school grade point average. Exceptions to the required grade point averages may be granted on  
32 an individual student basis if the educational entities agree and the terms of the agreement are  
33 contained within the dual enrollment inter-institutional articulation agreement established pursuant  
34 to subparagraph (22) of this section. [insert state] College System institution boards of trustees may  
35 establish additional initial student eligibility requirements, which shall be included in the dual  
36 enrollment articulation agreement, to ensure student readiness for postsecondary instruction.  
37 Additional requirements included in the agreement may not arbitrarily prohibit students who have  
38 demonstrated the ability to master advanced courses from participating in dual enrollment courses.

39 (4) District school boards may not refuse to enter into a dual enrollment articulation  
40 agreement with a local College System institution if that State College System institution has the  
41 capacity to offer dual enrollment courses. A College System institution may limit dual enrollment  
42 participation based upon capacity. Such limitation must be clearly specified in the dual enrollment  
43 articulation agreement.

44 (5)(a) Each faculty member providing instruction in college credit dual enrollment courses  
45 must:

- 46 1. Meet the qualifications required by the entity accrediting the postsecondary  
47 institution offering the course. The qualifications apply to all faculty members  
48 regardless of the location of instruction. The postsecondary institution offering the  
49 course must require compliance with these qualifications.

2. Provide the institution offering the dual enrollment course a copy of his or her postsecondary transcript.
  3. Provide a copy of the current syllabus for each course taught to the discipline chair or department chair of the postsecondary institution before the start of each term. The content of each syllabus must meet the same standards required for all college-level courses offered by that postsecondary institution.
  4. Adhere to the professional rules, guidelines, and expectations stated in the postsecondary institution's faculty or adjunct faculty handbook. Any exceptions must be included in the dual enrollment articulation agreement.
  5. Adhere to the rules, guidelines, and expectations stated in the postsecondary institution's student handbook which apply to faculty members. Any exceptions must be noted in the dual enrollment articulation agreement.
- (b) Each president, or designee, of a postsecondary institution offering a college credit dual enrollment course must:
1. Provide a copy of the institution's current faculty or adjunct faculty handbook to all faculty members teaching a dual enrollment course.
  2. Provide to all faculty members teaching a dual enrollment course a copy of the institution's current student handbook, which may include, but is not limited to, information on registration policies, the student code of conduct, grading policies, and critical dates.
  3. Designate an individual or individuals to observe all faculty members teaching a dual enrollment course, regardless of the location of instruction.
  4. Use the same criteria to evaluate faculty members teaching a dual enrollment course as the criteria used to evaluate all other faculty members.
  5. Provide course plans and objectives to all faculty members teaching a dual enrollment course.
- (6) The following curriculum standards apply to college credit dual enrollment:
- (a) Dual enrollment courses taught on the high school campus must meet the same competencies required for courses taught on the postsecondary institution campus. To ensure equivalent rigor with courses taught on the postsecondary institution campus, the postsecondary institution offering the course is responsible for providing in a timely manner a comprehensive, cumulative end-of-course assessment or a series of assessments of all expected learning outcomes to the faculty member teaching the course. Completed, scored assessments must be returned to the postsecondary institution and held for 1 year.
- (b) Instructional materials used in dual enrollment courses must be the same as or comparable to those used in courses offered by the postsecondary institution with the same course prefix and number. The postsecondary institution must advise the school district of instructional materials requirements as soon as that information becomes available but no later than one term before a course is offered.
- (c) Course requirements, such as tests, papers, or other assignments, for dual enrollment students must be at the same level of rigor or depth as those for all non-dual enrollment postsecondary students. All faculty members teaching dual enrollment courses must observe the procedures and deadlines of the postsecondary institution for the submission of grades. A postsecondary institution must advise each faculty member teaching a dual enrollment course of the institution's grading guidelines before the faculty member begins teaching the course.
- (d) Dual enrollment courses taught on a high school campus may not be combined with any non-college credit high school course.

1 (7) Career dual enrollment shall be provided as a curricular option for secondary students to  
2 pursue in order to earn a series of elective credits toward the high school diploma. Career dual  
3 enrollment shall be available for secondary students seeking a degree or certificate from a complete  
4 career preparatory program, and may not be used to enroll students in isolated career courses.

5 (8) Each district school board shall inform all secondary students and their parents of dual  
6 enrollment as an educational option and mechanism for acceleration. Students and their parents shall  
7 be informed of student eligibility requirements, the option for taking dual enrollment  
8 courses beyond the regular school year, and the minimum academic credits required for graduation.  
9 District school boards shall annually assess the demand for dual enrollment and provide that  
10 information to each partnering postsecondary institution. Alternative grade calculation, weighting  
11 systems, and or information regarding student education options that discriminate against dual  
12 enrollment courses are prohibited.

13 (9) The [Commissioner] of Education shall appoint faculty committees representing public  
14 school, State College System institution, and university faculties to identify postsecondary courses  
15 that meet the high school graduation requirements of [insert citation], and to establish the number of  
16 postsecondary semester credit hours of instruction and equivalent high school credits earned through  
17 dual enrollment pursuant to this section that are necessary to meet high school graduation  
18 requirements. Such equivalencies shall be determined solely on comparable course content and not  
19 on seat time traditionally allocated to such courses in high school. The [Commissioner] of Education  
20 shall recommend to the State Board of Education those postsecondary courses identified to meet  
21 high school graduation requirements, based on mastery of course outcomes, by their course numbers,  
22 and all high schools shall accept these postsecondary education courses toward meeting the  
23 requirements of [insert citation].

24 (10) Early admission is a form of dual enrollment through which eligible secondary students  
25 enroll in a postsecondary institution on a full-time basis in courses that are creditable toward the high  
26 school diploma and the associate or baccalaureate degree. A student must enroll in a minimum of 12  
27 college credit hours per semester or the equivalent to participate in the early admission program;  
28 however, a student may not be required to enroll in more than 15 college credit hours per semester or  
29 the equivalent. Students enrolled pursuant to this subsection are  
30 exempt from the payment of registration, tuition, and laboratory fees.

31 (11) Career early admission is a form of career dual enrollment through which eligible  
32 secondary students enroll full time in a career center or a State College System institution in courses  
33 that are creditable toward the high school diploma and the certificate or associate degree.  
34 Participation in the career early admission program is limited to students who have completed a  
35 minimum of 6 semesters of full-time secondary enrollment, including studies undertaken in the ninth  
36 grade. Students enrolled pursuant to this section are exempt from the payment of registration, tuition,  
37 and laboratory fees.

38 (12) The State Board of Education shall adopt rules for any dual enrollment programs  
39 involving requirements for high school graduation.

40 (13) The dual enrollment program for home education students consists of the enrollment of  
41 an eligible home education secondary student in a postsecondary course creditable toward an  
42 associate degree, a career certificate, or a baccalaureate degree. To participate in the dual enrollment  
43 program, an eligible home education secondary student must:

44 (a) Provide proof of enrollment in a home education program pursuant to  
45 [insert citation].

46 (b) Be responsible for his or her own instructional materials and transportation unless  
47 provided for otherwise.

48 (c) Sign a home education articulation agreement pursuant to paragraph



1 (14) Each postsecondary shall enter into a home education articulation agreement with each  
2 home education student seeking enrollment in a dual enrollment course and the student's parent. The  
3 home education articulation agreement shall include, at a minimum:

4 (a) A delineation of courses and programs available to for dually enrolled home  
5 education students. Courses and programs may be added, revised, or deleted at any time by  
6 the postsecondary institution.

7 (b) The initial and continued Identify eligibility requirements criteria for home  
8 education student participation, not to exceed those required of other dually enrolled  
9 students.

10 (c) The student's responsibilities for providing his or her own instructional materials  
11 and transportation.

12 (d) A copy of the statement on transfer guarantees developed by the Department of  
13 Education under subsection (16).

14 (15) The Department of Education shall approve any course for inclusion in the dual  
15 enrollment program that is contained within the statewide course numbering system. However,  
16 college-preparatory and other forms of pre-collegiate instruction, and physical education and other  
17 courses that focus on the physical execution of a skill rather than the intellectual attributes of the  
18 activity, may not be so approved, but must be evaluated individually for potential inclusion in the  
19 dual enrollment program. This subsection may not be construed to mean that an independent  
20 postsecondary institution eligible for inclusion in a dual enrollment or early admission program  
21 pursuant to [insert citation] must participate in the statewide course numbering system developed  
22 pursuant to [insert citation] to participate in a dual enrollment program.

23 (16) The Department of Education shall develop a statement on transfer guarantees to inform  
24 students and their parents, prior to enrollment in a dual enrollment course, of the potential for the  
25 dual enrollment course to articulate as an elective or a general education course into a postsecondary  
26 education certificate or degree program. The statement shall be provided to each district school  
27 superintendent, who shall include the statement in the information provided to all secondary students  
28 and their parents as required pursuant to this subsection. The statement may also include additional  
29 information, including, but not limited to, dual enrollment options, guarantees, privileges, and  
30 responsibilities.

31 (17) Students who meet the eligibility requirements of this section and who choose to  
32 participate in dual enrollment programs are exempt from the payment of registration, tuition, and  
33 laboratory fees.

34 (18) Instructional materials assigned for use within dual enrollment courses shall be made  
35 available to dual enrollment students from public high schools free of charge. This subsection does  
36 not prohibit a State College System institution from providing instructional materials at no cost to a  
37 home education student or student from a private school.

38 Instructional materials purchased by a district school board or State College System  
39 institution board of trustees on behalf of dual enrollment students shall be the property of the board  
40 against which the purchase is charged.

41 (19) School districts and Florida College System institutions must weigh dual enrollment  
42 courses the same as advanced placement, International Baccalaureate, and Advanced International  
43 Certificate of Education courses when grade point averages are calculated. Alternative grade  
44 calculation systems, alternative grade weighting systems, and information  
45 regarding student education options that discriminate against dual enrollment courses are prohibited.

46 (20) The [Commissioner] of Education may approve dual enrollment agreements for limited  
47 course offerings that have statewide appeal. Such programs shall be limited to a single site with  
48 multiple county participation.

1 (21) A postsecondary institution shall assign letter grades to each student enrolled in a dual  
2 enrollment course. The letter grade assigned by the postsecondary institution shall be posted to the  
3 student's high school transcript by the school district.

4 (22) Each district school superintendent and State College System institution president shall  
5 develop a comprehensive dual enrollment articulation agreement for the respective school district  
6 and State College System institution. The superintendent and president shall establish an articulation  
7 committee for the purpose of developing the agreement. Each state university president may  
8 designate a university representative to participate in the development of a dual enrollment  
9 articulation agreement. A dual enrollment articulation agreement shall be completed and submitted  
10 annually by the State College System institution to the Department of Education on or before [insert  
11 date]. The agreement must include, but is not limited to:

12 (a) A ratification or modification of all existing articulation agreements.

13 (b) A description of the process by which students and their parents are informed  
14 about opportunities for student participation in the dual enrollment program.

15 (c) A delineation of courses and programs available to students eligible to participate  
16 in dual enrollment.

17 (d) A description of the process by which students and their parents exercise options  
18 to participate in the dual enrollment program.

19 (e) A list of any additional initial student eligibility requirements for participation in  
20 the dual enrollment program.

21 (f) A delineation of the high school credit earned for the passage of each dual  
22 enrollment course.

23 (g) A description of the process for informing students and their parents of college-  
24 level course expectations.

25 (h) The policies and procedures, if any, for determining exceptions to the required  
26 grade point averages on an individual student basis.

27 (i) The registration policies for dual enrollment courses as determined by the  
28 postsecondary institution.

29 (j) Exceptions, if any, to the professional rules, guidelines, and expectations  
30 stated in the faculty or adjunct faculty handbook for the postsecondary institution.

31 (k) Exceptions, if any, to the rules, guidelines, and expectations stated in the student  
32 handbook of the postsecondary institution which apply to faculty members.

33 (l) The responsibilities of the school district regarding the determination of student  
34 eligibility before participating in the dual enrollment program and the monitoring of student  
35 performance while participating in the dual enrollment program.

36 (m) The responsibilities of the State College System institution regarding the  
37 transmission of student grades in dual enrollment courses to the school district.

38 (n) A funding provision that delineates costs incurred by each entity. School districts  
39 should share funding to cover instructional and support costs incurred by the postsecondary  
40 institution.

41 (o) Any institutional responsibilities for student transportation, if provided.

42 (23) The Department of Education shall develop an electronic submission system for dual  
43 enrollment articulation agreements and shall review, for compliance, each dual enrollment  
44 articulation agreement submitted pursuant to subparagraph (22) of this section. The Commissioner  
45 of Education shall notify the district school superintendent and the State College System institution  
46 president if the dual enrollment articulation agreement does not comply with statutory requirements  
47 and shall submit any dual enrollment articulation agreement with unresolved issues of  
48 noncompliance to the State Board of Education.

(24) District school boards and State College System institutions may enter into additional dual enrollment articulation agreements with state universities for the purposes of this section. School districts may also enter into dual enrollment articulation agreements with eligible independent colleges and universities pursuant to [insert citation].

(25) Postsecondary institutions may enter into dual enrollment articulation agreements with private secondary schools pursuant to subsection (2).

#### Section 20. [*Student assessment program for public schools.*]

Statewide assessment program.—The commissioner shall design and implement a statewide program of educational assessment that provides information for the improvement of the operation and management of the public schools, including schools operating for the purpose of providing educational services to youth in Department of [Juvenile Justice] programs. The commissioner may enter into contracts for the continued administration of the assessment, testing, and evaluation programs authorized and funded by the Legislature. Contracts may be initiated in 1 fiscal year and continue into the next and may be paid from the appropriations of either or both fiscal years. The commissioner is authorized to negotiate for the sale or lease of tests, scoring protocols, test scoring services, and related materials developed pursuant to law. Pursuant to the statewide assessment program, the commissioner shall:

(a) Develop and implement a student achievement testing program as follows:

1. The [insert state] Comprehensive Assessment Test (CAT) measures a student's content knowledge and skills in reading, writing, science, and mathematics. The content knowledge and skills assessed by the CAT must be aligned to the core curricular content established in the state standards. Other content areas may be included as directed by the commissioner. Comprehensive assessments of reading and mathematics shall be administered annually in grades 3 through 10 except, beginning with the [insert year] school year, the administration of grade 9 CAT Mathematics shall be discontinued, and beginning with the [insert year] school year, the administration of grade 10 CAT Mathematics shall be discontinued, except as required for students who have not attained minimum performance expectations for graduation as provided in [insert citation]. CAT Writing and CAT Science shall be administered at least once at the elementary, middle, and high school levels except, beginning with the [insert year] school year, the administration of CAT Science at the high school level shall be discontinued.

2.(a) End-of-course assessments for a subject shall be administered in addition to the comprehensive assessments required under subparagraph 1. End-of-course assessments must be rigorous, statewide, standardized, and developed or approved by the department. The content knowledge and skills assessed by end-of-course assessments must be aligned to the core curricular content established in the state standards.

(I) Statewide, standardized end-of-course assessments in mathematics shall be administered according to this sub-sub-subparagraph. Beginning with the [insert year] school year, all students enrolled in Algebra I or an equivalent course must take the Algebra I end-of-course assessment. For students entering grade 9 during the 2010-2011 school year and who are enrolled in Algebra I or an equivalent, each student's performance on the end-of-course assessment in Algebra I shall constitute 30 percent of the student's final course grade. Beginning with the 2012-2013 school year, the end-of-course assessment in Algebra I shall be administered four times annually. Beginning with students entering grade 9 in the [insert year] school year, a student who is enrolled in Algebra I or an equivalent must earn a passing score on the end-of-course assessment in Algebra I or attain an equivalent score as described in subsection (11) in order to earn course credit. Beginning with the [insert year] school

1 year, all students enrolled in geometry or an equivalent course must take the geometry  
2 end-of-course assessment. For students entering grade 9 during the [insert year]  
3 school year, each student's performance on the end-of-course assessment in geometry  
4 shall constitute 30 percent of the student's final course grade. Beginning with  
5 students entering grade 9 during the [insert year] school year, a student must earn a  
6 passing score on the end-of-course assessment in geometry or attain an equivalent  
7 score as described in subsection (12) in order to earn course credit.

8 (II) Statewide, standardized end-of-course assessments in science shall be  
9 administered according to this sub-sub-paragraph. Beginning with the [insert year]  
10 school year, all students enrolled in Biology I or an equivalent course must take the  
11 Biology I end-of-course assessment. For the [insert year] school year, each student's  
12 performance on the end-of-course assessment in Biology I shall constitute 30 percent  
13 of the student's final course grade. Beginning with students entering grade 9 during  
14 the 2012-2013 school year, a student must earn a passing score on the end-of-course  
15 assessment in Biology I in order to earn course credit.

16 (b) During the [insert year] school year, an end-of-course assessment in civics  
17 education shall be administered as a field test at the middle school level. During the [insert  
18 year] school year, each student's performance on the statewide, standardized end-of-course  
19 assessment in civics education shall constitute 30 percent of the student's final course grade.  
20 Beginning with the [insert year] school year, a student must earn a passing score on the end-  
21 of-course assessment in civics education in order to pass the course and be promoted from  
22 the middle grades. The school principal of a middle school shall determine, in accordance  
23 with State Board of Education rule, whether a student who transfers to the middle school and  
24 who has successfully completed a civics education course at the student's previous school  
25 must take an end-of-course assessment in civics education.

26 (c) The commissioner may select one or more nationally developed comprehensive  
27 examinations, which may include, but need not be limited to, examinations for a College  
28 Board Advanced Placement course, International Baccalaureate course, or Advanced  
29 International Certificate of Education course, or industry-approved examinations to earn  
30 national industry certifications identified in the Industry Certification Funding List, pursuant  
31 to rules adopted by the State Board of Education, for use as end-of-course assessments under  
32 this paragraph, if the commissioner determines that the content knowledge and skills  
33 assessed by the examinations meet or exceed the grade level expectations for the core  
34 curricular content established for the course in the state standards. The commissioner may  
35 collaborate with the American Diploma Project in the adoption or development of rigorous  
36 end-of-course assessments that are aligned to the state standards.

37 (d) Contingent upon funding provided in the General Appropriations Act,  
38 including the appropriation of funds received through federal grants, the [Commissioner] of  
39 Education shall establish an implementation schedule for the development and administration of  
40 additional statewide, standardized end-of-course assessments in English/Language Arts II, Algebra  
41 II, chemistry, physics, earth/space science, United States history, and world history. Priority shall be  
42 given to the development of end-of-course assessments in English/Language Arts II. The  
43 Commissioner of Education shall evaluate the feasibility and effect of transitioning from the grade 9  
44 and grade 10 CAT Reading and high school level CAT Writing to an end-of-course assessment in  
45 English/Language Arts II. The commissioner shall report the results of the evaluation to the  
46 President of the Senate and the Speaker of the House of Representatives no later than [insert date].

47 3. The testing program shall measure student content knowledge and skills adopted by the  
48 State Board of Education as specified in paragraph (a) and measure and report student performance  
49 levels of all students assessed in reading, writing, mathematics, and science. The commissioner shall

1 provide for the tests to be developed or obtained, as appropriate, through contracts and project  
2 agreements with private vendors, public vendors, public agencies, postsecondary educational  
3 institutions, or school districts. The commissioner shall obtain input with respect to the design and  
4 implementation of the testing program from state educators, assistive technology experts, and the  
5 public.

6 4. The testing program shall be composed of criterion-referenced tests that shall, to the extent  
7 determined by the commissioner, include test items that require the student to produce information  
8 or perform tasks in such a way that the core content knowledge and skills he or she uses can be  
9 measured.

10 5. CAT Reading, Mathematics, and Science and all statewide, standardized end-of-course  
11 assessments shall measure the content knowledge and skills a student has attained on the assessment  
12 by the use of scaled scores and achievement levels. Achievement levels shall range from 1 through  
13 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and  
14 level 3 indicating satisfactory performance on an assessment. For purposes of CAT Writing, student  
15 achievement shall be scored using a scale of 1 through 6 and the score earned shall be used in  
16 calculating school grades. A score shall be designated for each subject area tested, below which  
17 score a student's performance is deemed inadequate. The school districts shall provide appropriate  
18 remedial instruction to students who score below these levels.

19 6. The State Board of Education shall, by rule, designate a passing score for each part of the  
20 grade 10 assessment test and end-of-course assessments. Any rule that has the effect of raising the  
21 required passing scores may apply only to students taking the assessment for the first time after the  
22 rule is adopted by the State Board of Education. Except as otherwise provided in  
23 this subparagraph and as provided in [insert citation], students must earn a passing score on grade 10  
24 CAT Reading and grade 10 CAT Mathematics or attain concordant scores as described in subsection  
25 (10) in order to qualify for a standard high school diploma.

26 7. In addition to designating a passing score under subparagraph 6., the State Board of  
27 Education shall also designate, by rule, a score for each statewide, standardized end-of-course  
28 assessment which indicates that a student is high achieving and has the potential to meet college-  
29 readiness standards by the time the student graduates from high school.

30 8. Participation in the testing program is mandatory for all students attending public school,  
31 including students served in Department of [Juvenile Justice] programs, except as otherwise  
32 prescribed by the commissioner. A student who has not earned passing scores on the grade 10 CAT  
33 as provided in subparagraph 6. must participate in each retake of the assessment until the student  
34 earns passing scores or achieves scores on a standardized assessment which are concordant with  
35 passing scores pursuant to subsection (10). If a student does not participate in the statewide  
36 assessment, the district must notify the student's parent and provide the parent with information  
37 regarding the implications of such nonparticipation. A parent must provide signed consent for a  
38 student to receive classroom instructional accommodations that would not be available or permitted  
39 on the statewide assessments and must acknowledge in writing that he or she understands the  
40 implications of such instructional accommodations. The State Board of Education shall adopt rules,  
41 based upon recommendations of the commissioner, for the provision of test accommodations for  
42 students in exceptional education programs and for students who have limited English proficiency.  
43 Accommodations that negate the validity of a statewide assessment are not allowable in the  
44 administration of the CAT or an end-of-course assessment. However, instructional accommodations  
45 are allowable in the classroom if included in a student's individual education plan. Students using  
46 instructional accommodations in the classroom that are not allowable as accommodations on the  
47 CAT or an end-of-course assessment may have the CAT or an end-of-course assessment requirement  
48 waived pursuant to the requirements of [insert citation].



1           9. A student seeking an adult high school diploma must meet the same testing requirements  
2 that a regular high school student must meet.

3           10. District school boards must provide instruction to prepare students in the core curricular  
4 content established in the state standards adopted under [insert citation], including the core content  
5 knowledge and skills necessary for successful grade-to-grade progression and high school  
6 graduation. If a student is provided with instructional accommodations in the classroom that are not  
7 allowable as accommodations in the statewide assessment program, as described in the test manuals,  
8 the district must inform the parent in writing and must provide the parent with information regarding  
9 the impact on the student's ability to meet expected performance levels in reading, writing,  
10 mathematics, and science. The commissioner shall conduct studies as necessary to verify that the  
11 required core curricular content is part of the district instructional programs.

12           11. District school boards must provide opportunities for students to demonstrate an  
13 acceptable performance level on an alternative standardized assessment approved by the State Board  
14 of Education following enrollment in summer academies.

15           12. The Department of Education must develop, or select, and implement a common battery  
16 of assessment tools that will be used in all juvenile justice programs in the state. These tools must  
17 accurately measure the core curricular content established in the state standards.

18           13. For students seeking a special diploma pursuant to [insert citation], the Department of  
19 Education must develop or select and implement an alternate assessment tool that accurately  
20 measures the core curricular content established in the state standards for students with disabilities  
21 under [insert citation].

22           14. The Commissioner of Education shall establish schedules for the administration of  
23 statewide assessments and the reporting of student test results. When establishing the schedules for  
24 the administration of statewide assessments, the commissioner shall consider the observance of  
25 religious and school holidays. The commissioner shall, by [insert date] of each year, notify  
26 each school district in writing and publish on the department's Internet website the testing and  
27 reporting schedules for, at a minimum, the school year following the upcoming school year. The  
28 testing and reporting schedules shall require that:

29           a. There is the latest possible administration of statewide assessments and the earliest  
30 possible reporting to the school districts of student test results which is feasible within  
31 available technology and specific appropriations; however, test results for the CAT must be  
32 made available no later than the week of [insert date]. Student results for end-of-course  
33 assessments must be provided no later than 1 week after the school district completes testing  
34 for each course. The commissioner may extend the reporting schedule under exigent  
35 circumstances.

36           b. CAT Writing may not be administered earlier than the week of [insert date], and a  
37 comprehensive statewide assessment of any other subject may not be administered earlier  
38 than the week of [insert date].

39           c. A statewide, standardized end-of-course assessment is administered at the end of  
40 the course. The commissioner shall select an administration period for assessments that  
41 meets the intent of end-of-course assessments and provides student results prior to the end of  
42 the course. School districts shall administer tests in accordance with the schedule determined  
43 by the commissioner. For an end-of-course assessment administered at the end of the first  
44 semester, the commissioner shall determine the most appropriate testing dates based on a  
45 review of each school district's academic calendar. The commissioner may, based on  
46 collaboration and input from school districts, design and implement student testing programs,  
47 for any grade level and subject area, necessary to effectively monitor educational  
48 achievement in the state, including the measurement of educational achievement of the state  
49 standards for students with disabilities. Development and refinement of assessments shall

1 include universal design principles and accessibility standards that will prevent any  
2 unintended obstacles for students with disabilities while ensuring the validity and reliability  
3 of the test. These principles should be applicable to all technology platforms and assistive  
4 devices available for the assessments. The field testing process and psychometric analyses  
5 for the statewide assessment program must include an appropriate percentage of students  
6 with disabilities and an evaluation or determination of the effect of test items on such  
7 students.

8  
9 Section 21. [*Public school student progression; remedial instruction; reporting*  
10 *requirements.*]

11 (1) intent.—It is the intent of the Legislature that each student’s progression from one grade  
12 to another be determined, in part, upon satisfactory performance in reading, writing, science, and  
13 mathematics; that district school board policies facilitate student achievement that each student and  
14 his or her parent be informed of that student’s academic progress; and that students have access to  
15 educational options that provide academically challenging coursework or accelerated instruction  
16 pursuant to [insert citation].

17 (2) Comprehensive student progression plan. - Each district school board shall establish a  
18 comprehensive plan for student progression which must:

19 (a) Provide standards for evaluating each student’s performance, including how well  
20 he or she masters the performance standards approved by the State Board of Education.

21 (b) Provide specific levels of performance in reading, writing, science, and  
22 mathematics for each grade level, including the levels of performance on statewide  
23 assessments as defined by the commissioner, below which a student must receive  
24 remediation, or be retained within an intensive program that is different from the previous  
25 year’s program and that takes into account the student’s learning style.

26 (c) Provide appropriate alternative placement for a student who has been retained 2 or  
27 more years.

28 (d)1. List the student eligibility and procedural requirements established by the school  
29 district for whole-grade promotion, midyear promotion, and subject-matter acceleration that  
30 would result in a student attending a different school, pursuant to [insert citation].

31 2. Notify parents and students of the school district’s process by which a  
32 parent may request student participation in whole-grade promotion, midyear  
33 promotion, or subject-matter acceleration that would result in a student attending a  
34 different school, pursuant to [insert citation].

35 (e)1. Advise parents and students that additional ACCEL options may be available at  
36 the student’s school, pursuant to [insert citation].

37 2. Advise parents and students to contact the principal at the student’s school  
38 for information related to student eligibility requirements for whole grade promotion,  
39 midyear promotion, and subject-matter acceleration when the promotion or  
40 acceleration occurs within the principal’s school; virtual instruction in higher grade  
41 level subjects; and any other ACCEL options offered by the principal, pursuant to  
42 [insert citation].

43 3. Advise parents and students to contact the principal at the student’s school  
44 for information related to the school’s process by which a parent may request student  
45 participation in whole-grade promotion, midyear promotion, and subject-matter  
46 acceleration when the promotion or acceleration occurs within the principal’s school;  
47 virtual instruction in higher grade level subjects; and any other ACCEL options  
48 offered by the principal, pursuant to [insert citation].

1 (f) Advise parents and students of the early and accelerated graduation options under  
2 [insert citation].

3 (g) List, or incorporate by reference, all dual enrollment courses contained within the  
4 dual enrollment articulation agreement established pursuant to [insert citation].  
5

6 Section 22. [*Fee exemptions.*]

7 (1) The following students are exempt from the payment of tuition and fees, including lab  
8 fees, at a school district that provides postsecondary career programs, State College System  
9 institution, or state university:

10 (a) A student enrolled in a dual enrollment or early admission program pursuant to  
11 [insert citation].  
12

13 Section 23. [*Severability.*] Insert severability clause.

14 Section 24. [*Repealer.*] Insert repealer clause.

15 Section 25. [*Effective Date.*] Insert effective date.  
16  
17



# Caring for Students with Diabetes in School

This Act directs the state department of education and the state association of school nurses to develop guidelines to train school nurses and other employees in the care needed for students with diabetes

This Act requires parents or guardians who seek diabetes care for their children at school to submit diabetes medical management plans to the schools their children attend. It generally permits students who have diabetes to possess supplies and equipment to monitor their glucose levels and administer insulin at school. It generally directs a school nurse or other trained personnel to help students manage their diabetes at school and to respond to diabetic emergencies such as when a student's blood glucose levels are outside their target range.

The Act limits the liability of school nurses and school employees who perform activities authorized by the Act.

Submitted as:

Georgia

[HB 879 \(AS PASSED HOUSE AND SENATE\)](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] An Act relating to student health in elementary and secondary  
2 education, and other purposes.

3  
4           Section 2. [*Findings*.] Insert findings clause.

5  
6           Section 3. [*Requirements for diabetic students*.]

7           (a) As used in this Code section, the term:

8                   (1) 'Diabetes medical management plan' means a document developed by the student's  
9 physician or other health care provider that sets out the health services, including the student's target  
10 range for blood glucose levels, needed by the student at school and is signed by the student's parent  
11 or guardian.

12                   (2) 'School' means any primary or secondary public school located within this state.

13                   (3) 'School employee' means any person employed by a local board of education or  
14 state chartered special school or any person employed by a local health department who is assigned  
15 to a public school.

16                   (4) 'Trained diabetes personnel' means a school employee who volunteers to be  
17 trained in accordance with this Code section. Such employee shall not be required to be a health care  
18 professional.

19           (b)(1) No later than [insert date], the Department of Education, in conjunction with the [insert  
20 state] Association of School Nurses, shall develop guidelines for the training of school employees in  
21 the care needed for students with diabetes. The training guidelines shall include instruction in:

22                           (A) Recognition and treatment of hypoglycemia and hyperglycemia;

23                           (B) Understanding the appropriate actions to take when blood glucose levels  
24 are outside of the target ranges indicated by a student's diabetes medical management plan;

(C) Understanding physician instructions concerning diabetes medication dosage, frequency, and the manner of administration;

(D) Performance of finger-stick blood glucose checking, ketone checking, and recording the results;

(E) Administration of insulin and glucagon, an injectable used to raise blood glucose levels immediately for severe hypoglycemia, and the recording of results;

(F) Performance of basic insulin pump functions;

(G) Recognizing complications that require emergency assistance; and

(H) Recommended schedules and food intake for meals and snacks, the effect of physical activity upon blood glucose levels, and actions to be implemented in the case of schedule disruption.

(2) Each local board of education and state chartered special school shall ensure that the training outlined in paragraph (1) of this subsection is provided to a minimum of two school employees at each school attended by a student with diabetes.

(3) A school employee shall not be subject to any penalty or disciplinary action for refusing to serve as trained diabetes personnel.

(4) The training outlined in paragraph (1) of this subsection shall be coordinated and provided by a school nurse or may be contracted out to be provided by another health care professional with expertise in diabetes. Such training shall take place prior to the commencement of each school year, or as needed when a student with diabetes is newly enrolled at a school or a student is newly diagnosed with diabetes. The school nurse or other contracted health care professional shall provide follow-up training and supervision.

(5) Each local school system and state chartered special school shall provide information in the recognition of diabetes related emergency situations to all bus drivers responsible for the transportation of a student with diabetes.

(c) The parent or guardian of each student with diabetes who seeks diabetes care while at school shall submit to the school a diabetes medical management plan which upon receipt shall be reviewed and implemented by the school.

(d)(1) In accordance with the request of a parent or guardian of a student with diabetes and the student's diabetes medical management plan, the school nurse or, in the absence of the school nurse, trained diabetes personnel shall perform functions including, but not limited to, responding to blood glucose levels that are outside of the student's target range; administering glucagon; administering insulin, or assisting a student in administering insulin through the insulin delivery system the student uses; providing oral diabetes medications; checking and recording blood glucose levels and ketone levels, or assisting a student with such checking and recording; and following instructions regarding meals, snacks, and physical activity.

(2) The school nurse or at least one trained diabetes personnel shall be on site at each school and available during regular school hours to provide care to each student with diabetes as identified pursuant to subsection (c) of this Code section. For purposes of field trips, the parent or guardian, or designee of such parent or guardian, of a student with diabetes may accompany such student on a field trip.

(3) There shall be trained diabetes personnel at each school where a student with diabetes is enrolled, and a student's school choice shall in no way be restricted because the student has diabetes.

(4) The activities set forth in paragraph (1) of this subsection shall not constitute the practice of nursing and shall be exempted from all applicable statutory and regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a licensed health care professional.

(e) Upon written request of a student's parent or guardian and if authorized by the student's

1 diabetes medical management plan, a student with diabetes shall be permitted to perform blood  
2 glucose checks, administer insulin through the insulin delivery system the student uses, treat  
3 hypoglycemia and hyperglycemia, and otherwise attend to the monitoring and treatment of his or her  
4 diabetes in the classroom, in any area of the school or school grounds, and at any school related  
5 activity, and he or she shall be permitted to possess on his or her person at all times all necessary  
6 supplies and equipment to perform such monitoring and treatment functions.

7 (f) No physician, nurse, school employee, local school system, or state chartered special  
8 school shall be liable for civil damages or subject to disciplinary action under professional licensing  
9 regulations or school disciplinary policies as a result of the activities authorized or required by this  
10 Code section when such acts are committed as an ordinarily reasonably prudent physician, nurse,  
11 school employee, local school system, or state chartered special school would have acted under the  
12 same or similar circumstances.

13 (g) A private school which complies with the requirements of this Code section shall have  
14 the same limited liability for such school and its employees in the same manner as for public  
15 schools as provided for in subsection (f) of this Code section.”

16  
17 Section 4. [*Severability.*] Insert severability clause.

18  
19 Section 5. [*Repealer.*] Insert repealer clause.

20  
21 Section 6. [*Effective Date.*] Insert effective date.

# Charitable Bail Organizations

The Act amends state insurance law to allow the officials to issue certificates to a charitable bail organization to deposit money as bail under certain circumstances for individuals who cannot afford to do so themselves.

Submitted as:

New York

[SB 7752](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act may be cited as the “Charitable Bail Organizations Act.”

Section 2. [*Charitable bail organization.*]

(A) The [insert agency official] may issue a certificate to a charitable bail organization to deposit money as bail for another in accordance with the provisions of this section only if such entity is a non-profit organization organized pursuant to the United States internal revenue code as described by section 501(c)(3) of title 26 of the United States code, is registered as a charity [insert citation] and is current on such registration.

(B) The application for a charitable bail organization certificate shall be in such form or forms, and shall contain relevant information, as the [insert agency official] shall prescribe.

(C) The [insert agency official] may refuse to issue a charitable bail organization certificate if, in the [insert agency official] judgment, an applicant, or an officer or director of the applicant, has:

(1) Demonstrated untrustworthiness or incompetence;

(2) Given cause for the revocation or suspension of the certificate; or

(3) Failed to comply with any prerequisite for the issuance of the certificate.

(D) A charitable bail organization certificate shall be valid for a term of five years from issuance. At the time of application for every such certificate, and for every renewal thereof, an applicant shall pay to the superintendent a [insert fee] payable each term or fraction of a term, provided, however, that in his or her discretion, the superintendent may waive such fee.

(E) If an application for a renewal certificate shall have been filed with the [insert agency official] before the expiration of such certificate, then the certificate sought to be renewed shall continue in full force and effect either until the issuance by the [insert agency official] or the renewal certificate applied for or until five days after the [insert agency official] shall have refused to issue such renewal certificate.

(F) The [insert agency official] may refuse to renew or may revoke or suspend a charitable bail organization certificate for a reasonable period determined by the [insert agency official] if, after notice and hearing, the superintendent determines that an applicant or licensee, or an officer or director of the applicant or licensee, has:

(1) Demonstrated untrustworthiness or incompetence;

(2) Violated this section or authorized regulations promulgated thereunder; or

(3) Failed to stay current with their registration as a charity pursuant to [insert citation].

1           Section 3. [*Financial Requirements for Charitable Bail Organizations.*]

2           (A) A charitable bail organization shall:

3               (1) Only deposit money as bail in the amount of two thousand dollars or less for a  
4 defendant charged with one or more misdemeanors, provided, however, that such organization shall  
5 not execute as surety any bond for any defendant;

6               (2) Only deposit money as bail on behalf of a person who is financially unable to  
7 post bail, which may constitute a portion or the whole amount of such bail;

8               (3) Only deposit money as bail in one county in this state. Provided, however,  
9 that a charitable bail organization whose principal place of business is located within a city of a  
10 million or more may deposit money as bail in the counties comprising such city; and

11              (4) Not charge a premium or receive compensation for acting as a charitable bail  
12 organization.

13  
14           Section 3. [*Severability.*] Insert severability clause.

15  
16           Section 4. [*Repealer.*] Insert repealer clause.

17  
18           Section 5. [*Effective Date.*] Insert effective date.

# Concierge Medicine

This Act declares that the state needs a multipronged approach to provide adequate health care to many citizens who lack adequate access to it. It states that direct patient-provider practices, in which patients enter into a direct relationship with medical practitioners and pay a fixed amount directly to the health care provider for primary care services, represent an innovative, affordable option which could improve access to medical care, reduce the number of people who now lack such access, and cut down on emergency room use for primary care purposes, thereby freeing up emergency room facilities to treat true emergencies.

The Act provides that a “health care service contractor” does not include direct patient-provider primary care practices. It provides that direct practices must submit annual statements to the office of insurance commissioner specifying the number of providers in each practice, total number of patients being served, providers’ names, and the business address for each direct practice. The form for the annual statement will be developed in a manner prescribed by the commissioner.

It directs the state insurance commissioner to submit a study of direct care practices to the appropriate committees of the senate and house of representatives. The Act requires the study to also examine the extent to which individuals and families participating in a direct care practice maintain health coverage for health conditions not covered by the direct care practice. It directs the commissioner to recommend to the legislature whether the statutory authority for direct care practices to operate should be continued, modified, or repealed.

Submitted as:

Washington

[Chapter 267, Laws of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] An Act relating to innovative primary healthcare delivery.

Section 2. [*Findings.*]

Section 3. [*Definitions.*]

For the purposes of this chapter:

(1) “Health care services” means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) “Provider” means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) “Health care service contractor” means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. “Health care service contractor” does not include direct patient-provider primary care practices as defined in Section 4 this Act.

(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of [insert citation] and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in [insert citation] over total liabilities but the liabilities shall not include fully subordinated debt.

#### Section 4. *[Direct patient provider primary care practices; related definitions.]*

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under [insert



1 citation]. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated  
2 with other types of health care providers not engaged in a direct practice;

3 (b) Enters into direct agreements with direct patients or parents or legal guardians of  
4 direct patients;

5 (c) Does not accept payment for health care services provided to direct patients from  
6 any entity subject to regulation under [insert citation], plans administered under [insert citation]; and

7 (d) Does not provide, in consideration for the direct fee, services, procedures, or  
8 supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level  
9 radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring  
10 general anesthesia, or similar advanced procedures, services, or supplies.

11 (2) "Direct patient" means a person who is party to a direct agreement and is entitled to  
12 receive primary care services under the direct agreement from the direct practice.

13 (3) "Direct fee" means a fee charged by a direct practice as consideration for being available  
14 to provide and providing primary care services as specified in a direct agreement.

15 (4) "Direct agreement" means a written agreement entered into between a direct practice and  
16 an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct  
17 patients, whereby the direct practice charges a direct fee as consideration for being available to  
18 provide and providing primary care services to the individual direct patient. A direct agreement  
19 must:

20 (a) describe the specific health care services the direct practice will provide; and

21 (b) be terminable at will upon written notice by the direct patient.

22 (5) "Health care provider" or "provider" means a person regulated under [insert citation] to  
23 practice health or health-related services or otherwise practicing health care services in this state  
24 consistent with state law.

25 (6) "Health carrier" or "carrier" has the same meaning as [insert citation].

26 (7) "Primary care" means routine health care services, including screening, assessment,  
27 diagnosis, and treatment for the purpose of promotion of health, and detection and management of  
28 disease or injury.

29 (8) "Network" means the group of participating providers and facilities providing health care  
30 services to a particular health carrier's health plan or to plans administered under [insert citation].

### 31 32 Section 5. [*Limitations on direct practices.*]

33 Except as provided in section 8 of this act, no direct practice shall decline to accept any  
34 person solely on account of race, religion, national origin, the presence of any sensory, mental, or  
35 physical disability, education, economic status, or sexual orientation.

### 36 37 Section 6. [*Authorization to charge direct fees.*]

38 (1) A direct practice must charge a direct fee on a monthly basis. The fee must represent the  
39 total amount due for all primary care services specified in the direct agreement and may be paid by  
40 the direct patient or on his or her behalf by others.

41 (2) A direct practice must:

42 (a) Maintain appropriate accounts and provide data regarding payments made and  
43 services received to direct patients upon request; and

44 (b) Either:

45 (i) Bill patients at the end of each monthly period; or

46 (ii) If the patient pays the monthly fee in advance, promptly refund to the  
47 direct patient all unearned direct fees following receipt of written notice of termination of the direct  
48 agreement from the direct patient. The amount of the direct fee considered earned shall be a  
49 proration of the monthly fee as of the date the notice of termination is received.

(3) If the patient chooses to pay more than one monthly direct fee in advance, the funds must be held in a trust account and paid to the direct practice as earned at the end of each month. Any unearned direct fees held in trust following receipt of termination of the direct agreement shall be promptly refunded to the direct patient. The amount of the direct fee earned shall be a proration of the monthly fee for the then current month as of the date the notice of termination is received.

(4) The direct fee schedule applying to an existing direct patient may not be increased over the annual negotiated amount more frequently than annually. A direct practice shall provide advance notice to existing patients of any change within the fee schedule applying to those existing direct patients. A direct practice shall provide at least sixty days' advance notice of any change in the fee.

(5) A direct practice must designate a contact person to receive and address any patient complaints.

(6) Direct fees for comparable services within a direct practice shall not vary from patient to patient based on health status or sex.

#### Section 7. [*Activities of direct practices.*]

##### (1) Direct practices may not:

(a) Enter into a participating provider contract as defined [insert citation] with any carrier or with any carrier's contractor or subcontractor, or plans administered under [insert citation], to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under [insert citation], for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under [insert citation] as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

##### (2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by [insert citation] and 48.46.020 or plans administered under [insert citation] for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services provided in connection with wellness physical examinations. In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

1 (c) Charge an additional fee to direct patients for supplies, medications, and specific  
2 vaccines provided to direct patients that are specifically excluded under the agreement, provided the  
3 direct practice notifies the direct patient of the additional charge, prior to their administration or  
4 delivery.

5  
6 Section 8. [*Declining patients and discontinuing care.*]

7 (1) Direct practices may not decline to accept new direct patients or discontinue care to  
8 existing patients solely because of the patient's health status. A direct practice may decline to accept  
9 a patient if the practice has reached its maximum capacity, or if the patient's medical condition is  
10 such that the provider is unable to provide the appropriate level and type of health care services in  
11 the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain  
12 care from another physician, the direct practice may discontinue care for direct patients if:

13 (a) The patient fails to pay the direct fee under the terms required by the direct  
14 agreement;

15 (b) the patient has performed an act that constitutes fraud;

16 (c) the patient repeatedly fails to comply with the recommended treatment plan;

17 (d) the patient is abusive and presents an emotional or physical danger to the staff or  
18 other patients of the direct practice; or

19 (e) the direct practice discontinues operation as a direct practice.

20 (2) Direct practices may accept payment of direct fees directly or indirectly from non-  
21 employer third parties.

22  
23 Section 9. [*Prohibitions on deceptive and false advertising.*]

24 A person shall not make, publish, or disseminate any false, deceptive, or misleading  
25 representation or advertising in the conduct of the business of a direct practice, or relative to the  
26 business of a direct practice.

27  
28 Section 10. [*Terms of agreements.*]

29 A person shall not make, issue, or circulate, or cause to be made, issued, or circulated, a  
30 misrepresentation of the terms of any direct agreement, or the benefits or advantages promised  
31 thereby, or use the name or title of any direct agreement misrepresenting the nature thereof.

32  
33 Section 11. [*Submission of annual statements.*]

34 (1) Direct practices must submit annual statements, beginning on [insert date], to the office of  
35 insurance commissioner specifying the number of providers in each practice, total number of  
36 patients being served, the average direct fee being charged, providers' names, and the business  
37 address for each direct practice. The form and content for the annual statement must be developed in  
38 a manner prescribed by the commissioner.

39 (2) A health care provider may not act as, or hold himself or herself out to be, a direct  
40 practice in this state, nor may a direct agreement be entered into with a direct patient in this state,  
41 unless the provider submits the annual statement in subsection (1) of this section to the  
42 commissioner.

43 (3) The commissioner shall report annually to the legislature on direct practices including,  
44 but not limited to, participation trends, complaints received, voluntary data reported by the direct  
45 practices, and any necessary modifications to this chapter. The initial report shall be due [insert  
46 date].

47  
48 Section 12. [*Disclaimer requirements.*]

1 (1) A direct agreement must include the following disclaimer: “This agreement does not  
2 provide comprehensive health insurance coverage. It provides only the health care services  
3 specifically described.” The direct agreement may not be sold to a group and may not be entered  
4 with a group of subscribers. It must be an agreement between a direct practice and an individual  
5 direct patient. Nothing prohibits the presentation of marketing materials to groups of potential  
6 subscribers or their representatives.

7 (2) A comprehensive disclosure statement shall be distributed to all direct patients with their  
8 participation forms. Such disclosure must inform the direct patients of their financial rights and  
9 responsibilities to the direct practice as provided for in this chapter, encourage that direct patients  
10 obtain and maintain insurance for services not provided by the direct practice, and state that the  
11 direct practice will not bill a carrier for services covered under the direct agreement. The disclosure  
12 statement shall include contact information for the office of the insurance commissioner.

13  
14 Section 13. [*Study of direct care practices.*]

15 By [insert date], the commissioner shall submit a study of direct care practices to the  
16 appropriate committees of the senate and House of Representatives. The study shall include an  
17 analysis of the extent to which direct care practices:

18 (1) Improve or reduce access to primary health care services by recipients of Medicare and  
19 Medicaid, individuals with private health insurance, and the uninsured;

20 (2) Provide adequate protection for consumers from practice bankruptcy, practice decisions  
21 to drop participants, or health conditions not covered by direct care practices;

22 (3) Increase premium costs for individuals who have health coverage through traditional  
23 health insurance;

24 (4) Have an impact on a health carrier's ability to meet network adequacy standards set by the  
25 commissioner or state health purchasing agencies; and

26 (5) Cover a population that is different from individuals covered through traditional health  
27 insurance.

28 The study shall also examine the extent to which individuals and families participating in a  
29 direct care practice maintain health coverage for health conditions not covered by the direct care  
30 practice. The commissioner shall recommend to the legislature whether the statutory authority for  
31 direct care practices to operate should be continued, modified, or repealed.

32  
33 Section 14. [*Severability.*] Insert severability clause.

34  
35 Section 15. [*Repealer.*] Insert repealer clause.

36  
37 Section 16. [*Effective Date.*] Insert effective date.

# Coordinated Care Organizations Statement

Oregon enacted two laws to establish Coordinated Care Organizations (CCOs) to provide services to Medicaid recipients. These CCOs replace existing managed care organizations (MCOs), mental health organizations, and dental care organizations that previously provided such services.

The first created the Oregon Integrated and Coordinated Health Care Delivery System to be administered by the Oregon Health Authority (OHA). Under the Act:

- Coordinated Care Organizations (CCOs) are accountable for care management and provision of integrated and coordinated health care, managed within global budgets;
- OHA is required to regularly report to the Oregon Health Policy Board, Governor and Legislative Assembly on progress of payment reform and delivery system change;
- Establishes qualification criteria for CCOs, including governance structure;
- OHA must establish alternative payment methodologies;
- Develop standards at OHA for the utilization of patient centered primary care homes;
- Stipulates the inclusion of individuals who are dually eligible for Medicaid and Medicare;
- OHA must monitor and enforce consumer and provider protections;
- Outcomes, quality measures, and benchmarks to be evaluated and reported upon by OHA;
- OHA must develop CCO qualification criteria, global budgeting process and contract dispute process to be presented to the Legislative Assembly no later than February 1, 2012.
- describes provisions for transition to the System;
- requires the OHA, in consultation with the Department of Consumer and Business Services (DCBS), to propose recommendations regarding financial reporting requirements to the Legislative Assembly;
- requires the OHA to develop recommendations for remedies to contain health care costs that address defensive medicine, overutilization and medical malpractice;
- requires the OHA to apply for waivers necessary to obtain federal participation in System;
- requires the Home Care Commission to recruit, train, certify and refer community health workers and personal health navigators to be used by CCOs;
- describes the relationship between OHA, CCOs and county governments;
- describes contract requirements between OHA and CCOs, and
- specifies who is required to enroll in CCOs.

The next Act provides legislative approval of Oregon Health Authority (OHA) proposals for Coordinated Care Organizations (CCOs). It requires the authority to report quarterly to legislative committees on implementation of CCO model of health care delivery. It authorizes sharing and use of information between the Department of Consumer and Business Services and the authority for specified purposes. It prohibits discrimination against certain types of providers by CCOs and specified managed care organizations.

Submitted as:

Oregon

[HB 3650 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

Oregon

[SB 1580 \(Enrolled version\)](#)

Status: Enacted into law in 2012.

# Criminal Penalties for Fraudulent Military Records

The Act makes it a Class C misdemeanor to use fraudulent military records to obtain benefits intended for those who have actually served in the military.

Submitted as:

Texas

[SB 431](#)

Status: Became law in June 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short title.*] This Act may be cited as the “Fraudulent or Fictitious Military  
2 Record.”

3  
4           Section 2. [*Definitions.*]

5           (a) In this section:

6           (1) "Military record" means an enlistment record, occupation specialty, medal, award,  
7 decoration, or certification obtained by a person through the person's service in the armed forces of  
8 the United States or the state military forces.

9           (2) "State military forces" has the meaning assigned in [insert citation.]

10  
11          Section 3. [*Fraudulent or Fictitious Military Records.*]

12          (a) A person commits an offense if the person:

13           (1) uses or claims to hold a military record that the person knows:

14               (A) is fraudulent;

15               (B) is fictitious or has otherwise not been granted or assigned to the person;

16           or

17               (C) has been revoked; and

18           (2) uses or claims to hold that military record:

19               (A) in a written or oral advertisement or other promotion of a business; or

20               (B) with the intent to:

21                   (i) obtain priority in receiving services or resources under [*Insert*  
22 *citation*];

23                   (ii) qualify for a veteran's employment preference [*Insert citation*];

24                   (iii) obtain a license or certificate to practice a trade, profession, or  
25 occupation;

26                   (iv) obtain a promotion, compensation, or other benefit, or an increase  
27 in compensation or other benefit, in employment or in the practice of a trade,  
28 profession, or occupation;

29                   (v) obtain a benefit, service, or donation from another person;

30                   (vi) obtain admission to an educational program in this state; or

31                   (vii) gain a position in state government with authority over another

32 person, regardless of whether the actor receives compensation for the position.

33          (b) An offense under this section is a Class C misdemeanor.

1           (c) If conduct that constitutes an offense under this section also constitutes an offense under  
2 any other law, the actor may be prosecuted under this section or the other law.

3  
4           Section 4. [*Severability.*] Insert severability clause.

5  
6           Section 5. [*Repealer.*] Insert repealer clause.

7  
8           Section 6. [*Effective Date.*] Insert effective date.



# Displaying Proof of Insurance

This Act allows vehicle insurance and identification to be displayed on a wireless communication device as evidence of financial responsibility.

Submitted as:

Arizona

[Chapter 105 / House Bill 2677](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Insert short title to cite the Act.

2  
3 Section 2. [*Evidence of an automobile liability policy.*]

4 A. [insert citation] In this article, unless the context otherwise requires, “evidence” includes:

5 1. An original, a photocopy or a copy of a current and valid:

6 a. Motor vehicle or automobile liability policy that meets the requirements of [insert  
7 citation].

8 b. Binder or certificate of motor vehicle or automobile liability insurance that meets the  
9 requirements of [insert citation].

10 c. Certificate of self-insurance issued by the department under [insert citation] of this  
11 chapter.

12 d. Certificate of deposit that meets the requirements of [insert citation].

13 e. Motor vehicle insurance identification card issued by an authorized insurer or an  
14 authorized agent of the insurer for a motor vehicle or automobile liability policy that  
15 meets the requirements of [insert citation].

16 f. Certificate of insurance for a policy that meets the requirements [insert citation].

17 2. Designation of a motor vehicle as owned or leased by this state or any of its political  
18 subdivisions according to [insert citation].

19  
20 Section 3. [*Display on a wireless communication device.*]

21 A. An authorized insurer shall issue at least two motor vehicle nsurance identification cards  
22 for a motor vehicle or automobile liability policy that meets the requirements of [insert citation].

23 B. The card shall state that:

24 1. A person is required to possess evidence of financial responsibility within the  
25 motor vehicle.

26 2. The card meets the requirement or an image of the cart that is displayed on a  
27 wireless communication device meets the requirement.

28 3. The card or an image of the card that is displayed on a wireless communication  
29 device is satisfactory evidence if the person is asked by the department of transportation to verify  
30 financial responsibility on the motor vehicle.

31 C. All documentary evidence issued by an insurer or an authorized agent of the insurer shall  
32 indicate:

33 1. The name of the insurer as listed with the department of insurance.

2. For the purpose of verifying insurance coverage, the mailing address and telephone number of the insurer or an authorized agent of the insurer.

3. In order to accurately verify insurance coverage, other information as required by the department of transportation.

4. If a binder is issued by an authorized agent of an insurer, the name, address and telephone number of the agent.

D. This section does not apply to a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

Section 4. *[Motor vehicle financial responsibility requirement; civil penalties.]*

A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:

1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in [insert citation].

2. An alternate method of coverage as provided in [insert citation].

3. A certificate of self-insurance as prescribed in [insert citation].

4. A policy that satisfies the financial responsibility requirements prescribed in [insert citation].

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in [insert citation], a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a minimum civil penalty of five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.

1           3. If a person violates this section three or more times within a period of thirty-six  
2 months, the court shall impose a minimum civil penalty of one thousand dollars. On receipt of the  
3 abstract of the record of judgment, the department shall suspend the driver license of the person and  
4 the registration and license plates of the motor vehicle involved for one year. The department shall  
5 require on reinstatement of the driver license, the registration and the license plates that the person  
6 file with the department proof of financial responsibility in accordance with [insert citation].

7           F. A court may require a person to produce an insurance identification card as evidence in a  
8 hear for a violation of this section.

9  
10           Section 5. [*Severability*.] Insert severability clause.

11  
12           Section 6. [*Repealer*.] Insert repealer clause.

13  
14           Section 7. [*Effective Date*.] Insert effective date.

# Drone Use and Aerial Surveillance Statement

The rapid expansion of aerial surveillance technology with unmanned vehicles like drones was an issue of significant concern and interest across states. The signaling by the Federal Aviation Administration to open up more air space for commercial use by drones, and their application for law enforcement purposes precipitated the passage of several pieces of legislation across the country adding new parameters on the use of this transformational technology.

## Florida

Florida became the first state in the country to pass a measure that limits how state police can use drones equipped with surveillance cameras and other monitoring equipment. The only situations where police will be allowed to use drones without a warrant is if there is an imminent risk to property or life, or if the U.S. Department of Homeland Security declares a high risk of a terrorist attack. [Senate Bill 92](#) was approved 39-0 by the Senate, and it passed through all its committees unanimously before being signed into law in the spring of 2013. Below is a summary produced by the Florida Senate Criminal Justice Committee outlining the provisions of the Act:

The bill creates the “Freedom from Unwarranted Surveillance Act,” which prohibits law enforcement agencies from using drones to gather evidence or other information, unless:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization.
- The law enforcement agency first obtains a search warrant authorizing the use of a drone.
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life, such as to facilitate the search for a missing person, to prevent serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

Evidence gathered in violation of the bill is inadmissible in a criminal prosecution in any court of law in this state. Provisions are made for civil actions by an aggrieved party against a law enforcement agency that violates the prohibitions in the bill.

If approved by the Governor, these provisions take effect July 1, 2013.

## Idaho

Upon the passage of [Senate Bill 1134](#) in the spring of 2013, Idaho became the first state to require police to obtain warrants before using surveillance drones over homes, businesses or farm fields. From the Statement of Purpose prepared by the Legislative Services Office:

This legislation adds a new section to Idaho Code to define "unmanned aircraft system" excluding model flying airplanes or rockets, and to exclude unmanned aircraft used in taking commercial photography.

This provides that no person, entity or state agency may use an unmanned aircraft system to conduct unwarranted surveillance or observation of an individual or a dwelling owned by an individual without reasonable, articulable suspicion of criminal conduct. The same restrictions for unwarranted observation or surveillance will be used for a farm, dairy, ranch or other agricultural industry, except for state and local law enforcement agencies engaged in marijuana eradication efforts.

This also provides that no person, entity or state agency may use an unmanned aircraft system to photograph an individual without reasonable, articulable suspicion of criminal conduct and without consent from the individual for the purpose of publishing or publicly distributing photographs.

This provides for a civil cause of action and a fine in the amount of \$1000.00. This allows for utility companies to inspect facilities when there is a valid easement permit or right of occupancy

### **Virginia**

The passage of [H 2012](#) in 2013 established a two-year moratorium on drone use by police and regulatory agencies; however, exceptions were included for disaster response efforts, missing-person searches/Amber alerts, and National Guard training exercises. Below is a summary prepared by the Virginia Legislative Information System on the Act:

Places a moratorium on the use of unmanned aircraft systems by state and local law enforcement and regulatory entities until July 1, 2015, except in defined emergency situations or in training exercises related to such situations. The moratorium does not apply to certain Virginia National Guard functions or to research and development conducted by institutions of higher education or other research organizations. The bill requires the Department of Criminal Justice Services, in consultation with the Office of the Attorney General and other agencies, to develop protocols for the use of drones by law-enforcement agencies and report its findings to the Governor and the General Assembly by November 1, 2013.

# Eight in Six Program

This Act sets up a program in the state department of education to identify students who are taking courses in grades 7 through 12 at an accelerated rate and provide them with an incentive to graduate from high school with one or two years of college credit or with a professional-technical degree or certification. The program will provide funding so that a portion of the overload courses and summer courses taken by such students will be paid for by the state department of education.

Submitted as:

Idaho

[HB 426](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Eight in Six Act.”

2  
3           Section 2. [*Purpose.*]

4           The purpose of this program is to identify those students who are taking courses in grades 7  
5 through 12 at an accelerated rate and provide them with an incentive to graduate from high school  
6 with one or two years of college credit or with a professional-technical degree or certification. The  
7 program will provide funding so that a portion of the overload courses and summer courses taken by  
8 such students will be paid for by the State Department of Education.

9  
10          Section 3. [*Establishment of the Eight in Six program.*]

11          (1) A program is hereby established in the state department of education to be known as the  
12 “Eight in Six Program.”

13          (2) If a parent and student agree, by signing the appropriate form provided by the state  
14 department of education, to the conditions provided for in paragraphs (2)(a) and (b) of this section,  
15 the state department of education will pay for a percentage of the cost of overload courses and  
16 summer courses as provided for in this section.

17           (a) The student and parent agree that the student shall take and successfully complete  
18 a full course load during the school year.

19           (b) The student and parent agree that the student shall take and successfully complete  
20 at least one (1) summer course and at least fourteen (14) courses per school year.

21           (c) The state shall pay two hundred twenty-five dollars (\$225) per overload or  
22 summer course taken in this program.

23           (d) The state shall pay for no more than two (2) overload courses per student per  
24 school year. The state shall pay for no more than two (2) courses per student per summer school  
25 session. The state shall pay for no more than a combined total of four (4) overload and summer  
26 school courses per student per year. The state shall pay for no more than a combined total of eight  
27 (8) overload and summer school courses per student during such student's participation in the  
28 program.

29          Section 4. [*Severability.*] Insert severability clause.

30  
31          Section 5. [*Repealer.*] Insert repealer clause.

1           Section 6. [*Effective Date.*] Insert effective date.



# Electronic Proof of Insurance

This Act allows a person to produce proof of automobile insurance by electronic means in lieu of printed means under certain conditions. This includes displaying electronic images of that information on a cellular phone or other type of portable device.

Submitted as:

Idaho

[SB 1319](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act provides that a certain certificate or proof of liability  
2 insurance may be produced in electronic or paper format.

3  
4           Section 2. [*Certificate or proof of liability insurance to be carried in a motor vehicle.*]

- 5       1. A certificate or proof of liability insurance shall be in the possession of the operator of every  
6 motor vehicle or present in every motor vehicle at all times when the vehicle is operated  
7 within this state. The certificate or proof of liability insurance shall be provided for  
8 inspection to any peace officer upon request to the operator of any motor vehicle. No person  
9 shall be convicted of violating this section if that person produces at any time prior to  
10 conviction the certificate or proof of liability insurance covering the motor vehicle that  
11 person is accused of operating in violation of this section, where the certificate or proof of  
12 liability insurance demonstrates the existence of liability insurance described in [insert  
13 citation], which was in effect at the time of occurrence of the violation. The certificate or  
14 proof of liability insurance required by this section may be produced in either paper or  
15 electronic format. Acceptable electronic formats include display of electronic images on a  
16 cellular phone or any other type of portable electronic device.
- 17       2. If the court has not ordered the department to suspend the driving privileges of any person  
18 convicted of a violation of the provisions of this section, the department may rescind the  
19 suspension action, only if the driver can prove by sufficient evidence that the legally required  
20 motor vehicle insurance or other required evidence of financial responsibility was in force  
21 and effect at the time of the issuance of the citation. No reinstatement fee will be assessed for  
22 rescinding the suspension action under this section.
- 23       3. It is an infraction punishable by a fine of seventy-five dollars (\$75.00) for any person to  
24 violate the provisions of this section for the first time. A second and any subsequent  
25 conviction for a violation of the provisions of this section or the provisions of [insert  
26 citation], within five (5) years shall be a misdemeanor, punishable by a fine not exceeding  
27 one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six (6)  
28 months, or both. The department shall notify any person convicted of a violation of this  
29 section of the penalties which may be imposed for a second and any subsequent conviction.

30  
31       Section 3. [*Severability.*] Insert severability clause.

32  
33       Section 4. [*Repealer.*] Insert repealer clause.

1     Section 5. [*Effective Date.*] Insert effective date.

# Electronic Titling for New Vehicles

This Act allows the Department of Motor Vehicles to establish an electronic titling program for new motor vehicles. The DMV will refrain from issuing a certificate of title in paper form and, instead, shall create only the electronic record of such title to be retained by the Department in its existing electronic title record system with a notation that no certificate of title has been printed on paper. The owner of a vehicle will be deemed to have obtained and the Department will be deemed to have issued, a certificate of title when the electronic record has been created. An owner or lienholder listed on an electronic title record may at any time request and the Department shall provide a paper certificate of title for the vehicle. All transfers of vehicle ownership, with certain exceptions, are required to have a paper certificate of title.

Submitted as:

State: Virginia

[Chapter 650 \(S. 686\)](#)

Status: Became law in April 2012

## Suggested State Legislation

(Title, enacting clause, etc.)

### Section 1. [*Issuance of certificate of title and registration card*]

- A. The Department of Motor Vehicles, on receiving an application for a certificate of title for a motor vehicle, trailer, or semitrailer, shall issue to the owner a certificate of title and a registration card as separate documents.
- B. Subject to all applicable federal laws, the Department may, at the written request of the owner or lienholder listed on the application for certificate of title, supplemental lien, or transfer of lien, refrain from issuing a certificate of title in paper form and, instead, shall create only the electronic record of such title to be retained by the Department in its existing electronic title record system with a notation that no certificate of title has been printed on paper. The owner of a vehicle will be deemed to have obtained and the Department will be deemed to have issued, a certificate of title when such title record has been created electronically as provided in this subsection. An owner or lienholder listed on a title record so created may at any time request and the Department shall provide a paper certificate of title for the vehicle. All transfers of vehicle ownership shall require a paper certificate of title in accordance with, and subject to, all applicable federal laws.

### Section 2. [*Electronic titling program.*]

The Department may establish an electronic titling program for any "new motor vehicle" as that term is defined in [insert citation]. Participants in the electronic titling program shall submit electronic applications for original motor vehicle titles in a form and format prescribed by the Department. Participants must provide all documentation or information required by the Department to process the electronic title application, including an electronic manufacturer's certificate of origin and any information required by the Department in accordance with [insert citation]. The records of a nationally recognized motor vehicle title database shall be searched prior to transfer of vehicle ownership. Participants shall collect from the purchaser of the new motor vehicle any fee charged for the search of the nationally recognized motor vehicle title database. Upon receipt of a completed electronic application, the Department shall refrain from issuing a certificate of title in paper form and, instead, shall create only the electronic record of such title to be retained by the Department in

1 its existing electronic title record system with a notation that no certificate of title has been printed  
2 on paper. The owner of a motor vehicle will be deemed to have obtained and the Department will be  
3 deemed to have issued a certificate of title when such title record has been created electronically as  
4 provided in this section. An owner listed on a title record so created may at any time request and the  
5 Department shall provide a paper certificate of title for the vehicle.

# Energy Resources Procurement Act

The Act gives non-utility electricity consumers the ability to buy power directly from renewable energy generators, and it requires the Public Service Commission to approve contracts for electric service from renewable energy facilities.

Submitted as:

Utah

[SB 12](#)

Status: Became law in March 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short title.*] This Act shall be cited as the “Energy Resource Procurement Act.”

Section 2. [General description.]

This Act includes provisions relating to renewable energy facilities; authorizes an electric corporation to enter into a contract to supply electric service from a renewable energy facility, under certain circumstances; and requires Public Service Commission approval of contracts for electric service from renewable energy facilities.

Section 3. [*Appropriations clause.*] Insert appropriations clause.

Section 4. [*Definitions.*] As used in this Act.

(1) "Contract customer" means a person who executes or will execute a renewable energy contract with a qualified utility.

(2) "Qualified utility" means an electric corporation that serves more than 200,000 retail customers in the state.

(3) "Renewable energy contract" means a contract under this section for the delivery of electricity from a renewable energy facility to a contract customer's single metered location requiring the use of a qualified utility's transmission or distribution system to deliver the electricity from the renewable energy facility to the contract customer.

(4) "Renewable energy facility":

(a) except as provided in Subsection (4)(b), has the same meaning as renewable energy source defined [insert citation] ; and

(b) does not include an electric generating facility whose costs have been included in a qualified utility's rates as a facility providing electric service to the qualified utility's system.

Section 5. [*Contracts for the purchase of electricity from a renewable energy facility.*]

[Insert citation] Contracts for the purchase of electricity from a renewable energy facility.

(1) Within a reasonable time after receiving a request from one or more contract customers and subject to reasonable credit requirements, a qualified utility shall enter into a renewable energy contract with the requesting contract customer or customers to supply some or all of the electric service of the contract customer or customers from a renewable energy facility selected by the contract customer or customers.

(2) A renewable energy contract may not provide for electricity to be delivered to more than a single metered delivery location of a contract customer

(3) Subject to [Insert citation]:

(a) a single contract customer may receive electricity at multiple metered delivery locations from the same renewable energy facility; and

(b) multiple contract customers may receive electricity from the same renewable energy facility.

(4) The amount of electricity provided to any contract customer under all renewable energy contracts with that contract customer may not be less than 2.5 megawatts.

(5) The amount of electricity provided to any metered delivery location of a contract customer may not exceed the contract customer's metered kilowatt-hour load in any hour at that location.

(6) A renewable energy contract that meets the requirements of [Insert citation] may provide for one or more increases in the amount of electricity to be provided under the contract even though the amount of electricity to be provided by the increase is less than the minimum amount required under [Insert citation].

(7) The total amount of electricity to be provided by a qualified utility at any one time under all renewable energy contracts may not exceed 300 megawatts, unless the commission approves in advance a higher amount.

(8) Electricity generated by a renewable energy facility and delivered to a contract customer under a renewable energy contract may not be included in a net metering program under [Insert citation].

#### Section 6. [*Ownership of a renewable energy facility.*]

Ownership of environmental attributes.

(1) A renewable energy facility may be owned:

(a) by a person who will be a contract customer receiving electricity from the renewable energy facility;

(b) by a qualified utility;

(c) by a person other than a contract customer or qualified utility; or

(d) jointly by any combination of Subsections (1)(a), (b), and (c), whether in equal shares or otherwise.

(2) A qualified utility may be a joint owner of a renewable energy facility only if:

(a) the qualified utility consents to being a joint owner; and

(b) the joint ownership arrangement ensures that the qualified utility will recover all of its costs associated with its ownership of the renewable energy facility.

(3) To the extent that any electricity from a renewable energy facility to be delivered to a contract customer is owned by a person other than the contract customer:

(a) the qualified utility shall, by contract with the owner of the renewable energy facility, purchase all of that electricity;

(b) the qualified utility shall sell all of that electricity to the contract customer or customers under renewable energy contracts with the same duration and pricing as the contract between the qualified utility and the owner of the renewable energy facility; and

(c) the qualified utility's contract with the owner of the renewable energy facility shall provide that the qualified utility's obligation to purchase electricity under that contract ceases if the contract customer defaults in its obligation to purchase and pay for the electricity under the contract with the qualified utility.

(4) The right to any environmental attribute associated with a renewable energy facility shall remain the property of the renewable energy facility's owner, except to the extent that a contract to which the owner is a party provides otherwise.

1           Section 7. [*Exemption from Public Service Commission certificate of convenience and*  
2 *necessity requirements.*]

3       (1) A qualified utility is not required to comply with [Insert citation] with respect to a renewable  
4 energy facility that is the subject of a renewable energy contract if:

5           (a) each contract necessary for the commission to determine compliance with this part is filed  
6 with the commission; and

7           (b) the commission determines that each contract relating to the renewable energy facility  
8 complies with this part.

9       (2) In making its determination under [Insert citation], the commission may process and consider  
10 together multiple renewable energy contracts between the same contract customer and the qualified  
11 utility providing for the delivery of electricity from a renewable energy facility to the contract  
12 customer's multiple metered delivery locations.  
13

14           Section 8. [*Costs associated with delivering electricity from renewable energy to a*  
15 *customer.*]

16       (1) To the extent that a renewable energy contract provides for the delivery of electricity from a  
17 renewable energy facility owned by the contract customer, the renewable energy contract shall  
18 require the contract customer to pay for the use of the qualified utility's transmission or distribution  
19 facilities at the qualified utility's applicable rates, which may include transmission costs at the  
20 qualified utility's applicable rate approved by the Federal Energy Regulatory Commission.

21       (2) To the extent that a renewable energy contract provides for the delivery of electricity from a  
22 renewable energy facility owned by a person other than the qualified utility or the contract customer,  
23 the renewable energy contract shall require the contract customer to bear all reasonably identifiable  
24 costs that the qualified utility incurs in delivering the electricity from the renewable energy facility  
25 to the contract customer, including all costs to procure and deliver electricity and for billing,  
26 administrative, and related activities, as determined by the commission.

27       (3) A qualified utility that enters a renewable energy contract shall charge a contract customer for all  
28 metered electric service delivered to the contract customer, including generation, transmission, and  
29 distribution service, at the qualified utility's applicable tariff rates, excluding:

30           (a) any kilowatt hours of electricity delivered from the renewable energy facility, based  
31 on the time of delivery, adjusted for transmission losses;

32           (b) any kilowatt hours of electricity delivered from the renewable energy facility that  
33 coincide with the contract customer's monthly metered kilowatt demand measurement,  
34 adjusted for transmission losses;

35           (c) any transmission and distribution service that the contract customer pays for under  
36 [Insert citation]; and

37           (d) any transmission service that the contract customer provides under [Insert citation] to  
38 deliver generation from the renewable energy facility.



# Entertainment Industry Investment

This Act is targeted at retaining and expanding film, television, and digital media production in the state. The foundation of the Act is a 20% transferable tax credit. Production companies that spend a minimum of \$500,000 in the state on qualified production and post-production expenditures are eligible for this credit. This includes most materials, services and labor. For example, credits generated by qualified productions may be used by the production against income taxes or payroll taxes or sold/transferred to a third party for use against the purchaser's state tax liability. The 20% credit applies to both residential and out-of-town hires working in the state with a salary cap of \$500,000 per person, per production, when the employee is paid by "salary," which is defined as being paid by W2. If the production company uses a 1099 or a personal services contract to hire someone the \$500,000 limit does not apply.

The Act offers an additional 10% tax credit if a production company includes a state promotional logo in the qualified finished feature film, TV series, music video or digital media product.

Submitted as:

Georgia

[HB 1027/AP](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] An Act related to the creation of an entertainment industry  
2 investment tax credit.

3  
4           Section 2. [Definitions.]

5           1. 'Affiliate' means the members of a business enterprise's affiliated group within the meaning  
6 of Section 1504(a) of the Internal Revenue Code and also means any entity, notwithstanding  
7 its form of organization, that would otherwise qualify as a member of such affiliated group.

8           2. 'Business enterprise' or 'taxpayer' means any enterprise or organization, whether corporation,  
9 partnership, limited liability company, proprietorship, association, trust, business trust, real  
10 estate trust, or other form of organization, and its affiliates, which are registered and  
11 authorized to use the federal employment verification system known as 'E-Verify' or any  
12 successor federal employment verification system and is are engaged in or carrying on any  
13 business activities within this state, except that such term shall not include retail businesses.

14           Section 3. [Entertainment industry investment act.]

15           (A) This Code section shall be known and may be cited as the '[insert state] Entertainment  
16 Industry Investment Act.'

17           (B) As used in this Code section, the term:

18                       (1) 'Affiliates' means those entities that are included in the production  
19 company's or qualified interactive entertainment production company's affiliated group as defined in  
20 Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly  
21 owned 50 percent or more by members of the affiliated group.

(2) 'Base investment' means the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) 'Multimarket commercial distribution' means paid commercial distribution which extends to markets outside [insert state].

(4) 'Production company' means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(5) 'Production expenditures' means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures excluding license fees incurred with [insert state] companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a [insert state] based travel agency or travel company; insurance costs and bonding, if purchased through a [insert state] based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside the State of [insert state], marketing, story rights, or and distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold [insert state] income tax at the rate of 6 percent on all payments to loan-out companies for services performed in [insert state]. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in [insert state] pursuant to [insert citation]. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in [insert state]. For purposes of this chapter, loan-out company nonresident employees performing services in [insert state] shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in [insert state], notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by [insert citation] and the [appropriate state agency] shall provide by regulation the manner in which such liability shall be assessed and collected.

(6) 'Qualified [insert state] promotion' means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(a) Qualified movie production which includes an approximately a five-second long static or animated logo that promotes [insert state] within its presentation and all promotional trailers worldwide in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to [insert state] on the project's web page;

(b) Qualified TV production which includes an imbedded embedded five-second long [insert state] promotion during each broadcast half hour worldwide for the life of the project and which includes a link to [insert state] on the project's web page;

(c) Qualified music video which includes the [insert state] logo at the end of each video and within online promotions; or (d) Qualified interactive game which includes a 15 second long [insert state] advertisement in units sold and imbedded embedded in online promotions.

(7) 'Qualified interactive entertainment production company' means a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan 99 guaranteed by the state.

(8) 'Qualified production activities' means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, such as including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition. Such term shall not include the production of television coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in [insert state].

(9) 'Resident' means an individual as designated pursuant to [insert citation].

(10) 'State certified production' means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a 'work for hire' in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(11) 'Total aggregate payroll' means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(a) With respect to a single employee, the portion of any salary which exceeds \$500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(b) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest

1 shall be considered as having been paid to the employee and shall be  
2 aggregated regardless of the means of payment or distribution.

3 (c) For any production company or qualified interactive  
4 entertainment production company and its affiliates that invest in a state  
5 certified production approved by the Department of Economic Development  
6 and whose average annual total production expenditures in this state did not  
7 exceed \$30 million for [insert years], there shall be allowed an income tax  
8 credit against the tax imposed under this article. The tax credit under this  
9 subsection shall be allowed if the base investment in this state equals or  
10 exceeds \$500,000.00 for qualified production activities and shall be calculated  
11 as follows:

12 (1) The production company or  
13 qualified interactive entertainment production company  
14 shall be allowed a tax credit equal to 20 percent of the  
15 base investment in this state; and

16 (2)(A) The production company  
17 or qualified interactive entertainment production  
18 company shall be allowed an additional tax credit equal  
19 to 10 percent of such base investment if the qualified  
20 production activity includes a qualified [insert state]  
21 promotion. In lieu of the inclusion of the [insert state]  
22 promotional logo, the production company or qualified  
23 interactive entertainment production company may  
24 offer alternative marketing opportunities to be  
25 evaluated by the [insert] Department of Economic  
26 Development to ensure that they offer equal or greater  
27 promotional value to [insert state].

28 (B) The Department of Economic  
29 Development shall prepare an annual report detailing  
30 the marketing opportunities it has approved under the  
31 provisions of subparagraph (A) of this paragraph. The  
32 report shall include, but not be limited to: (i) The goals  
33 and strategy behind each marketing opportunity  
34 approved pursuant to the provisions of subparagraph  
35 (A) of this paragraph; (ii) The names of all production  
36 companies approved by the Department of Economic  
37 Development to provide alternative marketing  
38 opportunities; (iii) The estimated value to the state of  
39 each approved alternative marketing opportunity  
40 compared to the estimated value of the [insert state]  
41 promotional logo; and (iv) The names of all production  
42 companies who chose to include the [insert state]  
43 promotional logo in their final production instead of  
44 offering the state an alternative marketing proposal. The  
45 report required under this paragraph shall be completed  
46 no later than January 1 of each year and presented to  
47 [insert legislative committees], and the Governor.

48 (d) For any production company or qualified interactive entertainment  
49 production company and its affiliates that invest in a state certified production

1 approved by the Department of Economic Development and whose average  
2 annual total production expenditures in this state exceeded \$30 million for  
3 [insert years], there shall be allowed an income tax credit against the tax  
4 imposed under this article. For purposes of this subsection, the excess base  
5 investment in this state is computed by taking the current year production  
6 expenditures in a state certified production and subtracting the average of the  
7 annual total production expenditures for [insert years]. The tax credit shall be  
8 calculated as follows:

9 (1) If the excess base investment in this state equals or  
10 exceeds \$500,000.00, the production company or qualified interactive  
11 entertainment production company and its affiliates shall be allowed a tax  
12 credit of 20 percent of such excess base investment; and

13 (2)(A) The production company or qualified interactive  
14 entertainment production company and its affiliates shall be allowed an  
15 additional tax credit equal to 10 percent of the excess base investment if the  
16 qualified production activities include a qualified [insert state] promotion. In  
17 lieu of the inclusion of the [insert state] promotional logo, the production  
18 company or qualified interactive entertainment production company may offer  
19 marketing opportunities to be evaluated by the Department of Economic  
20 Development to ensure that they offer equal or greater promotional value to  
21 [insert state].

22 (B) The Department of Economic Development shall  
23 prepare an annual report detailing the marketing opportunities it has approved  
24 under the provisions of subparagraph (A) of this paragraph. The report shall  
25 include, but not be limited to: (i) The goals and strategy behind each  
26 marketing opportunity approved pursuant to the provisions of subparagraph  
27 (A) of this paragraph; (ii) The names of all production companies approved by  
28 the Department of Economic Development to provide alternative marketing  
29 opportunities; (iii) The estimated value to the state of each approved  
30 alternative marketing opportunity compared to the estimated value of the  
31 [insert state] promotional logo; and (iv) The names of all production  
32 companies who chose to include the [insert state] promotional logo in their  
33 final production instead of offering the state an alternative marketing  
34 proposal. The report required under this paragraph shall be completed no later  
35 than January 1 of each year and presented to each member of [insert  
36 legislative committees], and the Governor.

37 (e)(1) In no event shall the aggregate amount of tax credits allowed under  
38 [insert citation] section for qualified interactive entertainment production companies and affiliates  
39 exceed \$25 million. The maximum credit for any qualified interactive entertainment production  
40 company and its affiliates shall be \$5 million.

41 (2) The commissioner shall allow the tax credits for qualified interactive  
42 entertainment production companies on a first come, first served basis based on the date the credits  
43 are claimed. When the \$25 million cap is reached, the tax credit for qualified interactive  
44 entertainment production companies shall expire.

45 (f)(1) Where the amount of such credit or credits exceeds the production  
46 company's or qualified interactive entertainment production company's liability for such taxes in a  
47 taxable year, the excess may be taken as a credit against such production company's or qualified  
48 interactive entertainment production company's quarterly or monthly payment under [insert citation].  
49 Each employee whose employer receives credit against such production company's or qualified



1 interactive entertainment production company's quarterly or monthly payment under [insert citation]  
2 shall receive credit against his or her income tax liability under [insert citation] for the corresponding  
3 taxable year for the full amount which would be credited against such liability prior to the  
4 application of the credit provided for in this subsection. Credits against quarterly or monthly  
5 payments under [insert citation] and credits against liability under [insert citation] established by this  
6 subsection shall not constitute income to the production company or qualified interactive  
7 entertainment production company.

8 (2) If a production company and its affiliates, or a qualified interactive  
9 entertainment production company and its affiliates, claim the credit authorized under [insert  
10 citation] then the production company and its affiliates, or the qualified interactive entertainment  
11 production company and its affiliates, will only be allowed to claim the credit authorized under this  
12 Code section to the extent that the [insert state] resident employees included in the credit calculation  
13 authorized under this Code section and taken by the production company and its affiliates, or the  
14 qualified interactive entertainment production company and its affiliates, on such tax return under  
15 this Code section have been permanently excluded from the credit authorized under [insert citation].

16 (g) Any tax credits with respect to a state certified production earned by a  
17 production company or qualified interactive entertainment production company and previously  
18 claimed but not used by such production company or qualified interactive entertainment production  
19 company against its income tax may be transferred or sold in whole or in part by such production  
20 company or qualified interactive entertainment production company to another [insert state]  
21 taxpayer, subject to the following conditions:

22 (1) Such production company or qualified interactive  
23 entertainment production company may make only a single transfer or sale of  
24 tax credits earned in a taxable year; however, the transfer or sale may involve  
25 one or more transferees;

26 (2) Such production company or qualified interactive  
27 entertainment production company shall submit to the Department of  
28 Economic Development and to the Department of Revenue a written  
29 notification of any transfer or sale of tax credits within 30 days after the  
30 transfer or sale of such tax credits. The notification shall include such  
31 production company's or qualified interactive entertainment production  
32 company's tax credit balance prior to transfer, the credit certificate number,  
33 the remaining balance after transfer, all tax identification numbers for each  
34 transferee, the date of transfer, the amount transferred, and any other  
35 information required by the Department of Economic Development or the  
36 Department of Revenue;

37 (3) Failure to comply with this subsection shall result in  
38 the disallowance of the tax credit until the production company or qualified  
39 interactive entertainment production company is in full compliance;

40 (4) The transfer or sale of this tax credit does not extend  
41 the time in which such tax credit can be used. The carry-forward period for  
42 tax credit that is transferred or sold shall begin on the date on which the tax  
43 credit was originally earned;

44 (5) A transferee shall have only such rights to claim and  
45 use the tax credit that were available to such production company or qualified  
46 interactive entertainment production company at the time of the transfer,  
47 except for the use of the credit in paragraph (1) of subsection (f) of this Code  
48 section. To the extent that such production company or qualified interactive  
49 entertainment production company did not have rights to claim or use the tax

1 credit at the time of the transfer, the Department of Revenue shall either  
2 disallow the tax credit claimed by the transferee or recapture the tax credit  
3 from the transferee. The transferee's recourse is against such production  
4 company or qualified interactive entertainment production company; and

5 (6) The transferee must acquire the tax credits in this  
6 Code section for a minimum of 60 percent of the amount of the tax credits so  
7 transferred.

8 (h) The credit granted under this Code section shall be subject to the following  
9 conditions and limitations:

10 (1) The credit may be taken beginning with the taxable  
11 year in which the production company or qualified interactive entertainment  
12 production company has met the investment requirement. For each year in  
13 which such production company or qualified interactive entertainment  
14 production company either claims or transfers the credit, the production  
15 company or qualified interactive entertainment production company shall  
16 attach a schedule to the production company's or qualified interactive  
17 entertainment production company's [insert state] income tax return which  
18 will set forth the following information, as a minimum:

19 (A) A description of the qualified  
20 production activities, along with the certification from  
21 the Department of Economic Development;

22 (B) A detailed listing of the  
23 employee names, social security numbers, and [insert  
24 state] wages when salaries are included in the base  
25 investment;

26 (C) The amount of tax credit  
27 claimed for the taxable year;

28 (D) Any tax credit previously  
29 taken by the production company or qualified  
30 interactive entertainment production company against  
31 [insert state] income tax liabilities or the production  
32 company's or qualified interactive entertainment  
33 production company's quarterly or monthly payments  
34 under [insert citation];

35 (E) The amount of tax credit  
36 carried over from prior years;

37 (F) The amount of tax credit  
38 utilized by the production company or qualified  
39 interactive entertainment production company in the  
40 current taxable year; and

41 (G) The amount of tax credit to  
42 be carried over to subsequent tax years;

43 (2) In the initial year in which the production company  
44 or qualified interactive entertainment production company claims the credit  
45 granted in this Code section, the production company or qualified interactive  
46 entertainment production company shall include in the description of the  
47 qualified production activities required by subparagraph (A) of paragraph (1)  
48 of this subsection information which demonstrates that the activities included



1 in the base investment or excess base investment equal or exceed \$500,000.00  
2 during such year; and

3 (3) In no event shall the amount of the tax credit under  
4 this Code section for a taxable year exceed the production company's or  
5 qualified interactive entertainment production company's income tax liability.  
6 Any unused credit amount shall be allowed to be carried forward for five  
7 years from the close of the taxable year in which the investment occurred. No  
8 such credit shall be allowed the production company or qualified interactive  
9 entertainment production company against prior years' tax liability.

10 (i) The Department of Economic Development shall determine through the  
11 promulgation of rules and regulations what projects qualify for the tax credits authorized under this  
12 Code section. Certification shall be submitted to the state revenue commissioner.

13 (j) The state revenue commissioner shall promulgate such rules and  
14 regulations as are necessary to implement and administer this Code section.

15 (k) Any production company or qualified interactive entertainment production  
16 company claiming, transferring, or selling the tax credit shall be required to reimburse the  
17 Department of Revenue for any department initiated audits relating to the tax credit. This subsection  
18 shall not apply to routine tax audits of a taxpayer which may include the review of the credit  
19 provided in this Code section.

20  
21 Section 4. [*Severability.*] Insert severability clause.

22  
23 Section 5. [*Repealer.*] Insert repealer clause.

24  
25 Section 6. [*Effective Date.*] Insert effective date.]

# Excellence, Accountability, and Management

This Act generally revises the state's civil service law by:

- Renaming career service as the preferred service and revising the members of the executive service;
- Revising the powers and duties of the commissioner of human resources with regard to the state service;
- Rewriting laws about promotion and entrance tests; revising the manner in which state positions are filled and the manner in which layoffs and dismissals are made;
- Renames the state civil service commission as the state employee's appeals board, and revising the duties of the commission/board, and
- Replacing the present grievance procedure with a complaint and appeal procedure.

Submitted as:

Tennessee

[Chapter 800](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*]. This Act shall be cited as "The Excellence, Accountability, and  
2 Management Act."

3  
4           Section 2. [*Purposes*].

5           (a) The purpose of this Act is to establish in the state a system of personnel administration  
6 that will attract, select, retain and promote the best employees based on merit and equal opportunity,  
7 and free from coercive political influences. Because the citizens of the state deserve services from  
8 the best employees, the goal of the state personnel system is to provide technically competent  
9 employees to render impartial services to the public at all times and to render such services in an  
10 ethical and honorable manner. Specifically, the intent of the general assembly is to further this  
11 purpose by allowing agencies greater flexibility in personnel management in order to enhance the  
12 overall effectiveness and efficiency of state government. The general assembly further intends that  
13 state government operate within a framework of consistent best practices across all state agencies  
14 and entities and that the state's most valued resource, its employees, be managed in a manner  
15 designed to enhance work force productivity and demonstrate sound business practices.

16           (b) It is the policy of the state that agencies treat all employees in accordance with the  
17 following principles:

18               (1) Assuring fair treatment of applicants and employees in all aspects of personnel  
19 administration without regard to race, color, national origin, gender, age, disability, religion or creed,  
20 or political opinions or affiliations. This "fair treatment" principle includes compliance with all  
21 applicable state and federal equal employment opportunity and nondiscrimination laws;

22               (2) Recruiting, selecting, and promoting employees on the basis of their relative  
23 skills, abilities, competencies and knowledge, including an open process to consider qualified  
24 applicants for initial employment;

25               (3) Providing equitable and adequate compensation based on merit, performance, job  
26 value, and competitiveness within applicable labor markets;

1 (4) Training and developing employees, as needed, to assure a high level of  
2 performance and to provide work force knowledge and skills needed to maintain and advance the  
3 state's goals and objectives;

4 (5) Retaining employees on the basis of the adequacy of their performance, correcting  
5 inadequate performance when possible and appropriate, and separating employees whose  
6 performance and personal conduct is inadequate, unsuitable or inferior; and

7 (6) Assuring that employees are protected against coercion for partisan political  
8 purposes and are prohibited from using their official authority for the purpose of interfering with, or  
9 affecting the result of, an election or nomination for office.

10 (c) This chapter shall be liberally construed in order to increase governmental efficiency and  
11 responsiveness and to secure the employment of qualified persons in the state preferred service.

12 (d) The personnel administration system adopted under this chapter shall govern and limit all  
13 other state employment matters and every appointing authority.

14  
15 Section 3. [*Applicability.*]

16 (a) Except as provided in subsection (b), this chapter applies to all personnel in state service.  
17 "State service" means all officers and positions of trust or employment in the service of state  
18 government in the executive branch and all boards, commissions and agencies of state government,  
19 except those specifically excluded in this chapter.

20 (b) This chapter does not apply to the following:

21 (1) The legislative branch of state government including, but not limited to,  
22 employees of the fiscal review committee, and employees of any other committee, office or other  
23 entity created pursuant to law or resolution of either house of the general assembly for the purpose of  
24 serving either or both houses of the general assembly in executing its duties under the Constitution  
25 of [insert state];

26 (2) The judicial branch of state government including, but not limited to, employees  
27 of the administrative office of the courts;

28 (3) The office of the secretary of state;

29 (4) The office of the state treasurer;

30 (5) The office of the comptroller of the treasury;

31 (6) The office of the attorney general and reporter;

32 (7) The offices of the district attorneys general and the district public defenders;

33 (8) The schools, institutions and entities governed by the board of regents and the  
34 University of [insert state] board of trustees, including the members of the teaching staffs and the  
35 staffs of the boards themselves; and any other special school hereafter established;

36 (9) The [insert state] higher education commission and all employees of that  
37 commission; and

38 (10) The Tennessee Housing Development Agency and all employees of that  
39 authority.

40 (c) The commissioner shall, upon request of the heads of any of the excluded entries  
41 enumerated above, perform any of the functions set forth in this chapter. Such a request shall not be  
42 deemed to make the provisions of this chapter applicable to those entries.

43  
44 Section 4. [*Definitions.*]

45 As used in this chapter, unless the context otherwise requires:

46 (1) "Appointing authority" means a commissioner, department, officer or agency having  
47 power to make appointments to, and separations from, positions in state service;

48 (2) "Board of appeals" refers to the state employees' appeals board established by [insert  
49 citation] of this chapter;

(3) "Class" or "class of positions" means a group of positions in state service determined by the commissioner to have sufficiently similar duties, authority, and responsibility such that:

(A) The same qualifications may be reasonably required for; and

(B) The same schedule of pay may be equitably applied to; all positions in the group;

(4) "Commissioner" refers to the commissioner of human resources appointed under [insert citation];

(5) "Department" refers to the department of human resources pursuant to [insert citation] of this chapter. The term includes the commissioner;

(6) "Eligible" means an applicant meeting minimum qualifications whose name is on a list;

(7) "Executive service" means all other positions that have not been placed under the preferred service and as are described in [insert citation].

(8) "List" means a list of eligibles, including, but not limited to, a promotion list;

(9) "List of Eligibles" means a list of applicants who meet the minimum qualifications for appointment to a position as determined by the department;

(10) "Official Station" means the town or city where the employee performs a majority of his or her duties;

(11) "Preferred service" means all offices and positions of employment in the state service that have been placed under the preferred service provisions of this chapter;

(12) "State agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality in state service that is subject to this chapter; and

(13) "State service" shall have the same meaning assigned in [insert citation].

#### Section 5. [*Authority of human resources commissioner.*]

(a) The commissioner, as executive head of the department of human resources, shall direct and supervise all administrative and technical human resources activities state service. In addition to other authority and responsibilities imposed upon the commissioner by law, the commissioner shall have the authority to:

(1) Survey the administrative organization and procedures, including personnel procedures, of all state agencies, and submit to the governor measures to do the following among state agencies:

(A) Secure greater efficiency and economy;

(B) Minimize the duplication of activities; and

(C) Effect better organization and procedures.

(2) Prescribe rules and regulations for the administration and execution of this chapter in accordance with the Uniform Administrative Procedures Act;

(3) Develop personnel policies, methods, procedures, and standards for all state agencies;

(4) Establish and maintain a roster of all employees in state service;

(5) Appoint such departmental employees, experts, and special assistants as may be necessary to carry out the provisions of this chapter;

(6) Establish, execute and administer a classification and compensation plan for all employees in state service;

(7) Approve or disapprove and record the appointments, transfers, demotions, promotions, suspensions, dismissals, layoffs, reclassifications, reappointments, resignations, sick, annual, compensatory and special leave, and hours of service of employees;

(8) Implement a job performance evaluation system for employees in state service;

(9) Make available education development specialists, who will administer educational and training programs for employees in the state service, including legal compliance,

professional skills, talent development and leadership development. The commissioner shall approve any out-service training for state employees;

(10) Require that appointing authorities notify the employee of the right to appeal his or her dismissal, demotion or suspension, if any such right exists, and the time in which the employee must exercise his or her right to appeal;

(11) Make available employee relations specialists to:

(A) Offer assistance in employment related problems; and

(B) Help employees understand the procedures that are available for appeals;

(12) Evaluate the need for existing positions and approve new positions in state service and compensation for such positions;

(13) Check all payrolls and other compensation for personal services, and supply the information to the commissioner of finance and administration, before the same may be properly authorized for payment;

(14) Investigate personnel, salary rate and ranges, and employment conditions in state service as may be requested by the governor, and require the attendance of witnesses and production of documentary evidence pertinent to any such investigation;

(15) Process for payroll entry the personnel records of the state special schools; the state board of education shall have the exclusive authority to employ such personnel And determine their compensation;

(16) Implement, administer, and enforce this chapter and rules and policies adopted under this chapter; and

(17) Perform any other lawful acts that the commissioner considers necessary or desirable to carry out the provisions of this chapter.

(b) All supervisory personnel, during the time such person is employed by the state to hold such position, shall be physically present in [insert state] while supervising employees working within [insert state] unless business reasons require out-of-state travel. Supervisory personnel shall include any person who oversees, directs or manages the work, work flow, or employees in the performance of their daily duties. Nothing in this subsection (b) shall be construed as prohibiting telework policies issued by the department.

(c) The commissioner and appointing authorities may appoint a designee as they deem necessary to act within the scope of this chapter.

#### Section 6. *[Adoption of rules; force of law.]*

Rules adopted under the provisions of this chapter shall have the force and effect of law, and may include any provision relating to state employment consistent with the laws of this state, which may be necessary or appropriate to give effect to the provisions and purposes of this chapter.

#### Section 7. *[Powers of the department.]*

To carry out the purposes of this chapter, the department may do the following:

(1) Contract with persons outside the department as the commissioner deems necessary;

(2) Administer oaths;

(3) Issue subpoenas to compel the attendance of witnesses and the production of documents related to any investigation or hearing authorized by this chapter and secure enforcement of such subpoenas by petition to the chancery court of [insert county, state]; and

(4) Maintain such action or proceeding at law or in equity as the commissioner considers necessary or appropriate to secure compliance with this chapter and the rules, regulations and orders issued hereunder.

#### Section 8. *[Requirements of officers and state employees.]*

(a) All officers and employees of the state shall comply with the provisions of this chapter and the rules, regulations and orders established pursuant to this chapter, unless a specific exemption applies.

(b) A state officer or employee who fails to comply with any provision of this chapter or with any rule, regulation or order thereunder commits a Class C misdemeanor.

Section 9. [*State human resources board.*]

(a) There is created and established in the department of human resources a board of appeals of nine (9) members.

(b) The members of the board of appeals shall be citizens of the state. No member of the board of appeals shall be a member of any state or national committee of a political party or shall hold or be a candidate for any public office.

(c) The governor shall appoint the members of the board of appeals from the public at large. The governor shall strive to appoint members that reflect the geographic, racial, and gender diversity of the state population. Of the nine (9) members newly appointed, three (3) shall be appointed for a term of two (2) years, three (3) for a term of four (4) years, and three (3) for a term of six (6) years. Thereafter, each member shall be appointed for a term ending six (6) years from the date of the expiration of the term, for which the member's predecessor was appointed. A person appointed to fill a vacancy occurring prior to the expiration of such term shall, however, be appointed for only the remainder of the unexpired term. The governor may remove a member of the board of appeals for cause. Removal for cause may include, but is not limited to, three (3) consecutive absences from a meeting of the board of appeals.

(d) The commissioner shall establish the pay for the members of the board of appeals by rule. The members of the board of appeals shall be entitled to reimbursement for reasonable necessary travel expenses in accordance with the state comprehensive travel regulations promulgated by the department of finance and administration.

(e) The board of appeals shall elect one (1) of its members as chair. The board of appeals shall meet at least once every three (3) months and at such other times as shall be specified by call of the chair, the commissioner of human resources, or the governor. Notice of each meeting shall be given in writing to each member by the commissioner, and such notice shall specify the place and the time of the meeting. Three (3) members shall constitute a quorum.

(f) In addition to the duties expressly imposed upon the board of appeals elsewhere in this chapter, the board of appeals shall have jurisdiction to hear appeals brought pursuant to this chapter and regulations promulgated pursuant thereto. The board of appeals shall also be the final step in the appeals procedure provided for preferred service employees.

Section 10. [*State service; preferred service and executive service.*]

(a) The following positions shall be executive service positions:

(1) Any officer or employee appointed by the governor and all positions in the governor's office;

(2) Any deputy commissioner or equivalent authority in each department or state agency;

(3) Any assistant commissioner or equivalent authority in each department or state agency;

(4) Wardens and directors of correctional facilities identified in [insert citation] and chief officers of mental health institutes or developmental centers identified in [insert citation];

(5) The head of a division or major unit within a state agency or a regional director or manager for a state agency, regardless of the title of the position, who, as a substantial part of the position's duties, provides meaningful input on:



1 (A) The development of policy goals; or  
2 (B) The implementation of policy;  
3 (6) The highest ranking employee of a state agency who has a primary responsibility  
4 for one (1) or more of the following functions:  
5 (A) Public information and legislative affairs;  
6 (B) Fiscal, budget and audit matters;  
7 (C) Security or internal affairs;  
8 (D) Information technology systems; and  
9 (E) Human resources;  
10 (7) A clinical director, medical director, or other licensed physician;  
11 (8) A licensed attorney engaged in the practice of law and representing the state in  
12 such capacity; and  
13 (9) Any position serving in a confidential capacity to a commissioner, deputy  
14 commissioner, assistant commissioner or equivalent authority.  
15 (b) An employee in the executive service is an employee at will and serves at the pleasure of  
16 the employee's appointing authority.  
17 (c) All other full-time positions in state service shall be in the preferred service.  
18 (d) An employee becomes a member of the preferred service upon successful completion of  
19 the probationary period under the provisions of this chapter.  
20 (e) Preferred service employees include any commissioned member of the department of  
21 safety, below the rank of captain, serving in the capacity of executive security, who has been so  
22 certified by the commissioner of safety to the commissioner of human resources.  
23 (f) The commissioner shall determine equivalent levels for the purpose of assigning positions  
24 not specifically addressed in subsection (a) to the preferred or executive service. Such determination  
25 may be based on duties, responsibilities and reporting relationships and shall not be subject to review  
26 through any procedure. However, within any department, implementation of this provision shall not  
27 jeopardize federal funding resources.

28  
29 Section 11. [*Determinations of preferred service by the commissioner.*]

30 (a) The commissioner, after consulting with appointing authorities and other qualified  
31 authorities, shall determine, or cause to be determined, the authority, duties, and responsibilities of  
32 all positions in the state preferred service.

33 (b) The commissioner shall prepare a classification plan that groups all positions in the  
34 preferred service in classes, based on the authority, duties, and responsibilities of each position. The  
35 classification plan must set forth, for each class of positions, the class title and a statement of the  
36 authority, duties, and responsibilities of the class. Each class of positions may be subdivided, and  
37 classes may be grouped and ranked in such manner as the commissioner considers appropriate.

38 (c) The commissioner shall periodically:

39 (1) Review the positions in the state preferred service; and  
40 (2) Reallocate the positions to the proper classes based on the duties and  
41 responsibilities of the positions at the time of the review under subdivision (1).

42 (d) The commissioner shall also prepare a statement of minimum qualifications for each class  
43 of positions in the preferred service.

44 (e) When any position classification is upgraded in the classification plan, all employees in  
45 that position classification shall receive any necessary salary adjustment so that the employee's  
46 salary does not fall below the minimum range of the classification.

47  
48 Section 12. [*approval of establishing new positions.*]



1 Before establishing a new position in the preferred service or making a material change in the  
2 authority, duties, or responsibilities of a position in such service, an  
3 appointing authority shall receive approval from the commissioner in writing.  
4

5 Section 13. [*Position allocations and classifications.*]

6 The commissioner may, at any time, allocate any new position to a class, or change the  
7 allocation of any position to a class, or make changes in the classification plan. If any change is  
8 made in the classification plan by which a class of positions is divided, altered, or abolished, or the  
9 classes are combined, the commissioner shall reallocate the positions and/or the affected employee  
10 to the appropriate class.  
11

12 Section 14. [*Limitations on appointed preferred positions.*]

13 No person shall be appointed to or employed in a position in the preferred service under a  
14 classification title that has not been approved by the commissioner as appropriate to the duties to be  
15 performed. Nothing in this section prohibits the use of working job titles assigned by the appointing  
16 authority.  
17

18 Section 15. [*Compensation plans and pay guidelines for employees.*]

19 (a) The commissioner shall prepare and recommend to the governor a compensation plan for  
20 all employees. Such compensation plan shall include, for each class of positions, a minimum and  
21 maximum rate, and such intermediate rates as the commissioner considers necessary or equitable. In  
22 establishing such rates, the commissioner shall consider the ability to effectively recruit for positions  
23 in state service, the prevailing rates of pay for the services performed and for comparable services in  
24 public and private employment, living costs, other benefits received by employees, and the state's  
25 financial condition and policies. The compensation plan shall take effect when approved by the  
26 governor. The commissioner may initiate and recommend amendments, from time to time, to the  
27 governor. Each employee shall be paid at one of the rates set forth in the compensation plan for the  
28 class of positions, in which he or she is employed. The commissioner may approve payment at a rate  
29 above that assigned to the employee's position in the compensation plan when he or she determines  
30 it to be in the interest of the state. Nothing in this chapter shall be construed to affect salary surveys  
31 and compensation schedules conducted and implemented pursuant to statute, including, but not  
32 limited [insert citation].

33 (b) Notwithstanding any provision of law to the contrary, the commissioner shall establish  
34 guidelines to govern the distribution of any funds which may be available for merit pay for members  
35 of the state service.

36 (1) The guidelines shall establish objectively measurable criteria, which ensure that  
37 the merit pay system:

38 (A) Rewards above-average performance;

39 (B) Improves efficiency;

40 (C) Encourages participation in programs that will improve job performance  
41 and skills; and

42 (D) Does not permit, facilitate or promote discrimination on account of race,  
43 color, national origin, gender, age, disability, religion or creed, veteran's status or political opinions  
44 or affiliations.

45 (2) Such guidelines shall also provide that merit pay funds are consistently distributed  
46 in a fair and equitable manner.

47 (3) All employees shall be eligible for merit pay pursuant to rules promulgated by the  
48 department.

1 (c) Each employee whose job conduct and performance are satisfactory shall receive a  
2 periodic salary increase, if and when, authorized by the legislature; provided, that employees at or  
3 above the top step of their salary ranges shall not be eligible for such a salary increase. Periodic  
4 salary increases shall only be awarded to employees who have completed twelve (12) continuous  
5 months of state service as of [insert date] of each year. Employees who have not completed twelve  
6 (12) continuous months of state service as of [insert date] of each year shall be eligible for a periodic  
7 salary increase upon completion of twelve (12) continuous months of state service. Periodic salary  
8 increases shall be subject to availability of funds as provided in the general appropriations act for  
9 each fiscal year.

10  
11 Section 16. [*Compensatory time.*]

12 The commissioner shall establish guidelines for the accumulation and use of state  
13 compensatory time not governed by the Fair Labor Standards Act. Employees who accumulate the  
14 maximum number of hours of state compensatory time or more shall be paid for each additional hour  
15 of overtime worked based on that employee's hourly wage. Payment shall be made at the end of each  
16 pay period for eligible hours accumulated  
17 during the previous pay period .  
18

19 Section 17. [*Assigned duties of employees.*]

20 No preferred service employee shall be assigned to perform the majority of the duties and  
21 responsibilities of a position in a higher level classification than that of the position occupied by the  
22 employee, without the approval of the appointing authority. When an employee is so assigned, the  
23 duration of such assignment may not exceed ninety (90) days without the approval of the  
24 commissioner. The commissioner, in consultation with the commissioner of finance and  
25 administration, shall establish a procedure under which an employee who is assigned to perform the  
26 majority of the duties and responsibilities of a higher level classification for a period in excess of  
27 ninety (90) days shall receive additional compensation for such assignment.  
28

29 Section 18. [*Payment of employees.*]

30 (a) No employee may receive payment, unless the commissioner or the commissioner's agent  
31 has certified that the employee has been appointed and employed in accordance with the provisions  
32 of this chapter and the rules, regulations and orders issued thereunder.

33 (b) If the commissioner wrongfully withholds certification of the payroll voucher or account  
34 of any employee, the employee may maintain a proceeding in a court of record to compel the  
35 commissioner to certify such payroll voucher or account.  
36

37 Section 19. [*Recovery of sums.*]

38 The commissioner may bring an action to recover any sum paid contrary to any provision of  
39 this chapter or of any rule, regulation or order thereunder from:

40 (1) Any employee who made, approved or authorized such payment or who signed or  
41 countersigned a voucher, payroll, check or warrant for such payment;

42 (2) The sureties on the official bond of any such officer; or

43 (3) Any employee who incorrectly or improperly received any payment from the  
44 state.

45 All moneys recovered in any such action shall be paid into the state treasury.  
46

47 Section 20. [*Application for state employment.*]

48 (a) The commissioner shall inform prospective applicants for state employment of the  
49 process for obtaining state employment.

(b) The commissioner shall give public notice of a job opening at least one week prior to the closing of the application period.

(c) The commissioner shall include the duties of, and pay for, the position or the class, the qualifications required for such position, and any other information that the commissioner considers pertinent and useful. The notice shall also state the requisite assessment method.

(d) All assessments administered by the department, the total bank of questions from which such assessments were developed and the answers thereto shall be confidential and shall not be public records or state records open for public inspection in [insert citation].

#### Section 21. [*Employee reassignments.*]

(a) If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given a noncompetitive assessment in a manner prescribed by the commissioner.

(b) (1) The commissioner shall certify whether each employee has, met the minimum qualifications to retain the position. Upon certification, the employee shall be classified as a preferred service employee.

(2) An employee who is not certified shall be dismissed from the position as soon as is practicable, but no later than sixty (60) days after certification, unless the appointing authority notifies the commissioner that the employee has rendered satisfactory service and should be retained.

#### Section 22. [*Assessments of eligible applicants.*]

(a)(1) The commissioner shall, from time to time, conduct the assessments that the commissioner considers necessary for the purpose of establishing lists of eligibles.

(2) The assessments shall be competitive and shall be designed to determine the qualifications, fitness and ability of the applicant to perform the duties of the class of positions for which a list is to be established. The assessment may consist of a written, oral, or physical exam, or a demonstration of skills, or any combination of such types. The assessment may also consist of an evaluation of education, experience, skill, ability, competency, knowledge, aptitude, capacity, character, and other qualifications as, in the judgment of the commissioner, may determine and measure the relative ability of the applicant.

(3) No part of an assessment shall be framed to elicit information concerning the race, color, national origin, gender, age, disability, religion or creed, or political opinions or affiliations of an applicant.

(b) The commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability, who has been certified as unable to perform such a test by the department. The working test period shall not exceed one (1) year.

(c) The commissioner shall notify each applicant in writing of the results of the assessment as soon as reasonably practicable.

(d) A manifest error in the assessment result shall be corrected, if called to the attention of the commissioner within one (1) month after the establishment of the list of eligibles. The correction, however, shall not invalidate any appointment previously made from such list.

#### Section 23. [*Rejection of applicants.*]

(a) The commissioner may reject the application of any person for admission to an assessment or may strike the name of a person from a list, if the department determines that the applicant:

- (1) Lacks any of the required qualifications;
- (2) Is incapable of performing the essential functions of the position that the applicant is seeking;

1 (3) Has been convicted of a crime rendering the applicant unsuitable for a particular  
2 position;

3 (4) Has been dismissed for cause from state service;

4 (5) Has made a false statement of a material fact; or

5 (6) Committed or attempted to commit a fraud or deception in connection with  
6 submitting an application or attempting to secure an appointment to state service.

7 (b) Any person whose name is removed from a list of eligibles for any reason shall be  
8 notified.

9  
10 Section 24. [*Establishment of eligibles list.*]

11 (a) The commissioner shall establish and maintain a list of eligibles for the various classes of  
12 positions as the commissioner deems necessary or desirable to meet the needs of the service.

13 (b) At the time a list of eligibles is established, the commissioner shall determine the period  
14 during which such list shall remain in force.

15 (c) No person who is required to register for the federal draft under 50 U.S.C. Appx. § 453  
16 shall be eligible for employment with the state of Tennessee until such  
17 person has registered for such draft.

18  
19 Section 25. [*Filling an open preferred service position.*]

20 (a)(1) Whenever an appointing authority proposes to fill a position in the preferred service,  
21 the authority shall submit to the commissioner a statement showing the position to be filled, the  
22 duties for such position, the official station, the minimum qualifications and preferred skill, abilities,  
23 competencies and knowledge of the person to be appointed.

24 (2) The commissioner shall refer a list of eligibles who meet the minimum  
25 qualifications for the position.

26 (3) An appointing authority must offer an invitation to interview to a minimum of  
27 three (3) applicants from the referred list of eligibles, if three (3) or more applicants are on the list. If  
28 less than three (3) applicants are on the list of eligibles, the appointing authority must invite each  
29 person on the list to interview.

30 (4) Within thirty (30) days after being referred a list of eligibles, the appointing  
31 authority shall appoint one (1) of the applicants on the list of eligibles.

32 (b) Upon the request of the appointing authority, the commissioner may establish  
33 employment, promotional, unit, divisional or any other list of eligibles as deemed necessary or  
34 appropriate.

35 (c) If the official station of the vacancy to be filled is permanently located outside the  
36 geographic boundaries of the state of Tennessee, then the appointing authority may fill the vacancy  
37 without complying with subsections (a) and (b).

38 (d) In applying the provisions of this chapter, no person shall give any weight to political  
39 opinions or affiliation. No person holding a position in the preferred service shall solicit, directly or  
40 indirectly, or require any other person to solicit, directly or indirectly, donations or contributions for  
41 any political party, candidate, cause or purpose in order to acquire or deny a position in state service  
42 or to materially affect the retention, promotion or demotion of any employee in state service.

43  
44 Section 26. [*Consideration of eligible veterans.*]

45 (a) When invitations to interview candidates are extended, whether for appointment or  
46 promotion, and the list of eligibles includes any person who has been honorably discharged from the  
47 army, navy, air force, marine corps or coast guard or any member of the reserve components, as  
48 defined in 10 U.S.C. § 10101, who performs active federal service in the armed forces of the United  
49 States, these persons must be invited to interview.

1 (b) If a veteran is on the list of eligibles, and if the minimum qualifications and the skills,  
2 abilities, competencies and knowledge of the veteran and any another applicant being interviewed  
3 for the position are equal, preference will be given to the veteran for the position.

4 (c) When invitations to interview candidates are extended, whether for appointment or  
5 promotion, the spouse or surviving spouse of a veteran must be invited to interview, if the spouse or  
6 surviving spouse is a qualified voter in [insert state] or has been a resident of this state for two (2)  
7 years preceding such person's application, and one of the two following circumstances exists:

8 (1) As a result of such military service, the veteran suffered a one hundred percent  
9 (100%) service-connected disability or is permanently and totally disabled; or

10 (2)(A) The veteran died in the line of duty during such military service; and

11 (3) The surviving spouse has not remarried since the death of the veteran.

12 (d) Any appointing authority who passes over an eligible veteran and selects an eligible  
13 nonveteran shall file with the commissioner, within thirty (30) days, the reasons for so doing, which  
14 reasons will become a part of the veteran's record, but will not be made available to anyone other  
15 than the veteran, except in the discretion of the appointing authority.

16  
17 Section 27. [*Probationary period.*]

18 (a) Every person appointed to a position in the preferred service shall be subject to a  
19 probationary period of employment. The probationary period shall commence immediately upon  
20 appointment and shall continue for such time, not less than one (1) year, as shall be established by  
21 the commissioner. At any time during the employee's probationary period the appointing authority  
22 may remove the employee if, in the opinion of the appointing authority, the employee's performance  
23 or conduct during the probationary period indicates that such employee is unable or unwilling to  
24 satisfactorily perform or is not satisfactorily performing his or her duties, or that the employee's  
25 habits, dependability, or conduct do not merit continuance in the service.

26 (b) During the last month of an employee's probationary period, the appointing authority  
27 shall notify the commissioner in writing whether the performance and conduct of the employee have  
28 been satisfactory and whether continued employment is recommended.

29  
30 Section 28. [*Temporary appointments.*]

31 (a) When an appointing authority desires to fill a position in the preferred service, and the  
32 commissioner cannot timely evaluate the list of eligibles for such vacancy, the commissioner may  
33 authorize the appointing authority to fill the position by temporary appointment for a period not to  
34 exceed six (6) months. A temporary appointee shall hold a position only until an appropriate list has  
35 been established, the required evaluation is completed, and the appointment of the preferred service  
36 employee begins. No temporary appointment shall be renewed.

37 (b) An appointing authority may, with the approval of the commissioner, temporarily fill an  
38 existing preferred service position, for a period not to exceed ninety (90) days, by utilizing a  
39 temporary staffing service having a contract with the state to provide short-term temporaries. The  
40 provisions of this subsection (b) apply only to the utilization of vendor-supplied temporaries.

41 (c) If the position to be filled is not officially vacant, the appointing authority must obtain the  
42 commissioner's approval to overlap the position with another prior to making an appointment.

43  
44 Section 29. [*Emergency appointments.*]

45 When an emergency occurs, affecting the ability to fill a position in the preferred service  
46 under any other provision of this part, an appointing authority, in order to prevent stoppage of public  
47 business or loss or serious inconvenience to the public, may appoint any qualified person to such  
48 position with the approval of the commissioner. Any such person shall be employed only during



1 such emergency and for a period not exceeding one hundred twenty (120) days. No such  
2 appointment shall be renewed.

3  
4 Section 30. [*Assigning employees to different positions.*]

5 (a) An appointing authority may at any time assign an employee from one position to another  
6 position in the same job classification or rank within the same department. Upon making such  
7 assignment, the appointing authority shall give written notice of such action and the reasons for such  
8 action to the commissioner.

9 (b) A transfer of an employee from one department to another may be made with the  
10 approval of the commissioner and of the appointing authorities. The appointing authority, or  
11 authorities, with the approval of the commissioner, shall have authority to make such a transfer for  
12 any reason that they may deem to be for the good of the service. Their actions shall not be subject to  
13 appeal except as provided in this chapter.

14 (c) No employee shall be transferred from a position in one class to a position in another  
15 class of a higher rank or for which there are substantially dissimilar requirements for appointment,  
16 unless the employee is appointed to such latter position after certification of the employee's name  
17 from a list of eligibles in accordance with the provisions of this chapter.

18 (d) Any change of an employee from a position in one class to a position in a class of a lower  
19 rank shall be considered a demotion, except that the employee shall not be considered to have been  
20 demoted and shall not be required to serve a period of probation, if the change from a position in one  
21 class to a position in a class of a lower rank occurred:

- 22 (1) At the employee's request, with the concurrence of the department or agency; or  
23 (2) (A) Because of a change in the organizational structure of the government entity;  
24 (B) Because of the abolishment of a position;  
25 (C) As the result of a reduction in force; or  
26 (D) For reasons caused by organizational necessity.

27  
28 Section 31. [*Employee performance standards.*]

29 (a) In cooperation with appointing authorities, the commissioner shall establish, and may  
30 periodically amend:

- 31 (1) The standards of performance for employees;  
32 (2) The expected outcomes for employees; and  
33 (3) A system of job performance evaluations based upon the standards described in  
34 subdivisions (1) and (2).

35 (b) Employee performance standards and expected outcomes must be specific, measurable,  
36 achievable, relevant to the strategic objective of the employee's state agency or division, and time  
37 sensitive.

38 (c) Each appointing authority shall, at periodic intervals (but at least annually), make, and  
39 report to the commissioner, job performance evaluations for the employees in the appointing  
40 authority's department or state agency. Upon request by the commissioner, the appointing authority  
41 shall provide the information on which the appointing authority relied in evaluating job performance.

42 (d) The performance evaluations of state service employees shall not be considered public  
43 records under [insert citation]. Nothing in this subsection shall be construed to limit access to these  
44 records by law enforcement agencies, courts, or other governmental agencies performing official  
45 functions.

46 (e) Job performance evaluations may be used as follows:

- 47 (1) To determine salary increases and decreases within the limits established by the  
48 compensation plan developed under the provisions of this chapter;  
49 (2) As a factor in making or denying promotions; and

(3) As a means of determining employees:

(A) Who are candidates for promotion or transfer; or

(B) Who, because of a low job performance evaluation, are candidates for demotion, dismissal or reduction in force.

(f) On or before [insert citation], the department of human resources shall report to the state and local government committees of the senate and house of representatives on the job performance evaluation system, and shall provide to those committees a copy of any rules or regulations promulgated with respect to the performance evaluation system.

(g) In the process of establishing the system of job performance evaluations, the department shall afford representatives of recognized employee groups an opportunity to present facts, views or arguments related to the proposed system of job performance evaluations.

### Section 32. [*Furlough and layoff authority.*]

(a) An appointing authority has the authority to layoff or furlough employees or reduce hours of employment for any of the following reasons:

(1) Lack of funds;

(2) A reduction in spending authorization;

(3) Lack of work;

(4) Efficiency; or

(5) Other material change in duties or organization.

(b) The appointing authority has the authority to determine the extent, effective dates, and length of a layoff, furlough, or reduction in hours taken under subsection (a).

(c) The appointing authority shall determine the classifications affected and the number of employees laid off in each classification and each county to which a layoff applies.

(d) The commissioner shall approve all reductions in force and no such layoff, furlough, or reduction in hours may begin until such approval has been granted.

(e) In determining a layoff, the appointing authority must consider all employees under the same appointing authority, within the classification affected, and within the county affected and must also consider job performance evaluations as the primary factor. Thereafter, consideration shall be given to the following relevant factors:

(1) Seniority;

(2) Abilities; and

(3) Disciplinary record.

(A) Beginning [insert date], to [insert date], any preferred service employee whose position is abolished because of a reduction-in-force shall be provided written notice containing the reason for the layoff at least sixty (60) days in advance of the effective date for abolishing the position. This sixty-day period shall be used for career counseling, job testing, and placement efforts.

(B) Beginning [insert date], any preferred service employee whose position is abolished because of a reduction-in-force shall be provided written notice containing the reason for the layoff at least thirty (30) days in advance of the effective date for abolishing the position. This thirty-day period shall be used for career counseling, job testing, and placement efforts.

(1) Subject to certification by the commissioner of finance and administration that the rainy day fund, also known as the revenue fluctuation reserve fund, is likely to fall below two hundred million dollars (\$200,000,000), any notice required by this section may be reduced to a different period of time, but not less than fourteen (14) days.

(2) Nothing in this section shall place the state in a position of liability for the portion of any employee's salary attributed to a governmental grant in cases when the state had less than one hundred twenty (120) days' notice of the funding reduction. Nor shall the



1 requirement for notice prohibit any agency from closing the fiscal year with a balanced budget. In  
2 such cases, employees shall be provided the maximum notice possible.

3 (3) For purposes of seniority as a consideration for a reduction in  
4 force, a person with veteran's status, as defined in [insert citation], shall have an additional sixty (60)  
5 months of service credit added to their total months of state service.

6 (4) Any preferred service employee whose position is abolished  
7 because of a reduction-in-force shall receive the employee's final paycheck, including accumulated  
8 leave, no later than thirty (30) days after the date of layoff.

9 (f) A position in the preferred service shall not be considered to have been abolished as  
10 provided in subsection (a) if the same or essentially similar duties, as determined by the  
11 commissioner, are incorporated in a new position in the same agency within one (1) year after the  
12 effective date of the layoff that resulted in the position abolishment. Any preferred service employee  
13 so affected by abolishing the position shall be offered the newly established position upon  
14 application. The newly established position to which the employee returns shall not be placed in the  
15 executive service but shall remain in the preferred service.

16 (g) Notwithstanding any other law to the contrary, including, but not limited to, [insert  
17 citation], the reduction of scheduled hours of work authorized by this section shall including the  
18 closing of any or all state departments on any day or partial day of the week, when determined to be  
19 necessary by the governor as a result of reductions in funding levels.

20 (h) If at any time prior to or during any reduction-in-force the governor determines that the  
21 reduction-in-force will materially impair and/or disrupt governmental services to the public, the  
22 governor shall notify the speaker of the senate and the speaker of the house of representatives of the  
23 anticipated impairment and/or disruption of such governmental services. The governor shall advise  
24 the speakers of the actions that the governor and the affected department or departments will  
25 undertake to minimize the impairment and/or disruption of such governmental services.

26 The names of all preferred service employees affected by a reduction-in-force shall be placed  
27 on a layoff list maintained by the department. For a period of one (1) year following the date of the  
28 layoff, an employee, who is laid off as a result of a reduction-in-force, shall be notified of any job  
29 openings in the same job classification that the employee served immediately prior to layoff, shall be  
30 extended an invitation to apply for the job, and shall be granted an interview.

31  
32 Section 33. [*Suspension of an employee.*]

33 An appointing authority may suspend without pay an employee, for disciplinary purposes, for  
34 such length of time as the authority considers appropriate, not exceeding thirty (30) days in any  
35 twelve-month period. With the approval of the commissioner, an employee may be suspended for a  
36 longer period pending the appeal or the processing of an appeal in accordance with this chapter.

37  
38 Section 34. [*Dismissal of a preferred service employee.*]

39 (a) An employee in the preferred service who has successfully completed a probationary  
40 period becomes a preferred service employee and may be dismissed, demoted, or suspended for  
41 cause. The dismissal of a preferred service employee will take effect immediately after the  
42 appointing authority gives notice to such employee and files a written statement with the  
43 commissioner. The employee shall continue to receive compensation for ten (10) days following the  
44 date of dismissal.

45 (b) An appointing authority may dismiss any employee when the authority determines that  
46 the good of the service will be served thereby. Whenever an employee is dismissed "for the good of  
47 the service," the notice of termination must outline the reasons for dismissal.

48 (c) If an employee in state service willfully refuses or fails to appear before any legislative  
49 committee, or any officer, board or body authorized to conduct any hearing or inquiry, the employee

1 shall forfeit his or her position and shall not be eligible for appointment to any position in state  
2 service.

3 (d) Any employee who is absent from duty for more than three (3) consecutive work days  
4 without giving prior written or electronic notice to the appointing authority or appropriate manager  
5 that specifies the reason for such absence, and without securing permission to be on leave, or who  
6 fails to report for duty or to the immediate supervisor or the appointing authority within two (2)  
7 work days after the expiration of any authorized leave of absence, is considered as having resigned  
8 not in good standing, absent extenuating circumstances beyond the control of the employee causing  
9 the employee's absence or preventing the employee's return. An employee deemed to have resigned  
10 in accordance with these circumstances shall have the right to appeal such action through the appeal  
11 procedure described herein.

12 (e) The commissioner may dismiss an employee if the commissioner finds that the employee  
13 was appointed as a result of fraud.

14 (f) A preferred service employee is entitled to appeal a dismissal, demotion, or suspension as  
15 provided in [insert citation].

16  
17 Section 35. [*Report on promotions and dismissals.*]

18 The department of human resources and the department of finance and administration shall  
19 report electronically each month to the [insert appropriate oversight committee] committees of the  
20 senate and house of representatives and the fiscal review committee on bona fide employee  
21 promotions, showing clearly by department the names and the increases in pay as a result of such  
22 promotions. The departments shall also furnish an electronic copy of the report to the speakers of the  
23 senate and house of representatives and upon request to any member of the general assembly. The  
24 report shall also include employee transfers, dismissals, terminations, demotions, separations,  
25 positions reclassified from the preferred service to the executive service, and position abolishments  
26 showing clearly by department the name and title of each employee affected and such employee's  
27 position after such action.

28  
29 Section 36. [Appeals process for employees.]

30 (a) The department shall promulgate regulations establishing an appeal procedure for  
31 employees.

32 (b) An employee in the preferred service system, who has successfully completed the  
33 required probationary period, may file a complaint concerning the application of a law, rule, or  
34 policy to the dismissal, demotion, or suspension of the employee. If the term of the suspension is less  
35 than three (3) days, the right to appeal is limited to an appeal to the commissioner under Step II of  
36 subsection (h). An employee shall not be entitled to appeal a suspension of less than three (3) days to  
37 the board of appeals.

38 (c) An executive service employee, however, does not have standing to file a complaint  
39 under this section.

40 (d) A complaint filed under this section must identify the law, rule, or policy that was  
41 allegedly violated.

42 (e) An employee who files a complaint under this section must file the complaint as soon as  
43 possible after the occurrence of the act or condition complained of, and not later than fourteen (14)  
44 days after the date the employee became aware, or by the exercise of reasonable diligence should  
45 have become aware, of the occurrence giving rise to the complaint. If an employee fails to file the  
46 complaint within the fourteen-day period, the right to appeal under this chapter lapses and is deemed  
47 to have been waived in its entirety by the employee.

1 (f) For the purposes of this chapter, a complaint is filed when the appointing authority, the  
2 commissioner, or the board of appeals, depending on whether the complaint is being made under  
3 Step I, II or III as provided in subsection (h), receives a written or electronic copy of the complaint.

4 (g) A remedy granted under this section may not extend back more than thirty (30) days  
5 before the complaint was filed.

6 (h) The following appeal procedure is established:

7 Step 1: The complainant shall reduce the complaint to writing and file the complaint  
8 with the complainant's appointing authority. The appropriate appointing authority or designee shall  
9 conduct any investigation considered necessary, meet with the complainant in person, and issue a  
10 decision, in writing, not later than fifteen (15) days after the date the appointing authority receives  
11 the complaint. If the appointing authority does not issue a decision fifteen (15) days after the  
12 appointing authority receives the complaint, the complainant may appeal to the commissioner by  
13 filing the complaint in accordance with Step 11.

14 Step II: If the appointing authority does not find in favor of the complainant, the  
15 complainant may appeal to the commissioner of the department of human resources by filing the  
16 complaint not later than fourteen (14) days after the date of the appointing authority's written  
17 decision. The commissioner of the department of human resources shall review the complaint and  
18 the appointing authority's decision, and issue a decision, in writing, not later than thirty (30) days  
19 after the date the complaint was filed with the commissioner. If the commissioner does not issue a  
20 decision thirty (30) days after the commissioner receives the complaint, the complainant may appeal  
21 to the board of appeals in accordance with Step III.

22 Step III: The complainant or state agency may appeal in writing to the board of  
23 appeals not later than fourteen (14) days after the date the complainant, or in the case of a state  
24 agency, the state agency receives written notice of the action taken by the commissioner of the  
25 department of human resources. Within ten (10) days after the receipt of the appeal, the  
26 administrative law judge assigned to assist the board of appeals in the proceedings related to the  
27 appeal shall determine whether all previous procedural requirements were completed properly and in  
28 a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the  
29 procedural requirements have been met, the board of appeals shall conduct proceedings in  
30 accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the  
31 law, rule, or policy specified in the complaint was violated.

32 Each hearing under this chapter shall occur before a panel of at least three (3) members of the  
33 board of appeals, assisted by one (1) administrative law judge ("ALJ"). The ALJ shall assist at the  
34 hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising  
35 members of the board of appeals on the law of the case, and ensuring that the proceedings are carried  
36 out in accordance with this chapter and other applicable law. At no time shall the ALJ take part in  
37 the determination of a question of fact. An ALJ, upon timely motion, may decide any procedural  
38 question of law.

39 The board of appeals shall issue its final decision in each proceeding no later than one  
40 hundred twenty (120) days after the date of the filing of the appeal with the board of appeals.

41 (i) In order to ensure that the board of appeals issues its final decision no later than one  
42 hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be  
43 imposed on hearings before the board of appeals:

44 (1) The parties shall participate in a pre-hearing conference no later than twenty (20)  
45 days after the filing of the appeal. At the pre-hearing conference, a date must be set on which the  
46 hearing before the board of appeals will be held.

47 (2) All discovery must be completed no later than sixty (60) days after the filing of  
48 the appeal.

(3) All motions, both dispositive and non-dispositive, must be ruled on no later than thirty (30) days before the date of the hearing.

(4) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one hundred twenty (120) day time period for the board of appeals to issue its decision.

(5) Continuances of the hearing before the board of appeals may be granted only in extraordinary circumstances, as determined by the board of appeals or the ALJ.

(j) Decisions of the board of appeals are subject to judicial review in accordance with the Uniform Administrative Procedures Act, title 4, chapter 5 and the rules and regulations promulgated thereunder, in each case as amended in this chapter.

(k) The board of appeals may award attorney's fees and costs to a successfully appealing employee. The commissioner shall establish by rule the manner in which those fees shall be determined. The unsuccessful party or other state agency shall pay any fees or costs awarded under this subsection.

(l) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The commissioner may grant exceptions on a case-by-case basis.

(m) In any case in which a successful complainant has been awarded reinstatement, back pay or attorney's fees, the agency involved shall have a period of thirty (30) days from the date of the final order within which to provide reinstatement, back pay and/or attorney's fees.

#### Section 37. [*Responsibilities of a supervisor.*]

(a) The supervisor is responsible for maintaining the proper job performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor should administer disciplinary action at the step appropriate to the infraction, conduct, or performance, as determined by the supervisor.

(b) Upon written application by the employee, any written warning or written follow-up to an oral warning, which has been issued to an employee, shall be expunged from the employee's personnel file after a period of two (2) years; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

#### Section 38. [*Agreements with municipalities.*]

The commissioner may enter into agreements with any municipality or political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel. Any such agreement shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the commissioner. All municipalities and political subdivisions of the state are authorized to enter into such agreements.

#### Section 39. [*Use of public buildings.*]

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control for conducting an assessment, hearing or investigation authorized by this part [insert citation] of this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

#### Section 40. [*Ethical behavior regarding appointments; assessments.*]

1 (a) No person shall make any false statement, certificate, mark, rating or report with regard to  
2 any assessment, certification or appointment made under any provision of this chapter, or on any  
3 manner commit or attempt to commit any fraud preventing the impartial execution of this chapter. .

4 (b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any  
5 money, service or other valuable consideration for or on account of any appointment, proposed  
6 appointment, promotion or proposed promotion to, or any advantage on, a position in the state  
7 service.

8 (c) No employee of the department, examiner, or other person shall defeat, deceive or  
9 obstruct any person in such person's right to an assessment, eligibility, certification or appointment  
10 under this chapter, or furnish to any person any special or secret information, for the purpose of  
11 affecting the rights or prospects of any person with respect to employment in the preferred service.  
12

13 Section 41. [*Outside employment.*]

14 Nothing in this chapter shall be construed to prohibit a state employee from engaging in  
15 outside employment. Such outside employment shall not adversely affect the employee's  
16 performance with the state, create a conflict of interest between such additional employment, or  
17 conflict with the regular employment schedule of the employee.  
18

19 Section 42. [*Holiday and sick leave.*]

20 The rules shall provide for the hours of work, holidays, attendance regulations and leaves of  
21 absence in state service. They may contain provisions for annual, sick, and special leaves of absence,  
22 with or without pay.  
23

24 Section 43. [*Computing time.*]

25 In computing any period of time prescribed or allowed by this chapter, the date of the Act or  
26 event after which the designated period of time begins to run is not to be included. The last day of  
27 the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as  
28 defined in [insert citation], or, when the act to be done is the filing of a paper, a day on which the  
29 office where the paper to be filed is closed or on which weather or other conditions have made the  
30 office inaccessible, in which event the period runs until the end of the next day which is not one of  
31 the aforementioned days. When the period of time prescribed or allowed is less than eleven (11)  
32 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

# Expunction/Nonviolent Offenses

This Act creates a petition process to allow expunction of nonviolent felonies or nonviolent misdemeanors, regardless of the offender's age at the time of conviction, if after 15 years the person has had no other convictions for felonies or misdemeanors, other than traffic violations. The 15-year period is calculated from the conviction date or the completion of any sentence, period of post-release supervision, or period of probation. Multiple convictions occurring in the same session of court, where none of the offenses are alleged to have occurred after service of process for another offense, may all be expunged.

The petition process includes payment of a \$175 fee, notice to the district attorney who has a right to file an objection to the petition, and judicial authority to call upon a probation officer for investigation or verification of petitioner's conduct. Before granting the petition to expunge, the court must find:

- The petitioner has not had a previous conviction expunged under any of the expunction provisions. Expunction of a dismissed charge or not guilty finding will not prevent expunction under this Act.
- The petitioner has remained of good moral character and has no outstanding or pending criminal cases.
- The petitioner has no other felony or misdemeanor convictions, other than a traffic violation.
- The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution.

Submitted as:

North Carolina

[SESSION LAW 2012-191](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act to allow for expunction of nonviolent felonies or nonviolent  
2 misdemeanors.

3  
4           Section 2. [*Expunction of certain misdemeanors and felonies; no age limitation.*]

5           (a) For purposes of this section, the term “nonviolent misdemeanor” or “nonviolent felony”  
6 means any misdemeanor or felony except the following:

7                   (1) A Class A through G felony or a Class A1 misdemeanor.

8                   (2) An offense that includes assault as an essential element of the offense.

9                   (3) An offense requiring registration pursuant to [insert citation], whether or not the  
10 person is currently required to register.

11                   (4) Any of the following sex-related or stalking offenses: [insert citation].

12                   (5) Any felony offense in [insert citation] where the offense involves  
13 methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

14                   (6) Any felony offense in which a commercial motor vehicle was used in the  
15 commission of the offense.



1 (b) Notwithstanding any other provision of law, if the person is convicted of more than one  
2 nonviolent felony or nonviolent misdemeanor in the same session of court and none of the  
3 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had  
4 already been served with criminal process for the commission of a nonviolent felony or nonviolent  
5 misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be  
6 treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the  
7 expunction order issued under this section shall provide that the multiple nonviolent felony  
8 convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in  
9 accordance with this section.

10 (c) A person may file a petition, in the court where the person was convicted, for expunction  
11 of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the  
12 person has no other misdemeanor or felony convictions, other than a traffic violation, and was  
13 convicted of a nonviolent misdemeanor or nonviolent felony that is eligible pursuant to subsection  
14 (b) of this section. The petition shall not be filed earlier than 15 years after the date of the conviction  
15 or when any active sentence, period of probation, and post-release supervision has been served,  
16 whichever occurs later. The petition shall contain, but not be limited to, the following:

17 (1) An affidavit by the petitioner that the petitioner has been of good moral character  
18 since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been  
19 convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the  
20 United States or the laws of this State or any other state.

21 (2) Verified affidavits of two persons who are not related to the petitioner or to each  
22 other by blood or marriage, that they know the character and reputation of the petitioner in the  
23 community in which the petitioner lives and that the petitioner's character and reputation are good.

24 (3) A statement that the petition is a motion in the cause in the case wherein the  
25 petitioner was convicted.

26 (4) An application on a form approved by the Administrative Office of the Courts  
27 requesting and authorizing a name-based State and national criminal history record check by the  
28 Department of Justice using any information required by the Administrative Office of the Courts to  
29 identify the individual, a search by the Department of Justice for any outstanding warrants on  
30 pending criminal cases, and a search of the confidential record of expunctions maintained by the  
31 Administrative Office of the Courts. The application shall be forwarded to the Department of Justice  
32 and to the Administrative Office of the Courts, which shall conduct the searches and report their  
33 findings to the court.

34 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
35 representing amounts ordered for restitution entered against the petitioner are outstanding.

36 Upon filing of the petition, the petition shall be served upon the district attorney of the court  
37 wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter  
38 in which to file any objection thereto and shall be duly notified as to the date of the hearing of the  
39 petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to  
40 file objection to the petition. The district attorney shall make his or her best efforts to contact the  
41 victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

42 The presiding judge is authorized to call upon a probation officer for any additional  
43 investigation or verification of the petitioner's conduct since the conviction. The court shall review  
44 any other information the court deems relevant, including, but not limited to, affidavits or other  
45 testimony provided by law enforcement officers, district attorneys, and victims of crimes committed  
46 by the petitioner.

47 If the court, after hearing, finds that the petitioner has not previously been granted an  
48 expunction under this section, [insert citation]; the petitioner has remained of good moral character;  
49 the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other



1 felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding  
2 restitution orders or civil judgments representing amounts ordered for restitution entered against the  
3 petitioner; and the petitioner was convicted of an offense eligible for expunction under this section  
4 and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or  
5 nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be  
6 restored, in the contemplation of the law, to the status the person occupied before such arrest or  
7 indictment or information. If the court denies the petition, the order shall include a finding as to the  
8 reason for the denial.

9 (d) No person as to whom an order has been entered pursuant to subsection (c) of this section  
10 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a  
11 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,  
12 information, trial, or conviction. Persons pursuing certification under the provisions of [insert  
13 citation], however, shall disclose any and all convictions to the certifying Commission, regardless of  
14 whether or not the convictions were expunged pursuant to the provisions of this section.

15 Persons required by State law to obtain a criminal history record check on a prospective  
16 employee shall not be deemed to have knowledge of any convictions expunged under this section.

17 (e) The court shall also order that the conviction be expunged from the records of the court  
18 and direct all law enforcement agencies bearing record of the same to expunge their records of the  
19 conviction. The clerk shall notify State and local agencies of the court's order, as provided in [insert  
20 citation].

21 (f) Any other applicable State or local government agency shall expunge from its records  
22 entries made as a result of the conviction ordered expunged under this section upon receipt from the  
23 petitioner of an order entered pursuant to this section. The agency shall also reverse any  
24 administrative actions taken against a person whose record is expunged under this section as a result  
25 of the charges or convictions expunged. This subsection shall not apply to the Department of Justice  
26 for DNA records and samples stored in the State DNA Database and the State DNA Databank or to  
27 fingerprint records.

28 (g) A person who files a petition for expunction of a criminal record under this section must  
29 pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the  
30 petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This  
31 subsection does not apply to petitions filed by an indigent.

32  
33 Section 3. *[Expunction of records for first offenders who are under 18 years of age at the*  
34 *time of the commission of a nonviolent felony.]*

35 (a) For purposes of this section, the term "nonviolent felony" means any felony except the  
36 following:

37 (1) A Class A through G felony.

38 (2) A felony that includes assault as an essential element of the offense.

39 (3) A felony that is an offense for which the convicted offender must register under  
40 requiring registration pursuant to [insert citation], whether or not the person is currently required to  
41 register.

42 (4) A felony that is an offense that did not require registration under [insert citation]  
43 at the time of the commission of the offense but does require registration on the date the petition to  
44 expunge the offense would be filed.

45 (5) Any felony offense under the following sex-related or stalking offenses [insert  
46 citation].

47 (6) Any felony offense charged pursuant to [insert citation] where the offense involves  
48 methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine;  
49 except that if a prayer for judgment continued has been entered for an offense classified as either a

1 Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the  
2 procedures in this section.

3 (7) Any felony offense in which a commercial motor vehicle was used in the  
4 commission of the offense.

5 (b) Notwithstanding any other provision of law, if the person is convicted of more than one  
6 nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to  
7 have occurred after the person had already been charged and arrested with criminal process for the  
8 commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated  
9 as one nonviolent felony conviction under this section, and the expunction order issued under this  
10 section shall provide that the multiple nonviolent felony convictions shall be expunged from the  
11 person's record in accordance with this section.

12 (c) Whenever any person who had not yet attained the age of 18 years at the time of the  
13 commission of the offense and has not previously been convicted of any felony or misdemeanor  
14 other than a traffic violation under the laws of the United States or the laws of this State or any other  
15 state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court  
16 where the person was convicted for expunction of the nonviolent felony from the person's criminal  
17 record. The petition shall not be filed earlier than four years after the date of the conviction or when  
18 any active sentence, period of probation, and post-release supervision has been served, whichever  
19 occurs later. The person shall also perform at least 100 hours of community service, preferably  
20 related to the conviction, before filing a petition for expunction under this section. The petition shall  
21 contain the following:

22 (1) An affidavit by the petitioner that the petitioner has been of good moral character  
23 since the date of conviction of the nonviolent felony in question and has not been convicted of any  
24 other felony or any misdemeanor other than a traffic violation under the laws of the United States or  
25 the laws of this State or any other state.

26 (2) Verified affidavits of two persons who are not related to the petitioner or to each  
27 other by blood or marriage, that they know the character and reputation of the petitioner in the  
28 community in which the petitioner lives and that the petitioner's character and reputation are good.

29 (3) A statement that the petition is a motion in the cause in the case wherein the  
30 petitioner was convicted.

31 (4) An application on a form approved by the Administrative Office of the Courts  
32 requesting and authorizing (i) a State and national criminal history record check by the Department  
33 of Justice using any information required by the Administrative Office of the Courts to identify the  
34 individual; (ii) a search by the Department of Justice for any outstanding warrants or pending  
35 criminal cases; and (iii) a search of the confidential record of expunctions maintained by the  
36 Administrative Office of the Courts. The application shall be forwarded to the Department of Justice  
37 and to the Administrative Office of the Courts, which shall conduct the searches and report their  
38 findings to the court.

39 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
40 representing amounts ordered for restitution entered against the petitioner are outstanding.

41 (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours  
42 of community service since the conviction for the nonviolent felony. The affidavit shall include a list  
43 of the community services performed, a list of the recipients of the services, and a detailed  
44 description of those services.

45 (7) An affidavit by the petitioner that the petitioner possesses a high school diploma,  
46 a high school graduation equivalency certificate, or a General Education Development degree.

47 The petition shall be served upon the district attorney of the court wherein the case was tried  
48 resulting in conviction. The district attorney shall have 30 days thereafter in which to file any  
49 objection thereto and shall be duly notified as to the date of the hearing of the petition. The district

1 attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the  
2 request for expunction prior to the date of the hearing.

3 (d) The court in which the petition was filed shall take the following steps and shall consider  
4 the following issues in rendering a decision upon a petition for expunction of records of a nonviolent  
5 felony under this section:

6 (1) Call upon a probation officer for additional investigation or verification of the  
7 petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony  
8 in question.

9 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile  
10 records remain separate from adult records and files and are withheld from public inspection as  
11 provided under [insert citation].

12 (3) Review the amount of restitution made by the petitioner to the victim of the  
13 nonviolent felony to be expunged and give consideration to whether or not restitution was paid in  
14 full.

15 (4) Review any other information the court deems relevant, including, but not limited  
16 to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims  
17 of nonviolent felonies committed by the petitioner.

18 (e) The court may order that the person be restored, in the contemplation of the law, to the  
19 status the person occupied before the arrest or indictment or information if the court finds all of the  
20 following after a hearing:

21 (1) The petitioner has remained of good moral character and has been free of  
22 conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date  
23 of conviction of the nonviolent felony in question or any active sentence, period of probation, or  
24 post-release supervision has been served, whichever is later.

25 (2) The petitioner has not previously been convicted of any felony or misdemeanor  
26 other than a traffic violation under the laws of the United States or the laws of this State or any other  
27 state.

28 (3) The petitioner has no outstanding warrants or pending criminal cases.

29 (4) The petitioner has no outstanding restitution orders or civil judgments  
30 representing amounts ordered for restitution entered against the petitioner.

31 (5) The petitioner was less than 18 years old at the time of the commission of the  
32 offense in question.

33 (6) The petitioner has performed at least 100 hours of community service since the  
34 time of the conviction and possesses a high school diploma, a high school graduation equivalency  
35 certificate, or a General Education Development degree.

36 (7) The search of the confidential records of expunctions conducted by the  
37 Administrative Office of the Courts shows that the petitioner has not been previously granted an  
38 expunction.

39 (f) No person as to whom an order has been entered pursuant to subsection (e) of this section  
40 shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a  
41 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,  
42 information, trial, or conviction. Persons pursuing certification under the provisions of [insert  
43 citation], however, shall disclose any and all felony convictions to the certifying Commission  
44 regardless of whether or not the felony convictions were expunged pursuant to the provisions of this  
45 section.

46 Persons required by State law to obtain a criminal history record check on a prospective  
47 employee shall not be deemed to have knowledge of any convictions expunged under this section.

48 (g) The court shall also order that the nonviolent felony conviction be expunged from the  
49 records of the court and direct all law enforcement agencies bearing record of the same to expunge

1 their records of the conviction. The clerk shall notify State and local agencies of the court's order as  
2 provided in [insert citation].

3 (h) Any other applicable State or local government agency shall expunge from its records  
4 entries made as a result of the conviction ordered expunged under this section. The agency shall also  
5 reverse any administrative actions taken against a person whose record is expunged under this  
6 section as a result of the charges or convictions expunged. This subsection shall not apply to the  
7 Department of Justice for DNA records and samples stored in the State DNA Database and the State  
8 DNA Databank.

9 (i) Any person eligible for expunction of a criminal record under this section shall be notified  
10 about the provisions of this section by the probation officer assigned to that person. If no probation  
11 officer is assigned, notification of the provisions of this section shall be provided by the court at the  
12 time of the conviction of the felony which is to be expunged under this section.”

13  
14 Section 4. [*Expunction of records when charges are dismissed or there are findings of not*  
15 *guilty.*]

16 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged  
17 with an infraction under [insert citation] prior to [insert date] and the charge is dismissed, or a  
18 finding of not guilty or not responsible is entered, that person may apply to the court of the county  
19 where the charge was brought for an order to expunge from all official records any entries relating to  
20 his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the  
21 person had not previously received an expungement under this section, [insert citation], and that the  
22 person had not previously been convicted of any felony under the laws of the United States, this  
23 State, or any other state, the court shall order the expunction. No person as to whom such an order  
24 has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to  
25 be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by  
26 reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

27 (a1) Notwithstanding subsection (a) of this section, if a person is charged with  
28 multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are  
29 made, then a person may apply to have each of those charges expunged if the offenses occurred  
30 within the same 12-month period of time or if the charges are dismissed or findings are made at the  
31 same term of court. Unless circumstances otherwise clearly provide, the phrase “term of court” shall  
32 mean one week for superior court and one day for district court. There is no requirement that the  
33 multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were  
34 consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i)  
35 that the person had not previously received an expungement under this subsection, or that any  
36 previous expungement received under this subsection occurred prior to [insert date] and was for an  
37 offense that occurred within the same 12-month period of time, or was dismissed or findings made at  
38 the same term of court, as the offenses that are the subject of the current application, (ii) that the  
39 person had not previously received an expungement under [insert citation] and (iii) that the person  
40 had not previously been convicted of any felony under the laws of the United States, this State, or  
41 any other state, the court shall order the expunction. No person as to whom such an order has been  
42 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty  
43 of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of  
44 his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

45 (b) The court may also order that the said entries, including civil revocations of drivers  
46 licenses as a result of the underlying charge, shall be expunged from the records of the court, and  
47 direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public  
48 Safety, the Division of Motor Vehicles, and any other State or local government agencies identified  
49 by the petitioner as bearing record of the same to expunge their records of the entries, including civil

1 revocations of drivers licenses as a result of the underlying charge being expunged. This subsection  
2 does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations  
3 under [insert citation]. The clerk shall notify State and local agencies of the court's order as provided  
4 in [insert citation]. The clerk shall forward a certified copy of the order to the Division of Motor  
5 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also  
6 expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition  
7 of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the  
8 records, as required under [insert citation], shall not be taxed against the petitioner.

9 (b1) Any person entitled to expungement under this section may also apply to the  
10 court for an order expunging DNA records when the person's case has been dismissed by the trial  
11 court and the person's DNA record or profile has been included in the State DNA Database and the  
12 person's DNA sample is stored in the State DNA Databank. A copy of the application for  
13 expungement of the DNA record or DNA sample shall be served on the district attorney for the  
14 judicial district in which the felony charges were brought not less than 20 days prior to the date of  
15 the hearing on the application. If the application for expungement is granted, a certified copy of the  
16 trial court's order dismissing the charges shall be attached to an order of expungement. The order of  
17 expungement shall include the name and address of the defendant and the defendant's attorney and  
18 shall direct the SBI to send a letter documenting expungement as required by subsection (b2) of this  
19 section.

20 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of  
21 this section, the SBI shall purge the DNA record and all other identifying information from the State  
22 DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except  
23 that the order shall not apply to other offenses committed by the individual that qualify for inclusion  
24 in the State DNA Database and the State DNA Databank. A letter documenting expungement of the  
25 DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the  
26 defendant's attorney at the address specified by the court in the order of expungement.

27 (c) The clerk shall notify State and local agencies of the court's order as provided in [insert  
28 citation].

## 30 Section 5. *[Confidential agency files; exceptions to expunction.]*

31 (a) The Administrative Office of the Courts shall maintain a confidential file containing the  
32 names of those people for whom it received a notice under [insert citation]. The information  
33 contained in the file may be disclosed only as follows:

34 (1) To a judge of the General Court of Justice of [insert state] for the purpose of  
35 ascertaining whether a person charged with an offense has been previously granted a discharge or an  
36 expunction.

37 (2) To a person requesting confirmation of the person's own discharge or expunction,  
38 as provided in [insert citation].

39 (3) To the General Court of Justice of [insert state] in response to a subpoena or other  
40 court order issued pursuant to a civil action under [insert citation].

41 (4) If the criminal record was expunged pursuant to [insert citation], to State and local  
42 law enforcement agencies for employment purposes only.

43 (5) If the criminal record was expunged pursuant to [insert citation], to the [insert  
44 state] Criminal Justice Education and Training Standards Commission for certification purposes  
45 only.

46 (6) If the criminal record was expunged pursuant to [insert citation], to the [insert  
47 state] Sheriffs' Education and Training Standards Commission for certification purposes only.”

48 (b) Notwithstanding [insert citation], the Commission may gain access to a person's felony  
49 conviction records, including those maintained by the Administrative Office of the Courts in its



1 confidential files containing the names of persons granted expunctions. The Commission may deny,  
2 suspend, or revoke a person's certification based solely on that person's felony conviction, whether  
3 or not that conviction was expunged.

4 (c) Notwithstanding [insert citation] the Commission may gain access to a person's felony  
5 conviction records, including those maintained by the Administrative Office of the Courts in its  
6 confidential files containing the names of persons granted expunctions. The Commission may deny,  
7 suspend, or revoke a person's certification based solely on that person's felony conviction, whether  
8 or not that conviction was expunged.

9  
10 Section 6. [*Severability*.] Insert severability clause.

11  
12 Section 7. [*Repealer*.] Insert repealer clause.

13  
14 Section 8. [*Effective Date*.] Insert effective date.

15

# Funeral Services Courtesy Cards

This Act provides for the board of funeral and cemetery service to create a courtesy card for funeral directors licensed in bordering states, authorizing the funeral directors to provide certain funeral services in the state.

Submitted as:

Indiana

[SB 370](#)

Status: Became law in March 2012

## Suggested State Legislation

(Title, enacting clause, etc.)

### Section 1. [*Definitions*]

As used in this Act:

(1)"Courtesy card" means a special permit issued by the (board of funeral and cemetery service) to funeral directors licensed in bordering states.

(2)"Funeral ceremonies" refer to services or rites commemorating the deceased, with the dead human body present, conducted at:

(a) churches;

(b) funeral homes;

(c) cemeteries;

(d) crematories; or

(e) elsewhere.

Funeral ceremonies include visitations, funerals, graveside funeral services, and other similar rites or ceremonies.

### Section 2. [*Requirements of card holders.*]

A. The board shall issue a courtesy card to an individual who is not licensed under this article as a funeral director but who is licensed or certified as a funeral director in one (1) or more states, if all of the following requirements are met:

(1) The individual is licensed as a funeral director in a bordering state.

(2) The bordering state issues courtesy cards or similar permits to funeral directors licensed in [insert state].

(3) The individual completes an application for a courtesy card on a form provided by the board. The application for a courtesy card must include certification, including the seal of the state where the individual is licensed.

(4) The individual certifies on the application that the individual has reviewed and understands materials prepared by the board for individuals seeking courtesy cards.

(5) The individual pays the fee established under section 3.

### Section 3. [*Establishment of Fee*]

The board shall adopt rules to set the fee for the card. The fee must be sufficient to cover the cost of issuing the card. When establishing the fee, the board must consider the fees charged by



bordering states that issue courtesy cards. Insofar as possible, the fees established must be consistent with the fees of the bordering states that issue courtesy cards.

Section 4. [*Courtesy card validity.*]

A courtesy card issued is valid for a period consistent with other licenses issued by the board, to be established by the board.

Section 5. [*Authorized activities.*]

A. The holder of a courtesy card issued under this chapter is authorized to undertake the following acts of funeral directing:

(1) Remove and transport unembalmed and embalmed deceased human bodies to [the state] from and from [the state] to the state or states where the courtesy card holder is licensed as a funeral director.

(2) Prepare and complete sections of a death certificate and other disposition permits needed for disposition of deceased human remains, and sign and file death certificates and permits.

(3) Sign and file death certificates and other disposition permits without the assistance of or being under the supervision of a funeral director licensed under this article.

(4) Supervise and conduct funeral ceremonies in [the state] without the assistance of a funeral director licensed under this article.

Section 6. [*Applicability to state law; discipline actions.*]

A courtesy card holder must comply with all state laws and rules when engaged in any acts of funeral directing in the state. The board may revoke or suspend a courtesy card or subject the courtesy card holder to discipline in accordance with the laws and rules applicable to funeral directors licensed under this article. Any disciplinary measure taken by the board against a courtesy card holder must be reported by the board to the state board or agency that issued the courtesy card holder's funeral director's license or certification.

Section 7. [*Limitations.*]

A. The holder of a courtesy card issued under this chapter is not authorized to undertake the following acts:

(1) Transfer the courtesy card to another individual.

(2) Own or operate a funeral home, crematory, or office that provides or offers to sell or arrange funeral or disposition services in [insert state].

(3) Except as provided in section 5 of this chapter, perform any acts related to the practice of funeral direction in [the state], including:

(A) arranging for a funeral or disposition service with members of the public;

(B) being employed by or contracted to perform funeral or embalming service in [the state] by a funeral home licensed under this article;

(C) advertising funeral or disposition services;

(D) executing contracts for funeral or disposition services in [insert state];

(E) preparing or embalming deceased human remains in [insert state]; or

(F) exhuming or disinterring human remains in [insert state].

# Health Benefit Exchange

This Act establishes the governance, structure, and funding of the Health Benefit Exchange, a public corporation and independent unit of government created to (1) reduce the number of uninsured; (2) facilitate the purchase and sale of qualified health plans (QHPs) in the individual market; (3) assist qualified employers facilitating the enrollment of their employees in QHPs in the small group market and in accessing small business tax credits; (4) assist individuals in accessing public programs, premium tax credits, and cost-sharing reductions; and (5) supplement the individual and small group insurance markets outside of the exchange. The exchange will be governed by a Board of Trustees and funded through specified fees or assessments. The bill also establishes a Health Benefit Exchange Fund. Appointed members serve four-year terms and may not serve more than two consecutive terms. Board members are entitled to reimbursement for expenses. Members of the board must disclose certain relationships and adhere strictly to conflict of interest provisions. The exchange must study and report on specified functions and is prohibited from implementing those functions until the Governor and General Assembly enact additional legislation.

The primary function of the exchange will be to certify and make available QHPs to individuals and small businesses and to serve as a gateway to an expanded Medicaid program.

To offer a QHP, a carrier must be licensed and in good standing to offer health insurance; offer at least one QHP at both silver and gold levels outside the exchange if participating in the individual exchange; offer at least one QHP at both silver and gold levels in the small group market outside the exchange if participating in the SHOP exchange; and charge the same premiums for plans offered inside and outside the exchange. The exchange must certify health benefit plans as QHPs. To be certified, a plan must provide the essential benefits package required under ACA; obtain prior approval of premium rates and contract language from the Insurance Commissioner; provide at least a bronze level of coverage; and ensure that cost-sharing requirements do not exceed the limits established under ACA. A QHP is required to provide at least a bronze level of coverage if the QHP is certified as a qualified catastrophic plan.

A QDP must meet all QHP requirements except that dental plan carriers need not be licensed to offer other health benefits. Plans must be limited to dental/oral health benefits and include essential pediatric dental benefits and other dental benefits required by the Secretary of Health and Human Services or the exchange. Carriers may offer health and dental plans jointly under certain circumstances.

Submitted as:

Maryland

[Chapter 2 of 2011](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1           Section 1. [*Short Title.*] This Act shall be cited as “The Health Benefit Exchange Act.”
- 2
- 3           Section 2. [*Findings.*]
- 4
- 5           Section 3. [Health benefit exchange definitions.]
- 6           (a) in this title the following words have the meanings indicated.

1 (b) “affordable care act” means the federal patient protection and affordable care act, as  
2 amended by the federal health care and education reconciliation act of 2010, and any regulations  
3 adopted or guidance issued under the acts.

4 (c) “board” means the board of trustees of the exchange.

5 (d) “carrier” means:

- 6 (1) an insurer authorized to sell health insurance;
- 7 (2) a nonprofit health service plan;
- 8 (3) a health maintenance organization; or
- 9 (4) a dental plan organization; or
- 10 (5) any other entity providing a plan of health insurance, health benefits, or health  
11 services authorized under this article or the Affordable Care Act.

12 (e) “exchange” means the health benefit exchange established as a public corporation under  
13 [insert citation] of this title.

14 (f) “fund” means the health benefit exchange fund established under [insert citation] of this  
15 subtitle.

16 (g) (1) “health benefit plan” means a policy, contract, certificate, or agreement offered,  
17 issued, or delivered by a carrier to an individual or small employer in the state to provide, deliver,  
18 arrange for, pay for, or reimburse any of the costs of health care services.

19 (2) “health benefit plan” does not include:

- 20 (i) coverage only for accident or disability insurance or any combination of  
21 accident and disability insurance;
- 22 (ii) coverage issued as a supplement to liability insurance;
- 23 (iii) liability insurance, including general liability insurance and automobile  
24 liability insurance;
- 25 (iv) workers’ compensation or similar insurance;
- 26 (v) automobile medical payment insurance;
- 27 (vi) credit-only insurance;
- 28 (vii) coverage for on-site medical clinics; or
- 29 (viii) other similar insurance coverage, specified in federal regulations issued  
30 pursuant to [insert citation] the federal health insurance portability and accountability act, under  
31 which benefits for health care services are secondary or incidental to other insurance benefits.

32 (3) “health benefit plan” does not include the following benefits if they are provided  
33 under a separate policy, Certificate, or contract of insurance, or are otherwise not an integral part of  
34 the plan:

- 35 (i) limited scope dental or vision benefits;
- 36 (ii) benefits for long-term care, nursing home care, home health care,  
37 community-based care, or any combination of these benefits; or
- 38 (iii) such other similar limited benefits as are specified in federal regulations  
39 issued pursuant to P.L. 104–191 the federal Health Insurance Portability and Accountability Act.

40 (4) “health benefit plan” does not include the following benefits if the benefits are  
41 provided under a separate policy, certificate, or contract of insurance, there is no coordination  
42 between the provision of the benefits and any exclusion of benefits under any group health plan  
43 maintained by the same plan sponsor, and the benefits are paid with respect to an event without  
44 regard to whether the benefits are provided under any group health plan maintained by the same plan  
45 sponsor:

- 46 (i) coverage only for a specified disease or illness; or
- 47 (ii) hospital indemnity or other fixed indemnity insurance.

(5) “health benefit plan” does not include the following if offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental insurance (as defined under § 1882(g)(1) of the Social Security Act);

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or

(iii) similar supplemental coverage provided to coverage under a group health plan.

(h) “managed care organization” has the meaning stated in [insert citation] of the health – general article.

(i) “qualified dental plan” means a plan certified by the exchange that provides limited scope dental benefits, as described in [insert citation] of this title.

(j) “qualified employer” means a small employer that elects to make its full-time employees eligible for one or more qualified health plans offered through the shop exchange and, at the option of the employer, some or all of its part-time employees, provided that the employer:

(1) has its principal place of business in the state and elects to provide coverage through the shop exchange to all of its eligible employees, wherever employed; or

(2) elects to provide coverage through the shop exchange to all of its eligible employees who are principally employed in the state.

(k) “qualified health plan” means a health benefit plan that has been certified by the exchange to meet the criteria for certification described in § 1311(c) of the Affordable Care Act and [insert citation] of this title.

(l) “qualified individual” means an individual, including a minor, who at the time of enrollment:

(1) is seeking to enroll in a qualified health plan offered to individuals through the exchange;

(2) resides in the state;

(3) is not incarcerated, other than incarceration pending disposition of charges; and

(4) is, and reasonably is expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States.

(m) “secretary” means the secretary of the federal department of health and human services.

(n) “shop exchange” means the small business health options program authorized under [insert citation] of this title.

(o) (1) “small employer” means an employer that, during the preceding calendar year, employed an average of not more than:

(i) 50 employees if the preceding calendar year ended on or before [insert date]; and

(ii) 100 employees if the preceding calendar year ended after [insert date].

(2) for purposes of this subsection:

(i) all persons treated as a single employer under § 414(b), (c), (m), or (o) of the Internal Revenue Code shall be treated as a single employer;

(ii) an employer and any predecessor employer shall be treated as a single employer;

(iii) all employees shall be counted, including part-time employees and employees who are not eligible for coverage through the employer;

(iv) if an employer was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer shall be based on the average number of employees that the employer is reasonably expected to employ on business days in the current calendar year; and

(v) an employer that makes enrollment in qualified health plans available to its employees through the shop exchange, and would cease to be a small employer by reason of an increase in the number of its employees, shall continue to be treated as a small employer for purposes of this title as long as it continuously makes enrollment through the shop exchange available to its employees.

Section 4. [*Authorization of the health benefit exchange.*]

(A) there is a [insert state] health benefit exchange.

(B) (1) the exchange is a body politic and corporate and is an instrumentality of the state.

(2) the exchange is a public corporation and a unit of state government.

(3) the exercise by the exchange of its authority under this title is an essential governmental function.

(C) the purposes of the exchange are to:

(1) reduce the number of uninsured in the state;

(2) facilitate the purchase and sale of qualified health plans in the individual market in the state by providing a transparent marketplace;

(3) assist qualified employers in the state in facilitating the enrollment of their employees in qualified health plans in the small group market in the state and in accessing small business tax credits; and

(4) assist individuals in accessing public programs, premium tax credits, and cost-sharing reductions; and

(5) supplement the individual and small group insurance markets outside of the exchange.

(D) nothing in this title, and no regulation adopted or other action taken by the exchange under this title, may be construed to:

(1) preempt or supersede:

(i) the authority of the commissioner to regulate insurance business in the state; or

(ii) the requirements of the Affordable Care Act; or

(2) authorize the exchange to carry out any function not authorized by the Affordable Care Act.

Section 5. [*Health benefit exchange board of trustees.*]

(A) there is a board of trustees of the exchange.

(B) the board consists of the following members:

(1) the secretary of [state health agency];

(2) the commissioner;

(3) the executive director of the [insert state] health care commission; and

(4) the following members appointed by the governor, with the advice and consent of the senate:

(i) three members who:

1. Represent the interests of employers and individual consumers of products offered by the exchange; and

2. May have public health research expertise; and

(ii) three members who have demonstrated knowledge and expertise in at least two of the following areas:

1. Individual health care coverage;

2. Small employer-sponsored health care coverage;

1 3. Health benefit plan administration;  
2 4. Health care finance;  
3 5. Administration of public or private health care delivery systems;  
4 and  
5 6. Purchasing and facilitating enrollment in health plan coverage,  
6 including demonstrated knowledge and expertise about the role of licensed health insurance  
7 producers and third-party administrators in connecting employers and individual consumers to  
8 health plan coverage; and  
9 7. Public health and public health research, including knowledge about  
10 the health needs and health disparities among the state's diverse communities.  
11 (C) in making appointments of members under subsection (b)(4) of this section, the governor  
12 shall assure that:  
13 (1) the board's composition reflects a diversity of expertise;  
14 (2) the board's composition reflects the gender, racial, and ethnic diversity of the  
15 state; and  
16 (3) the geographic areas of the state are represented.  
17 (D) (1) for purposes of this subsection, "affiliation" means:  
18 (i) a financial interest, as defined in [insert citation];  
19 (ii) a position of governance, including membership on a board of directors,  
20 regardless of compensation;  
21 (iii) a relationship through which compensation, as defined in [insert citation],  
22 is received; or  
23 (iv) a relationship for the provision of services as a regulated lobbyist, as  
24 defined in [insert citation].  
25 (2) a member of the board or of the staff of the exchange, while serving on the board  
26 or the staff, may not have an affiliation with:  
27 (i) a carrier, an insurance producer, a third-party administrator, a managed  
28 care organization, or any other person doing business contracting directly with the exchange; or  
29 (ii) a trade association of carriers, insurance producers, third-party  
30 administrators, or managed care organizations; or  
31 (iii) any other association of entities doing business in a position to contract  
32 directly with the exchange.  
33 (E) (1) the term of a member appointed by the governor is 4 years.  
34 (2) the terms of members appointed by the governor are staggered as required by the  
35 terms provided for members of the board on [insert date].  
36 (3) at the end of a term, a member continues to serve until a successor is appointed  
37 and qualifies.  
38 (4) a member who is appointed after a term has begun serves only for the rest of the  
39 term and until a successor is appointed and qualifies.  
40 (F) an appointed member of the board may not serve more than two consecutive full terms.  
41 (G) the governor shall designate a chair of the board.  
42 (H) (1) the board shall determine the times, places, and frequency of its meetings.  
43 (2) five members of the board constitute a quorum.  
44 (3) action by the board requires the affirmative vote of at least five members.  
45 (I) a member of the board is entitled to reimbursement for expenses under the standard state  
46 travel regulations, as provided in the state budget.  
47 (J) a member shall:  
48 (1) meet the requirements of this title, the affordable care act, and all applicable state  
49 and federal laws and regulations;



(2) serve the public interest of the individuals and qualified employers seeking health care coverage through the exchange; and

(3) ensure the sound operation and fiscal solvency of the exchange.

(K) a member of the board shall perform the member's duties:

(1) in good faith;

(2) in the manner the member reasonably believes to be in the best interests of the exchange; and

(3) without intentional or reckless disregard of the care an ordinarily prudent person in a like position would use under similar circumstances.

(L) a member of the board who performs the member's duties in accordance with the standard provided in subsection (K) of this section may not be liable personally for actions taken as a member.

(M) a member of the board may be removed for incompetence, misconduct, or failure to perform the duties of the position.

(N) (1) (i) a member of the board shall be subject to the state ethics law, [insert citation].

(ii) in addition to the disclosure required under [insert citation], a member of the board shall disclose to the board and to the public any relationship not addressed in the required financial disclosure that the member has with a carrier, insurance producer, third-party administrator, managed care organization, or other entity in an industry involved in matters likely to come before the board.

(2) on all matters that come before the board, the member shall:

(i) adhere strictly to the conflict of interest provisions under title 15, subtitle 5 of the state government article relating to restrictions on participation, employment, and financial interests; and

(ii) provide full disclosure to the board and the public on:

1. Any matter that gives rise to a potential conflict of interest; and

2. The manner in which the member will comply with the provisions of [insert citation] to avoid any conflict of interest or appearance of a conflict of interest.

#### Section 6. *[Executive director of the health benefits exchange.]*

(A) (1) with the approval of the governor, the board shall appoint an executive director of the exchange.

(2) subject to the approval of the governor, the the executive director shall serve at the pleasure of the board.

(3) the board shall determine the appropriate compensation for the executive director.

(B) under the direction of the board, the executive director shall:

(1) be the chief administrative officer of the exchange;

(2) direct, administer, and manage the operations of the exchange; and

(3) perform all duties necessary to comply with and carry out the provisions of this title, other state law and regulations, and the Affordable Care Act.

(C) (1) the executive director may employ and retain a staff for the exchange.

(2) except as provided in paragraphs (3) and (4) of this subsection, or otherwise by law, the executive director's appointment, retention, and removal of staff of the exchange are not subject to [insert citation] of the state personnel and pensions article.

(3) in hiring staff for functions that must be performed by state personnel under the affordable care act or other applicable federal or state laws, the executive director's appointment, retention, and removal of such staff shall be in accordance with [insert citation] of the state personnel and pensions article.

(4) to the extent practicable, in in hiring staff for functions that have been and currently are performed by state personnel, the executive director's appointment, retention, and



1 removal of such staff shall be in accordance with [insert citation] of the state personnel and pensions  
2 article.

3 (5) in hiring except as provided in paragraph (6) of this subsection, staff for all other  
4 positions necessary to carry out the purposes of this title, the executive director, with the approval of  
5 the board, may:

6 (i) designate positions as technical or professional to be shall be positions in  
7 the executive service or management service, or special appointments of the skilled service or the  
8 professional service in the state personnel management system; and

9 (ii) retain as independent contractors or employees, and set compensation for,  
10 attorneys, financial consultants, and any other professionals or consultants necessary to carry out the  
11 planning, development, and operations of the exchange and the provisions of this title.

12 (6) the executive director may retain as independent contractors or employees, and set  
13 compensation for, attorneys, financial consultants, and any other professionals or consultants  
14 necessary to carry out the planning, development, and operations of the exchange and the provisions  
15 of this title.

16 (D) the executive director shall determine the classification, grade, and compensation of staff  
17 of the exchange hired or designated under subsection (C)(3), (4), and (5)(i) of this section:

18 (1) in consultation with the secretary of [insert appropriate state budget agency];

19 (2) with the approval of the board; and

20 (3) when possible, in accordance with the state pay plan.

21 (E) (1) with respect to staff of the exchange hired or designated under subsection (C)(3), (4),  
22 and (5)(i) of this section, the executive director shall submit to the secretary of [insert appropriate  
23 state budget agency], at least 45 days before the effective date of the change, each change to the  
24 exchange's salary plans that involves increases or decreases in salary ranges other than those  
25 associated with routine reclassifications and promotions or general salary increases approved by the  
26 general assembly.

27 (2) reportable changes include:

28 (i) the creation or abolition of classes;

29 (ii) the re-grading of classes from one established range to another; and

30 (iii) the creation of new pay schedules or ranges.

31 (3) the secretary of [insert state budget agency] shall:

32 (i) review the proposed change; and

33 (ii) at least 15 days before the effective date of the proposed change:

34 1. Advise the executive director whether the change would have an  
35 adverse effect on comparable state jobs; and

36 2. If there would be an adverse effect, recommend an alternative  
37 change that would not have an adverse effect on comparable state jobs.

38 (4) failure of the secretary of [insert appropriate budget agency] to respond in a timely  
39 manner is deemed to be agreement with the change as submitted.

40 (F) except as otherwise provided in this title, an employee or independent contractor of the  
41 exchange is not subject to any law, regulation, or executive order governing state compensation,  
42 including furloughs, pay cuts, or any other general fund cost savings measure.

#### 43 44 Section 7. *[Powers of the board.]*

45 (A) subject to any limitations under this title or other applicable law, the board shall have all  
46 powers necessary or convenient to further carry out the functions authorized by the Affordable Care  
47 Act and consistent with the purposes of the exchange.

48 (B) the enumeration of specific powers in this title is not intended to restrict the board's  
49 power to take any lawful action that the board determines is necessary or convenient to further carry

1 out the functions authorized by the Affordable Care Act and consistent with the purposes of the  
2 exchange.

3 (C) in addition to the powers set forth elsewhere in this title, the board may:

4 (1) adopt and alter an official seal;

5 (2) sue, be sued, plead, and be impleaded;

6 (3) adopt bylaws, rules, and policies;

7 (4) adopt regulations to carry out this title:

8 (i) in accordance with title 10, subtitle 1 of the state government article; and

9 (ii) without conflicting with or preventing application of regulations adopted  
10 by the secretary under Title 1, Subtitle d of the Affordable Care Act;

11 (5) maintain an office at the place designated by the board;

12 (6) appoint advisory committees composed of experts and individuals knowledgeable  
13 about individual and employer-sponsored health care coverage, health benefit plan administration,  
14 health care finance, administration of public and private health care delivery systems, purchasing  
15 and facilitating enrollment in health plan coverage, health care delivery models and payment  
16 reforms, and other experts and individuals as appropriate;

17 (7) enter into any agreements or contracts and execute the instruments necessary or  
18 convenient to manage its own affairs and carry out the purposes of this title;

19 (8) apply for and receive grants, contracts, or other public or private funding; and

20 (9) do all things necessary or convenient to carry out the powers granted by this title.

21 (D) (1) to carry out the purposes of this title or perform any of its functions under this title,  
22 the board may contract or enter into memoranda of understanding with eligible entities, including:

23 (i) the [insert state] medical assistance program;

24 (ii) the family investment unit of the department of human resources;

25 (iii) insurance producers and third party administrators registered in the state  
26 that are not affiliated with a carrier; and

27 (IV) any other entities not affiliated with a carrier that have experience in  
28 individual and small group public and private health insurance plans and or facilitating enrollment in  
29 those plans.

30 (2) the operations of the exchange are subject to the provisions of this title whether  
31 the operations are performed directly by the exchange or through an entity under a contract with the  
32 exchange.

33 (3) the board shall ensure that any entity under a contract with the exchange complies  
34 with the provisions of this

35 (E) (1) the board may enter into information-sharing agreements with federal and state  
36 agencies, and other state health insurance exchanges, to carry out the provisions of this title.

37 (2) an information-sharing agreement entered into under paragraph (1) of this  
38 subsection shall:

39 (i) include adequate protections with respect to the confidentiality of  
40 information; and

41 (ii) comply with all state and federal laws and regulations.

42 (F) (1) the board, in accordance with [insert citation], shall adopt written policies and  
43 procedures governing all procurements of the exchange.

44 (2) to the fullest extent practicable, and in a manner that does not impair the  
45 exchange's ability to carry out the purposes of this title, the board's procurement policies and  
46 procedures shall establish an open and transparent process that:

47 (i) promotes public confidence in the procurements of the exchange;

(ii) ensures fair and equitable treatment of all persons and entities that participate in the procurement system of the exchange;

(iii) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity;

(iv) promotes increased economic efficiency and responsibility on the part of the exchange;

(v) achieves the maximum benefit from the purchasing power of the exchange; and

(vi) provides clarity and simplicity in the rules and procedures governing the procurements of the exchange.

(G) to carry out the purposes of this title, the board shall:

(1) create and consult with advisory committees; and

(2) appoint to the advisory committees representatives of:

(i) insurers or health maintenance organizations offering health benefit plans in the state;

(ii) nonprofit health service plans offering health benefit plans in the state;

(iii) licensed health insurance producers and advisers;

(iv) third-party administrators;

(v) health care providers, including:

1. hospitals;
2. long-term care facilities;
3. mental health providers;
4. developmental disability providers;
5. substance abuse treatment providers;
6. federally qualified health centers;
7. physicians;
8. nurses;
9. experts in services and care coordination for criminal and juvenile justice populations;
10. licensed hospice providers; and
11. other health care professionals;

(vi) managed care organizations;

(vii) employers, including large, small, and minority-owned employers;

(viii) public employee unions, including public employee union members who are caseworkers in local departments of social services with direct knowledge of information technology systems used for Medicaid eligibility determination;

(ix) consumers, including individuals who:

1. Reside in lower-income and racial or ethnic minority communities;
2. Have chronic diseases or disabilities; or
3. Belong to other hard-to-reach or special populations;

(x) individuals with knowledge and expertise in advocacy for consumers described in item (ix) of this item;

(xi) public health researchers and other academic experts with knowledge and background relevant to the functions and goals of the exchange, including knowledge of the health needs and health disparities among the state's diverse communities; and

(xii) any other stakeholders identified by the exchange as having knowledge or representing interests relevant to the functions and duties of the exchange.

#### Section 8. [Health benefit exchange fund.]

(A) in this section, "fund" means the [insert state] health benefit exchange fund.

- 1 (B) there is a [insert state] health benefit exchange fund.
- 2 (C) the purpose of the fund is to provide funding for the operation and administration of the  
3 exchange in carrying out the purposes of the exchange under this title.
- 4 (D) the exchange shall administer the fund.
- 5 (E) (1) the fund is a special, non-lapsing fund that is not subject [insert citation] of the state  
6 finance and procurement article.
- 7 (2) the state treasurer shall hold the fund separately, and the comptroller shall account  
8 for the fund.
- 9 (F) the fund consists of:
- 10 (1) any user fees or other assessments collected by the exchange;
- 11 (2) income from investments made on behalf of the fund;
- 12 (3) interest on deposits or investments of money in the fund;
- 13 (4) money collected by the board as a result of legal or other actions taken by the  
14 board on behalf of the exchange or the fund;
- 15 (5) money donated to the fund;
- 16 (6) money awarded to the fund through grants; and
- 17 (7) any other money from any other source accepted for the benefit of the fund.
- 18 (G) the fund may be used only to provide funding for the operation and administration of the  
19 exchange in carrying out the purposes authorized under this title.
- 20 (H)(1) the state treasurer shall invest the money of the fund in the same manner as other state  
21 money may be invested.
- 22 (2) any investment earnings of the fund shall be credited to the fund.
- 23 (3) no part of the fund may revert or be credited to the general fund or any special  
24 fund of the state.
- 25 (I) a debt or an obligation of the fund is not a debt of the state or a pledge of credit of the  
26

27 Section 8. *[Functions and operations of the exchange.]*

- 28 (A) on or before [insert date], the functions and operations of the exchange shall include at a  
29 minimum all functions required by § 1311(d)(4) of the Affordable Care Act.
- 30 (B) on or before January 1, 2014, in compliance with § 1311(D)(4) of the Affordable Care  
31 Act, the exchange shall:
- 32 (1) make qualified health plans available to qualified individuals and qualified  
33 employers;
- 34 (2) allow a carrier to offer a qualified health dental plan through the exchange that  
35 provides limited scope dental benefits under that meet the requirements of § 9832(C)(2)(A) of the  
36 Internal Revenue Code, either separately or in conjunction with a qualified health plan, provided that  
37 the qualified health plan provides pediatric dental benefits that meet the requirements of §  
38 1302(B)(1)(J) of the Affordable Care Act;
- 39 (3) implement procedures for the certification, recertification, and decertification of  
40 health benefit plans as qualified health plans, consistent with guidelines developed by the secretary  
41 under § 1311(C) of the Affordable Care Act;
- 42 (4) provide for the operation of a toll-free telephone hotline to respond to requests for  
43 assistance;
- 44 (5) provide for initial, annual, and special enrollment periods, in accordance with  
45 guidelines adopted by the secretary under § 1311(C)(6) of the Affordable Care Act;
- 46 (6) maintain a web site through which enrollees and prospective enrollees of qualified  
47 health plans may obtain standardized comparative information on qualified health plans and  
48 qualified dental plans;

(7) with respect to each qualified health plan offered through the exchange:

- (i) assign a rating for each qualified health plan in accordance with the criteria developed by the secretary under § 1311(C)(3) of the Affordable Care Act and any additional criteria that may be applicable under the laws of the state and regulations adopted by the exchange under this title; and
- (ii) determine each qualified health plan's level of coverage in accordance with regulations adopted by the secretary under § 1302(D)(2)(A) of the Affordable Care Act and any additional regulations adopted by the exchange under this title;

(8) present qualified health plan options offered by the exchange in a standardized format, including the use of the uniform outline of coverage established under § 2715 of the Federal Public Health Service Act;

(9) in accordance with § 1413 of the Affordable Care Act, provide information and make determinations regarding eligibility for the following programs:

- (i) the [insert state] medical assistance program under title XIX of the Social Security Act;
- (ii) the [insert state] children's health insurance program under title XXI OF the Social Security Act; and
- (iii) any applicable state or local public health insurance program;

(10) facilitate the enrollment of any individual who the exchange determines is eligible for a program described in item (9) of this subsection;

(11) establish and make available by electronic means a calculator to determine the actual cost of coverage of a qualified health plan and a qualified dental plan offered by the exchange after application of any premium tax credit under § 36B of the Internal Revenue Code and any cost-sharing reduction under § 1402 of the Affordable Care Act;

(12) establish a shop exchange through which qualified employers may access coverage for their employees at specified levels of coverage and meet standards for the federal qualified employer tax credit;

(13) implement a certification process for individuals exempt from the individual responsibility requirement and penalty under § 5000A of the Internal Revenue Code on the grounds that:

- (i) no affordable qualified health plan that covers the individual is available through the exchange or the individual's employer; or
- (ii) the individual meets other requirements under the affordable care act that make the individual eligible for the exemption;

(14) implement a process for transfer to the United States Secretary of the Treasury the name and taxpayer identification number of each individual who:

- (i) is certified as exempt from the individual responsibility requirement;
- (ii) is employed but determined eligible for the premium tax credit on the grounds that:
  1. The individual's employer does not provide minimum essential coverage; or
  2. The employer's coverage is determined to be unaffordable for the individual or does not provide the requisite minimum actuarial value;
- (iii) notifies the exchange under § 1411(B)(4) of the Affordable Care Act that the individual has changed employers; and
- (iv) ceases coverage under a qualified health plan during the plan year, together with the date coverage ceased;

(15) provide notice to employers of employees who cease coverage under a qualified health plan during a plan year, together with the date coverage ceased;



1 (16) conduct processes required by the secretary and the United States Secretary of  
2 the Treasury to determine eligibility for premium tax credits, reduced cost-sharing, and individual  
3 responsibility requirement exemptions;

4 (17) establish a navigator program in accordance with § 1311(i) of the Affordable  
5 Care Act and any requirements established under this title;

6 (18) (i) establish a process, in accordance with § 10108 of the Affordable Care Act,  
7 for crediting the amount of free choice vouchers to premiums of qualified health plans and qualified  
8 dental plans in which qualified employees are enrolled; and

9 (ii) collect the amount credited from the employer offering the qualified health  
10 plan;

11 (19) carry out a plan to provide appropriate assistance for consumers seeking to  
12 purchase products through the exchange, including the implementation of the navigator program and  
13 toll-free hotline required under item (4) of this subsection; and

14 (20) carry out a public relations and advertising campaign to promote the exchange.

15 (C) if the individual enrolls in another type of minimum essential coverage neither the  
16 exchange nor a carrier offering qualified health plans through the exchange may charge an individual  
17 a fee or penalty for termination of coverage on the grounds that:

18 (1) the individual has become newly eligible for that coverage; or

19 (2) the individual's employer-sponsored coverage has become affordable under the  
20 standards of § 36B(C)(2)(C) of the Internal Revenue Code.

21 (D) in carrying out its duties under this title, the exchange, through the advisory committees  
22 established under [insert citation] of this title or through other means, shall consult with  
23 stakeholders, including:

24 (1) individual health care consumers;

25 (2) small and large employers;

26 (3) individuals and entities with experience in facilitating enrollment in qualified  
27 health plans;

28 (4) advocates for special and hard-to-reach populations;

29 (5) representatives of health care providers, carriers, and plan administrators;

30 (6) experts in the administration of public and private health care delivery systems  
31 and health care finance; and

32 (7) any other appropriate stakeholders identified by the exchange.

33 (E) the exchange, through the advisory committees established under § 31–106(g) of this title  
34 or through other means, shall consult with and consider the recommendations of the stakeholders  
35 represented on the advisory committees in the exercise of its duties under this title.

36 (F) the exchange may not make available:

37 (1) any health benefit plan that is not a qualified health plan; or

38 (2) any dental plan that is not a qualified dental plan.

39  
40 Section 9. [*Certification of health benefit plans by the exchange.*]

41 (A) the exchange shall certify health benefit plans as qualified health plans.

42 (B) to be certified as a qualified health plan, a health benefit plan shall:

43 (1) except as provided in subsection (c) of this section, provide the essential benefits  
44 package required under § 1302(a) of the Affordable Care Act;

45 (2) obtain prior approval of premium rates and contract language from the  
46 commissioner;



(3) except as provided in subsection (d) of this section, provide at least a bronze level of coverage, as defined in the affordable care act and determined by the exchange under § 31–108(b)(7)(ii) of this title;

(4) (i) ensure that its cost-sharing requirements do not exceed the limits established under § 1302(c)(1) of the Affordable Care Act; and

(ii) if the health benefit plan is offered through the shop exchange, ensure that the health benefit plan's deductible does not exceed the limits established under § 1302(c)(2) of the Affordable Care Act;

(5) be offered by a carrier that:

(i) is licensed and in good standing to offer health insurance coverage in the state;

(ii) if the carrier participates in the exchange's individual market, offers at least one qualified health plan at the silver level and one at the gold level in the individual market outside the exchange;

(iii) if the carrier participates in the shop exchange, offers at least one qualified health plan at the silver level and one at the gold level in the small group market outside the shop exchange;

(iv) charges the same premium rate for each qualified health plan regardless of whether the qualified health plan is offered through the exchange, through an insurance producer outside the exchange, or directly from a carrier;

(V) does not charge any cancellation fees or penalties in violation of [insert citation] of this title; and

(VI) complies with the regulations adopted by the secretary under § 1311(d) of the Affordable Care Act and by the exchange under § 31–106(c)(4) of this title;

(6) meet the requirements for certification established under the regulations adopted by:

(I) the secretary under § 1311(c)(1) of the Affordable Care Act, including minimum standards for marketing practices, network adequacy, essential community providers in underserved areas, accreditation, quality improvement, uniform enrollment forms and descriptions of coverage, and information on quality measures for health plan performance; and

(ii) the exchange under [insert citation] of this title;

(7) be in the interest of qualified individuals and qualified employers, as determined by the exchange;

(8) provide any other benefits as may be required by the commissioner under any applicable state law or regulation; and

(9) meet any other requirements established by the exchange under this title.

(C) a qualified health plan is not required to provide essential benefits that duplicate the minimum benefits of qualified dental plans, as provided in subsection (G) of this section, if:

(1) the exchange has determined that an adequate choice of at least one qualified dental plans plan is available to supplement the qualified health plan's coverage; and

(2) at the time the carrier offers the qualified health plan, the carrier discloses in a form approved by the exchange that:

(I) the plan does not provide the full range of essential pediatric benefits; and

(ii) qualified dental plans providing these and other dental benefits also not provided by the qualified health plan are offered through the exchange.

(D) a qualified health plan is not required to provide at least a bronze level of coverage under subsection (B)(3) of this section if the qualified health plan:

(1) meets the requirements and is certified as a qualified catastrophic plan as provided under the affordable care act; and

(2) will be offered only to individuals eligible for catastrophic coverage.

(E) a health benefit plan may not be denied certification:

- (1) solely on the grounds that the health benefit plan is a fee-for-service plan;
- (2) through the imposition of premium price controls by the exchange; or
- (3) solely on the grounds that the health benefit plan provides treatments necessary to prevent patients' deaths in circumstances the exchange determines are inappropriate or too costly.

(F) in addition to other rate filing requirements that may be applicable under this article, each carrier seeking certification of a health benefit plan shall:

- (1) (i) submit to the exchange a justification for any premium increase before implementation of the increase; and
- (ii) post the increase on the carrier's web site;
- (2) submit to the exchange, the secretary, and the commissioner, and make available to the public, in plain language as required under § 1311(E)(3)(B) of the Affordable Care Act, accurate and timely disclosure of:
  - (i) claims payment policies and practices;
  - (ii) financial disclosures;
  - (iii) data on enrollment, disenrollment, number of claims denied, and rating practices;
  - (iv) information on cost-sharing and payments with respect to out-of-network coverage;
  - (v) Information on enrollee and participant rights under title I of the Affordable Care Act; and
  - (vi) any other information as determined appropriate by the secretary and the exchange; and
- (3) make available information about costs an individual would incur under the individual's health benefit plan for services provided by a participating health care provider, including cost-sharing requirements such as deductibles, co-payments, and coinsurance, in a manner determined by the exchange.

(G) (1) except as provided in paragraphs (2), (3), and (4) of this subsection, the requirements applicable to qualified health plans under this title also shall apply to qualified dental plans.

(2) a carrier offering a qualified dental plan shall be licensed to offer dental coverage but need not be licensed to offer other health benefits.

(3) a qualified dental plan shall:

- (i) be limited to dental and oral health benefits, without substantial duplication of other benefits typically offered by health benefit plans without dental coverage; and
- (ii) include at a minimum:
  1. The essential pediatric dental benefits required by the secretary under § 1302(b)(1)(j) of the Affordable Care Act; and
  2. Other dental benefits required by the secretary or the exchange.
- (iii) include any other benefits as may be required by the secretary or the exchange.

(4) carriers jointly may offer a comprehensive plan through the exchange in which dental benefits are provided by a carrier through a qualified dental plan and other benefits are provided by a carrier through a qualified health plan, provided that the plans are priced separately and made available for purchase separately at the same price as when offered jointly.

#### Section 10. *[Exchange fees.]*

(A) subject beginning [insert date], subject to subsection (B) subsections (B) and (C) of this section, the exchange may:

(1) impose user fees, licensing or other regulatory fees, or other assessments on persons that benefit from the exchange that do not exceed reasonable projections regarding the amount necessary to support the operations of the exchange under this title; or

(2) otherwise generate funding necessary to support its operations under this title.

(B) any fees, assessments, or other funding mechanisms shall be imposed or implemented, to the maximum extent possible, in a manner that is transparent and broad-based.

(C) before imposing or altering any fee or assessment established by law, the exchange shall adopt regulations that specify:

(1) the persons subject to the fee or assessment;

(2) the amount of the fee or assessment; and

(3) the manner in which the fee or assessment will be collected.

(D) funds collected through any fees, assessments, or other funding mechanisms:

(1) shall be deposited in the [insert state] health benefit exchange fund;

(2) shall be used only for the purposes authorized under this title; and

(3) may not be used for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative and regulatory actions.

(E) the exchange may not impose fees or assessments authorized under this section in a manner that would provide a competitive disadvantage to health benefit plans operating outside of the exchange.

(F) the exchange shall maintain a web site on which it shall publish:

(1) the average amounts of any fees, assessments, or other payments required by the exchange;

(2) the administrative costs of the exchange; and

(3) the amount of funds known to be lost through waste, fraud, and abuse.

#### Section 11. *[Administration of the exchange.]*

(A) the exchange shall be administered in a manner designed to:

(1) prevent discrimination;

(2) streamline enrollment and other processes to minimize expenses and achieve maximum efficiency;

(3) prevent waste, fraud, and abuse; and

(4) promote financial integrity.

(B) the exchange shall keep an accurate accounting of all its activities, expenditures, and receipts.

(C) (1) on or before [insert month] of each year, the board shall forward to the secretary, the governor, and, in accordance with [insert citation].

(2) the report shall:

(i) be in the standardized format required by the secretary;

(ii) include data regarding coverage, price, quality, benefits, consumer choice, and other metrics to evaluate exchange performance, assure transparency, and facilitate research and analysis:

1. Health plan participation, ratings, coverage, price, quality improvement measures, and benefits;

2. Consumer choice, participation, and satisfaction information to the extent the information is available;

3. Financial integrity, fee assessments, and status of the fund; and

1 4. Any other appropriate metrics related to the operation of the  
2 exchange that may be used to evaluate exchange performance, assure transparency, and facilitate  
3 research and analysis; and

4 (iii) include data to identify disparities related to gender, race, ethnicity,  
5 geographic location, language, disability, or other attributes of special populations.

6 (D) the board shall cooperate fully with any investigation into the affairs of the exchange,  
7 including making available for examination the records of the exchange, conducted by:

8 (1) the secretary under the secretary's authority under the Affordable Care Act; and

9 (2) the commissioner under the commissioner's authority to regulate the sale and  
10 purchase of insurance in the state.

11  
12 Section 11. [*Study and recommendations.*]

13 (A) Be it enacted, that, with respect to the functions of the [insert state] health benefit  
14 exchange established under Section 1 of this Act, and the requirements for health benefit plan  
15 certification mandated by the federal Patient Protection and Affordable Care Act and as  
16 implemented by [insert citation], as enacted by section 1 of this Act, that require further study and  
17 recommendations under section 13 of this Act before full implementation is possible, including  
18 recommendations for further legislative or regulatory action, the exchange of trustees of the [insert  
19 state] Health Benefit Exchange established under section 1 of this Act, may not implement those  
20 functions or impose those requirements until:

21 (1) the Exchange conducts the studies and reports its findings and recommendations  
22 to the Governor and the General Assembly as required under section 5 of this Act; and

23 (2) the findings and recommendations for further legislative or regulatory action are  
24 acted upon by the governor and the general assembly. the [insert state] health benefit exchange  
25 established under Section 1 of this Act may not exercise any powers, duties, or functions under the  
26 provisions of [insert citation], as enacted by section 1 of this Act, until:

27 (i) the exchange has reported its findings and recommendations, including  
28 recommendations for legislation necessary or desirable to carry out its purposes and functions, to the  
29 governor and the general assembly, in accordance with Section 5 of this Act; and

30 (ii) the governor and the general assembly authorize the exercise of the  
31 powers, duties, and functions through enactment of additional legislation in the [insert year]  
32 legislative session.

33  
34 Section 12. [*Appointment clarification to board of trustees.*]

35 Be it enacted, that, with respect to the governor's appointment to the board of trustees of the  
36 [insert state] health benefit exchange established under Section 1 of this Act, of those members  
37 representing the interests of employers and consumers, it is the intent of the general assembly that  
38 the governor seek to appoint, where practicable and particularly in the initial appointments, members  
39 whose particular knowledge and understanding include the interests of minority-owned employers  
40 and individual consumers who come from lower-income and minority communities, have chronic  
41 diseases or disabilities, or belong to other hard-to-reach or special populations.

42  
43 Section 13. [*Health benefit exchange advisory committee.*]

44 (A) Be it enacted that the [insert state] health benefit exchange established under section 1 of  
45 this Act:

46 (1) in consultation with the advisory committees established under [insert citation], as  
47 enacted by section 1 of this Act, and with other stakeholders, shall study and make recommendations  
48 regarding:

(i) the feasibility and desirability of the exchange engaging in:

1. selective contracting, either through competitive bidding or a negotiation process similar to that used by large employers, to reduce health care costs and improve quality of care by certifying only those health benefit plans that meet certain requirements such as promoting patient-centered medical homes, adopting electronic health records, meeting minimum outcome standards, implementing payment reforms to reduce medical errors and preventable hospitalizations, reducing disparities, ensuring adequate reimbursements, enrolling low-risk members and underserved populations, managing chronic conditions and promoting healthy consumer lifestyles, value-based insurance design, and adhering to transparency guidelines and uniform price and quality reporting; and
2. multistate or regional contracting within the State;

(ii) the rules under which health benefit plans should be offered inside and outside the Exchange in order to mitigate adverse selection and encourage enrollment in the Exchange, including:

1. whether any benefits should be required of qualified health plans beyond those mandated by the federal Patient Protection and Affordable Care Act (Affordable Care Act), and whether any such additional benefits should be required of health benefit plans offered outside the exchange;
2. whether carriers offering health benefit plans outside the exchange should be required to offer either all the same health benefit plans inside the exchange, or alternatively, at least one health benefit plan inside the exchange; and
3. whether managed care organizations with health choice contracts should be required to offer products inside the exchange, and whether carriers offering health benefit plans inside the exchange should be required to also participate in the [insert state] medical assistance program which provisions applicable to qualified health plans should be made applicable to qualified dental plans;

(iii) the design and operation of the exchange's navigator program and any other appropriate consumer assistance mechanisms, including:

1. how the navigator program could utilize, interact with, or complement private sector resources, including insurance producers the infrastructure of the existing private sector health insurance distribution system in the state to determine whether private sector resources may be available and suitable for use by the exchange;
2. the effect the exchange may have on private sector employment in the health insurance distribution system in the state;
3. what functions, in addition to those required by the Affordable Care Act, should be performed by navigators;
4. what training and expertise should be required of navigators, and whether different markets and populations require navigators with different qualifications;
5. how navigators should be retained and compensated, and how disparities between navigator compensation and the compensation of insurance producers outside the exchange can be minimized or avoided; and
6. how to ensure that navigators provide information in a manner culturally, linguistically, and otherwise appropriate to the needs of the diverse populations served by the exchange, and that navigators have the capacity to meet these needs; and
7. what other means of consumer assistance may be appropriate and feasible, and how they should be designed and implemented;

(iv) the design and function of the SHOP exchange beyond the requirements of the Affordable Care Act, to promote quality, affordability, and portability, including:



1. whether it should be a defined contribution/employee choice model or whether employers should choose the qualified health plan to offer their employees;

2. whether the current individual and small group markets should be merged; and

3. whether the SHOP exchange should be made available to employers with 50 to 100 employees prior to [insert year], as authorized by the Affordable Care Act; and

(v) how the exchange can be self-sustaining by [insert year] in compliance with the Affordable Care Act, including:

1. a recommended plan for the budget of the exchange;

2. the user fees, licensing fees, or other assessments that should be imposed by the exchange to fund its operations, including what type of user fee cap or other methodology would be appropriate to ensure that the income of the exchange comports with the expenditures of the exchange; and

3. a recommended plan for how to prevent fraud, waste, and abuse;

and

(vi) how the exchange should conduct its public relations and advertising campaign, including what type of solicitation, if any, of individual consumers or employers, would be desirable and appropriate; and

(2) on or before [insert date], shall report its interim findings and recommendations, including initial recommendations for further legislative or regulatory action, to the governor and, in accordance with [insert citation], the general assembly; and

(3) on or before [insert date], shall report its final findings and recommendations, including final recommendations for further legislative or regulatory action, to the governor and, in accordance with [insert date] of the state government article, the general assembly.

Section 14. *[Report by the advisory committee.]*

Be it enacted that on or before [insert date], the [insert state] health benefit exchange established under section 1 of this Act, in consultation with the advisory committees established under section 13, as enacted by section 1 of this Act, and with other stakeholders, shall conduct a study and report its findings and recommendations to the governor and, in accordance with [insert citation] of the state government article, the general assembly, on whether the exchange should remain an independent public body or should become a nongovernmental, nonprofit entity.

Section 15. *[Potentiality for the exchange to become a nongovernmental entity.]*

It is the intent of the general assembly that the [insert state] health benefits exchange established under section 1 of this Act should not take any action that would inhibit the potential transformation of the exchange into a nongovernmental, nonprofit entity or a quasi-governmental entity.

Section 16. *[Severability.]* Insert severability clause.

Section 17. *[Repealer.]* Insert repealer clause.

Section 18. *[Effective Date.]* Insert effective date.



# Health Care Cost Containment Statement

The Act aims to set health care cost growth on a sustainable long-term path. It establishes a statewide health care cost growth goal for the health care industry pegged an amount no greater than the growth in the state's overall economy.

## Enhancing Transparency and Accountability of the Health Care Marketplace

This Act:

- Requires the state's Medicaid program, the state's employee health care program, and all other state-funded health care programs to transition to new health care payment methodologies. These payment models incentivize the delivery of high-quality, coordinated, efficient and effective health care while reducing waste, fraud and abuse.
- Authorizes targeted Medicaid rate increases of up to \$20 million for providers that demonstrate a significant transition to new payment methodologies.
- Establishes a certification process for Accountable Care Organizations (ACO) health care provider systems dedicated to cost growth reduction, quality improvement and patient protection. These ACOs would receive a contracting preference in state health programs.
- Establishes a certification process for patient-centered medical homes – a care delivery model that provides patients with a single point of coordination for all their health needs. Enhancing Transparency and Accountability of the Health Care Marketplace.
- Requires all health care provider systems to register with the state and report regularly on financial performance, market share, cost trends, and quality measures.
- Charges the Attorney General to monitor trends in the health care market including consolidation in the provider market in order to protect patient access and quality.
- Establishes a new “Cost and Market Impact Review” to examine changes in the health care industry and the impact of these changes on cost, quality, and market competitiveness. The findings of this review may be referred to the Attorney General for further investigation.
- Develops a process to track price variation among different health care providers over time and establishes a Special Commission to determine and quantify the acceptable and unacceptable factors contributing to price variation among providers.

## Community-Based Prevention, Public Health, Wellness

The Act:

- Dedicates \$60 million over the next 4 years in a historic investment in community-based prevention, public health, and wellness efforts to reduce the rates of costly preventable chronic diseases, such as obesity, diabetes, and asthma.
- Establishes a new wellness tax credit for businesses that implement recognized workplace wellness programs, up to \$10,000 per employer. These programs will improve employee health, reduce recidivism, and help control the growth in employer health care premiums.
- Requires the Department of Public Health to develop a “model guide” for wellness programs for businesses and to provide stipends to help businesses establish programs.

- Requires health insurance companies to provide a premium adjustment for small businesses that adopt approved workplace wellness programs. Building the Health Care System and Workforce for the 21st Century.

### Health Care Infrastructure and Workforce

This Act:

- Dedicates \$135 million over the next 4 years to support investments in our community hospitals to support the infrastructure necessary to build the health care system of the 21st century. This funding, targeted for financially distressed hospitals, will assist in the transition to new payment methodologies and care delivery models.
- Commits an additional \$30 million in investments for other eligible health care providers to accelerate the on-going statewide adoption of interoperable electronic health records.
- Establishes a Health Care Workforce Transformation Trust Fund to invest in the training, education, and skill development programs necessary to help workers succeed in the health care system of the future. This Fund received \$20 million in the fiscal 2013 budget.
- Incentives the accelerated adoption of connected health technology, such as telemedicine. Increasing Access to Essential Care Services.

### Access to Essential Services and Necessary Care

The Act:

- Expands the role of physician assistants and nurse practitioners to act as primary care providers in order to expand access to cost-effective care.
- Expands the role of “limited-service-clinics” to act as a cost-effective and convenient point of access for health care services provided by nurse practitioners.
- Expands an existing workforce loan forgiveness program to include providers of behavioral, substance use disorder, and mental health services.
- Establishes a new primary care residency program supported by the Department of Public Health in order to increase the pipeline of primary care providers. Promoting Administrative Simplification for Health Care Providers.
- Requires certified ACOs, patient-centered medical homes, and provider organizations that receive a risk-based payment to set up a system of internal appeals. The appeals process may last no longer than 14 days.
- Requires certified ACOs to guarantee access to all medically necessary services for patients, either internally or through providers outside of the ACO. Integrating Behavioral, Substance Use Disorder, and Mental Health Services.
- Requires health insurance companies to comply with federal mental health parity law and submit documentation to the Attorney General certifying compliance.
- Establishes a special task force to make recommendations on how to integrate behavioral health services in the payment and delivery systems developed under this bill.

### Health Care Administration

This Act:

- Requires the development of standard prior authorization forms, which would be available electronically, so that providers would use only one form for all payers.
- Authorizes penalties for non-compliance with standardized coding and billing requirements.
- Streamlines data reporting requirement by designating a single agency as the secure data repository for all health care information reported to and collected by the state.

### Medical Malpractice

The Act:

- Creates a 182-day cooling off period while both sides try to negotiate a settlement and requires the exchange of information between the plaintiff and defense to promote early settlement.
  - Allows a health care provider or facility to admit to a mistake or error. The admission cannot be used in a court as an admission of liability. However, if a provider lies under oath about the error or mistake, then the statement can be used as an admission of liability.
  - Creates a task force to study defensive medicine and medical overutilization.
- Improving Consumer Transparency of Health Care Costs.

### Health Care Costs Transparency

The Act:

- Establishes new transparency tools to help consumers make health care purchasing decisions based on comparative cost and quality, including the establishment of a consumer health information website with transparent prices and shared-decision making online tools.
- Directs health insurance carriers to disclose the out-of-pocket costs for a proposed health care service and protects patients from paying more than the disclosed amount.
- Requires health insurance carriers to provide a summary to health care consumers in an easily readable and understandable format showing the consumer's responsibility, if any, for payment of any portion of a health care provider claim.

### Health Insurance Affordability

This Act:

- Extends key provisions of small business health insurance legislation passed in 2010, including a requirement that the Division of Insurance rigorously review premium filings to ensure that small businesses and individuals receive the most efficient products possible.
- Extends the current authority of the Division of Insurance to help mitigate and stabilize large “spikes” in premium increases from year to year.
- Increases the minimum premium savings for “tiered” or “selective” network health products from 12% to 14% and establishes a new “smart-tiering” option.

## Miscellaneous

This Act also establishes a Health Policy Commission to oversee policy development necessary to implement the Act, including setting and enforcing the health care cost growth benchmark, certifying new payment methods and care delivery models, and conducting new “Cost and Market Impact” reviews of market changes. It creates a Center for Health Information and Analysis as an independent state agency, governed by an executive director appointed by majority vote of the Governor, Attorney General, and State Auditor (similar to the Inspector General). The Center will act as the designated health care data collection, dissemination, and analysis agency of the state and will provide critical, independent analysis of the how the state’s policies are affecting cost trends.

The Act bans mandatory overtime for nurses in a hospital setting unless patient safety requires it in an emergency situation or there is no reasonable alternative. It raises the full-time equivalent threshold for fair share contributions from 10 to 20 employees and adds a provision that employees who have health insurance from other sources will not be included in the calculation of whether an employer is a contributing employer.

It establishes a health planning council to develop, every 5 years, a state health plan determining the future medical capital needs of the state. The Act requires a review and recommendations relative to increasing the use of health savings accounts, flexible savings accounts, and other “consumer-driven plans.” It also directs state agencies responsible for the purchase of prescription drugs to form a uniform procurement unit to negotiate bulk purchases and creates a commission to review methods to reduce the cost of prescription drugs for public and private payers.

Status:

Massachusetts

[S Bill 2400](#)

Status: Enacted into law in 2012.

# Health Care Sharing Ministries

This Act specifies requirements for a health care sharing ministry and exempts a health care sharing ministry from requirements of state insurance law.

Submitted as:

Indiana

[HOUSE ENROLLED ACT No. 1050](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act shall be cited as “The Health Care Sharing Ministry Act.”

Section 2. [*Health care sharing ministries.*]

(A) As used in this chapter, “health care sharing ministry” means a nonprofit organization that:

(1) is comprised only of participants who share similar and sincerely held religious beliefs;

(2) is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(3) acts as a facilitator among participants who have financial or medical needs that are qualified in accordance with the organization's criteria, matching those participants with other participants who have the present ability to assist with financial or medical needs;

(4) provides for the financial or medical needs of a participant through contributions from one (1) participant to another participant;

(5) provides information about amounts that participants, with no assumption of risk or promise to pay, may contribute for distribution:

(a) among the participants; or

(b) by the organization to participants;

(6) provides a written monthly statement to all participants that specifies:

(a) the total dollar amount of qualified needs submitted to the organization;

and

(b) the amount actually published or assigned to participants for their contribution; and

(7) includes the following statement, in writing, on or accompanying all applications and guideline materials:

“Notice: The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor its plan of operation is an insurance policy. Any assistance you receive with your medical bills will be totally voluntary. Neither the organization nor any other participant can be compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Whether or not you receive any payments for medical expenses and whether or not this organization continues to operate, you are always personally responsible for the payment of your own medical bills.”.

(B) The term does not include a fraternal benefit society described in [insert citation].

(C) A health care sharing ministry is not considered to be engaged in the business of

1 insurance under this title or any other provision of [insert state] law.

2

3 Section 3. [*Severability*.] Insert severability clause.

4

5 Section 4. [*Repealer*.] Insert repealer clause.

6

7 Section 5. [*Effective Date*.] Insert effective date.



# Higher Education Outcomes-Based Funding

This Act requires the state higher education coordinating board consider certain performance indicators when devising base formula funding recommendations for funding public institutions of higher education. These include degree completion rates and the number of degrees awarded in critical fields. The Act defines critical fields as the fields of engineering, computer science, mathematics, physical science, allied health, nursing, and teaching certification in the field of science or mathematics.

Submitted as:

Texas

[HB 9](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Higher Education Outcomes-Based  
2 Funding Act.”

3  
4           Section 2. [*Purposes.*]

5           (a) To finance a system of higher education and to secure an equitable distribution of state funds  
6 deemed to be available for higher education, the board shall perform the functions described  
7 in this section. Funding policies shall:

8                   (1) allocate resources efficiently and provide incentives for programs of superior  
9 quality and for institutional diversity;

10                   (2) provide incentives for supporting the five-year master plan developed and revised  
11 under [insert citation]; and

12                   (3) discourage unnecessary duplication of course offerings between institutions and  
13 unnecessary construction on any campus; and

14                   (4) emphasize an alignment with education goals established by the board.

15           (b) A committee under Subsection (b) must be composed of representatives of a cross-section  
16 of institutions representing each of the institutional groupings under the board ’s accountability  
17 system. The commissioner of higher education shall solicit recommendations for the committee ’s  
18 membership from the chancellor of each university system and from the president of each institution  
19 of higher education that is not a component of a university system. The chancellor of a university  
20 system shall recommend to the commissioner at least one institutional representative for each  
21 institutional grouping to which a component of the university system is assigned. The president of an  
22 institution of higher education that is not a component of a university system shall recommend to the  
23 commissioner at least one institutional representative for the institutional grouping to which the  
24 institution is assigned.

25           (c) Formulas for basic funding shall:

26                   (1) reflect the role and mission of each institution;

27                   (2) shall emphasize funding elements that directly support faculty;

28                   (3) and shall reflect both fixed and variable elements of cost; and

29                   (4) incorporate, as the board considers appropriate, goals identified in the board ’s  
30 long-range statewide plan developed under [insert citation].

1           Section 3. [*Student success-based funding recommendations.*]

2           (a) The legislature finds that it is in the state 's highest public interest to evaluate student  
3 achievement at institutions of higher education and to develop higher education funding policy based  
4 on that evaluation. Funding policies that promote postsecondary educational success based on  
5 objective indicators of relative performance, such as degree completion rates, are critical to  
6 maintaining the state's competitiveness in the national and global economy and supporting the  
7 general welfare of this state. Therefore, the purpose of this section is to ensure that institutions of  
8 higher education produce student outcomes that are directly aligned with the state 's education goals  
9 and economic development needs.

10          (b) In this section:

11           (1) "At-risk student" means an undergraduate student of an institution of higher  
12 education:

13                   (A) who has been awarded a grant under the federal Pell Grant program; or

14                   (B) who, on the date the student initially enrolled in the institution:

15                           (i) was 20 years of age or older;

16                           (ii) had a score on the Scholastic Assessment Test (SAT) or the  
17 American College Test (ACT) that was less than the national mean score for students  
18 taking that test;

19                           (iii) was enrolled as a part-time student; or

20                           (iv) had not received a high school diploma but had received a high  
21 school equivalency certificate within the last six years.

22           (2) "Critical field" means a field of study designated as a critical field under  
23 Subsection (b).

24           (b) Except as otherwise provided under Subdivision (2), the fields of engineering, computer  
25 science, mathematics, physical science, allied health, nursing, and teaching certification in the  
26 field of science or mathematics are critical fields. Beginning [insert date], the board, based on the  
27 board 's determination of those fields of study in which the support and development of  
28 postsecondary education programs at the bachelor 's degree level are most critically necessary for  
29 serving the needs of this state, by rule may:

30                   (1) designate as a critical field a field of study that is not currently designated by this  
31 subsection or by the board as a critical field; or

32                   (2) remove a field of study from the list of fields currently designated by this  
33 subsection or by the board as critical fields.

34           (c) This subsection applies only to a general academic teaching institution other than a public  
35 state college.

36           In devising its funding formulas and making its recommendations to the legislature relating  
37 to institutional appropriations of funds under [insert citation] for institutions to which this subsection  
38 applies, the board, in the manner and to the extent the board considers appropriate and in  
39 consultation with those institutions, shall incorporate the consideration of undergraduate student  
40 success measures achieved during the preceding state fiscal biennium by each of the institutions. At  
41 the time the board makes for incorporating the success measures, to the extent the board considers  
42 appropriate in consultation with those institutions, into the distribution of any incentive funds  
43 available for those institutions, including performance incentive funds under [insert citation]. The  
44 board's recommendations must provide alternative approaches for applying the success measures  
45 and must compare the effects on funding of applying the success measures within the formula for  
46 base funding to applying the success measures as a separate formula. The success measures  
47 considered by the board under this subsection may include:

48                   (1) the total number of bachelor 's degrees awarded by the institution;

(2) the total number of bachelor's degrees in critical fields awarded by the institution;  
(3) the total number of bachelor's degrees awarded by the institution to at-risk students; and

(4) as determined by the board, the six-year graduation rate of undergraduate students of the institution who initially enrolled in the institution in the fall semester immediately following their graduation from a public high school in this state as compared to the six-year graduation rate predicted for those students based on the composition of the institution's student body.

(d) Notwithstanding Subsection (c):

(1) not more than 10 percent of the total amount of general revenue appropriations of base funds for undergraduate education recommended by the board for all institutions to which Subsection (c) applies for a state fiscal biennium may be based on student success measures; and

(2) the board's recommendation for base funding for undergraduate education based on student success measures does not reduce or otherwise affect funding recommendations for graduate education.

(e) This subsection applies only to public junior colleges, public state colleges, and public technical institutes. In devising its funding formulas and making its recommendations to the legislature relating to institutional appropriations of incentive funds for institutions to which this subsection applies, the board, in the manner and to the extent the board considers appropriate and in consultation with those institutions, shall incorporate the consideration of the undergraduate student success measures achieved during the preceding state fiscal biennium by each of the institutions. The success measures considered by the board under this subsection may include:

(1) the following academic progress measures achieved by students at the institution:

(A) successful completion of:

(i) developmental education in mathematics;

(ii) developmental education in English;

(iii) the first college-level mathematics course with a grade of "C" or higher;

(iv) the first college-level English course with a grade of "C" or higher; and

(v) the first 30 semester credit hours at the institution; and

(B) transfer to a four-year college or university after successful completion of at least 15 semester credit hours at the institution; and

(2) the total number of the following awarded by the institution:

(A) associate's degrees;

(B) bachelor's degrees under [insert citation]; and

(C) certificates identified by the board for purposes of this section as effective measures of student success.

(f) Biennially, the board, in consultation with institutions to which Subsections (c) and (e) apply, shall review the student success measures considered by the board under those subsections.

(g) The board shall include in its findings and recommendations to the legislature under [insert citation]:

(1) an evaluation of the effectiveness of the student success measures described by this section in achieving the purpose of this section during the preceding state fiscal biennium; and

(2) any related recommendations the board considers appropriate.

(h) The board shall adopt rules for the administration of this section, including rules requiring each institution of higher education to submit to the board any student data or other information the board considers necessary for the board to carry out its duties under this section.

#### Section 4. *[Reporting requirements.]*

- 1  
2 (a) Not later than [insert date], and subsequently not later than [insert date], the board shall  
3 submit to the [legislative research agency/committee of jurisdiction] a written report  
4 reviewing, comparing, and highlighting national and global best practices on:  
5 (1) improving student outcomes, including student retention, graduations, and graduation  
6 rates; and  
7 (2) higher education governance, administration, and transparency.  
8 (b) This section expires [insert date].  
9

10 Section 5. [*Severability.*] Insert severability clause.  
11

12 Section 6. [*Repealer.*] Insert repealer clause.  
13

14 Section 7. [*Effective Date.*] Insert effective date.

# Horizontal Gas Wells

This Act establishes requirements for permits and regulatory rules governing drilling horizontal wells in the state. Specifically, it:

- requires permits for horizontal wells;
- establishes permit application requirements and contents for drilling horizontal wells;
- establishes application requirements and payment of fees;
- requires emergency and legislative rules pertaining to drilling such wells in karst formations;
- authorizes rules governing large pits and impoundment;
- addresses providing notice to property owners enter their property to survey or to conduct seismic activity related to such wells;
- provides for public notice and comments about proposed wells;
- establishes well location restrictions;
- requires a report to the legislature about noise, light dust and volatile organic compounds related to such wells;
- addresses guidelines and procedures to control and mitigate noise, light, dust and volatile organic compounds in relation to horizontal drilling activities;
- requires rules for plugging and abandonment of horizontal wells;
- establishes reclamation requirements;
- requires performance bonds or other security;
- provides for compensation for certain damages to certain surface owners;
- provides for reimbursement of property taxes to surface owners;
- provides for civil action, rebuttable presumption and relief for water contamination or deprivation;
- addresses water rights and replacement procedures;
- creates an Oil and Gas Horizontal Well Production Damage Compensation Act;
- defines terms; conditions and parameters for compensating surface owners for drilling operations;
- preserves common law right of action and providing offset for compensation or damages paid.

Submitted as:

West Virginia

[HB 401 \(Chapter 1, Acts, 4<sup>th</sup> Extraordinary Session, 2011\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “The Horizontal Well Act.”

2

3           Section 2. [*Definitions*.] Unless the context clearly requires a different meaning, as used in  
4 this Act:

5           (1) “Best management practices” means schedules of activities, prohibitions of practices,  
6 maintenance procedures and other management practices established by the [department] to prevent

1 or reduce pollution of waters of this state. For purposes of this Act, best management practices also  
2 include those practices and procedures set out in the [Erosion and Sediment Control Manual of the  
3 office of oil and gas];

4 (2) “Correlative rights” means the reasonable opportunity of each person entitled thereto to  
5 recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

6 (3) “Deep well” means any well other than a shallow well or coalbed methane well, drilled to  
7 a formation below the top of the uppermost member of the [Onondaga Group];

8 (4) “Department” means the [department of environmental protection];

9 (5) “Drilling operations” means the actual drilling or redrilling of a horizontal well  
10 commenced subsequent to the effective date of this article, and the related preparation of the drilling  
11 site and access road, which requires entry, upon the surface estate;

12 (6) “Drilling unit” means the acreage on which the board decides one well may be drilled  
13 under section ten of this article;

14 (7) “Flowback Recycle Pit” means a pit used for the retention of flowback and freshwater  
15 and into which no other wastes of any kind are placed;

16 (8) “Freshwater Impoundment” means an impoundment used for the retention of fresh water  
17 and into which no wastes of any kind are placed;

18 (9) “Horizontal drilling” means a method of drilling a well for the production of natural gas  
19 that is intended to maximize the length of wellbore that is exposed to the formation and in which the  
20 wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to  
21 parallel a particular geologic formation;

22 (10) “Horizontal well” means any well site, other than a coalbed methane well, drilled using  
23 a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines,  
24 gathering lines and roads, or utilizes more than two hundred ten thousand gallons of water in any  
25 thirty day period;

26 (11) “Impoundment” means a man-made excavation or diked area for the retention of fluids;

27 (12) “Karst terrain” means a terrain, generally underlain by limestone or dolomite, in which  
28 the topography is formed chiefly by the dissolving of rock, and which may be characterized by  
29 sinkholes, sinking streams, closed depressions, subterranean drainage and caves;

30 (13) “Oil and gas developer” means the person who secures the drilling permit required by  
31 [insert citation];

32 (14) “Perennial stream” means a stream or portion of a stream that flows year-round, is  
33 considered a permanent stream and for which base flow is maintained by ground-water discharge to  
34 the streambed due to the ground-water elevation adjacent to the stream being higher than the  
35 elevation of the streambed;

36 (15) “Person” means any natural person, corporation, firm, partnership, partnership  
37 association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other  
38 representative of any kind, and includes any government or any political subdivision or agency  
39 thereof;

40 (16) “Pit” means a man-made excavation or diked area that contains or is intended to contain  
41 an accumulation of process waste fluids, drill cuttings or any other liquid substance generated in the  
42 development of a horizontal well and which could impact surface or groundwater;

43 (17) “Secretary” means the [secretary of the department of environmental protection] as or  
44 other person to whom the [secretary] has delegated authority or duties pursuant to [insert citation];  
45 and

46 (18) “Surface estate” means an estate in or ownership of the surface of a particular tract of  
47 land overlying the oil or gas leasehold being developed; and



1 (19) “Surface owner” means a person who owns an estate in fee in the surface of land, either  
2 solely or as a co-owner.

3 (20) “Water purveyor” means any person engaged in the business of selling water to another  
4 and who is regulated by the [Bureau for Public Health] pursuant to [insert citation].  
5

6 Section 3. [*Horizontal Well Location Restrictions.*]

7 (a) Horizontal wells may not be drilled within [two hundred fifty feet measured horizontally]  
8 from any existing water well or developed spring used for human or domestic animal consumption.  
9 The center of well pads may not be located within [six hundred twenty-five feet] of an occupied  
10 dwelling structure, or a building [two thousand five hundred square feet or larger] used to house or  
11 shelter dairy cattle or poultry husbandry. This limitation is applicable to those wells, developed  
12 springs, dwellings or agricultural buildings that existed on the date a notice to the surface owner of  
13 planned entry for surveying or staking as provided by this Act or a notice of intent to drill a  
14 horizontal well was provided pursuant to this Act, whichever occurs first, and to any dwelling under  
15 construction prior to that date. This limitation may be waived by written consent of the surface  
16 owner transmitted to the [department] and recorded in the real property records maintained by the  
17 clerk of the county commission for the county in which such property is located. Furthermore, the  
18 well operator may be granted a variance by the [secretary] from these distance restrictions upon  
19 submission of a plan which identifies the sufficient measures, facilities or practices to be employed  
20 during well site construction, drilling and operations. The variance, if granted, shall include terms  
21 and conditions the [department] requires to ensure the safety and protection of affected people and  
22 property. The terms and conditions may include insurance, bonding and indemnification, as well as  
23 technical requirements.

24 (b) No well pad may be prepared or well drilled within [one hundred feet] measured  
25 horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or  
26 within [three hundred feet] of a naturally reproducing trout stream. No well pad may be located  
27 within [one thousand feet] of a surface or ground water intake of a public water supply. The distance  
28 from the public water supply as identified by the [department] shall be measured as follows:

29 (1) For a surface water intake on a lake or reservoir, the distance shall be measured  
30 from the boundary of the lake or reservoir.

31 (2) For a surface water intake on a flowing stream, the distance shall be measured  
32 from a semicircular radius extending upstream of the surface water intake.

33 (3) For a groundwater source, the distance shall be measured from the wellhead or  
34 spring. The [department] may, in its discretion, waive these distance restrictions upon submission of  
35 a plan identifying sufficient measures, facilities or practices to be employed during well site  
36 construction, drilling and operations to protect the waters of the state. A waiver, if granted, shall  
37 impose any permit conditions as the [secretary] considers necessary.

38 (c) Notwithstanding the foregoing provisions of this section, nothing contained in this section  
39 prevents an operator from conducting the activities permitted or authorized by a Clean Water Act  
40 Section 404 permit or other approval from the United States Army Corps of Engineers within any  
41 waters of the state or within the restricted areas referenced in this section.

42 (d) The well location restrictions set forth in this section shall not apply to any well on a  
43 multiple well pad if at least one of the wells was permitted or has an application pending prior to the  
44 effective date of this Act.

45 (e) The [secretary] shall, by [date], report to the [Legislature] on the noise, light, dust and  
46 volatile organic compounds generated by the drilling of horizontal wells as they relate to the well  
47 location restrictions regarding occupied dwelling structures pursuant to this section. Upon a finding,  
48 if any, by the [secretary] that the well location restrictions regarding occupied dwelling structures are  
49 inadequate or otherwise require alteration to address the items examined in the study required by this

subsection, the [secretary] shall have the authority to propose for promulgation legislative rules establishing guidelines and procedures regarding reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal wells, including reasonable means of mitigating such factors, if necessary.

Section 4. [*Horizontal Well Work Permits.*]

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the [secretary] a well work permit pursuant to this Act.

(b) Prior to filing a permit application, the operator shall provide notice of planned entry on to the surface tract to conduct any plat surveys required pursuant to this Act. Such notice shall be provided at least [seven days but no more than forty-five days] prior to such entry to:

(1) The surface owner of such tract;

(2) To any owner or lessee of coal seams beneath such tract that has filed a declaration pursuant to [insert citation].

(3) Any owner of minerals underlying such tract in the county tax records. The notice shall include a statement that copies of the state [*Erosion and Sediment Control Manual*] and the statutes and rules related to oil and gas exploration and production may be obtained from the [secretary], which statement shall include contact information, including the address for a web page on the [secretary's] website, to enable the surface owner to obtain copies from the [secretary].

(c) No later than the filing date of the application, the applicant for a permit for any well work or for a certificate of approval for the construction of an impoundment or pit as required by this Act shall deliver, by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, copies of the application, the erosion and sediment control plan required by this Act, and the well plat to each of the following:

(1) The owners of record of the surface of the tract on which the well is or is proposed to be located;

(2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if the surface tract is to be used for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to this Act.

(3) The coal owner, operator or lessee, in the event the tract of land on which the well proposed to be drilled is located is known to be underlain by one or more coal seams;

(4) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if the surface tract is to be used for the placement, construction, enlargement, alteration, repair, removal or abandonment of any impoundment or pit as described in this Act;

(5) Any surface owner or water purveyor who is known to the applicant to have a water well, spring or water supply source located within one thousand five hundred feet of the center of the well pad which is used to provide water for consumption by humans or domestic animals; and

(6) The operator of any natural gas storage field within which the proposed well work activity is to take place.

(d) (1) If more than [three tenants in common] or other co-owners of interests described in subsection (b) of this section hold interests in the lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to [insert citation].

(2) Notwithstanding any provision of this Act to the contrary, notice to a lien holder is not notice to a landowner, unless the lien holder is the landowner.

1 (e) With respect to surface landowners or water purveyors, notification shall be made on  
2 forms and in a manner prescribed by the [secretary] sufficient to identify, for those people, the rights  
3 afforded them under [this Act], and the opportunity for testing their water well.

4 (f) Prior to filing an application for a permit for a horizontal well under this Act, the applicant  
5 shall publish in the county in which the well is located or is proposed to be located a [Class II legal  
6 advertisement] as described in [insert citation], containing notice of the public website required to be  
7 established and maintained pursuant to this Act and language indicating the ability of the public to  
8 submit written comments on the proposed permit, with the first publication date being at least [ten  
9 days] prior to the filing of the permit application. The [secretary] shall consider, in the same manner  
10 required by [insert citation], written comments submitted in response to the legal advertisement  
11 received by the [secretary] within [thirty days] following the last required publication date, provided  
12 that such parties submitting written comments pursuant to this subsection are not entitled to  
13 participate in the processes and proceedings that exist under [insert citation].

14 (g) Materials served upon people described in subsection (b) of this section shall contain a  
15 statement of the time limits for filing written comments, who may file written comments, the name  
16 and address of the [secretary] for the purpose of filing the comments and obtaining additional  
17 information, and a statement that the persons may request, at the time of submitting written  
18 comments, notice of the permit decision and a list of people qualified to test water.

19 (h) Any person entitled to submit written comments to the [secretary] pursuant to [this Act]  
20 shall also be entitled to receive from the [secretary] a copy of the permit as issued or a copy of the  
21 order modifying or denying the permit if the person requests receipt of them as a part of the written  
22 comments submitted concerning the permit application.

23 (i) The surface owners, and the coal owner, operator or lessee described in this section is also  
24 entitled to receive notice within [seven days but no less than two days] before commencement that  
25 well work or site preparation work that involves any disturbance of land is expected to commence.

26 (j) Persons entitled to notice pursuant to subsection (b) of this section may contact the  
27 [department] to ascertain the names and locations of water testing laboratories in the subject area  
28 capable and qualified to test water supplies in accordance with standard accepted methods. In  
29 compiling that list of names the [department] shall consult with the state [bureau for public health]  
30 and local health departments.

31 (k) (1) Prior to conducting any seismic activity for seismic exploration for natural gas to  
32 be extracted using horizontal drilling methods, the company or person performing the activity shall  
33 provide notice to [insert utilities] and to all surface owners, coal owners and lessees, and natural gas  
34 storage field operators on whose property blasting, percussion or other seismic-related activities will  
35 occur.

36 (2) The notice shall be provided at least [three days] prior to commencement of the  
37 seismic activity.

38 (3) The notice shall also include a reclamation plan in accordance with the [*Erosion*  
39 *and Sediment Control Manual*] that provides for the reclamation of any areas disturbed as a result of  
40 the seismic activity, including filling of shot holes used for blasting.

41 (4) Nothing in this subsection decides questions as to whether seismic activity may be  
42 secured by mineral owners, surface owners or other ownership interests.

43 (l) Notwithstanding any provision of this Act to the contrary, all notices required by this Act  
44 shall be delivered by the method set forth in [insert citation] which notice shall provide that further  
45 information may be obtained from the [department's] website.

46 (m) The applicant shall tender proof of and certify to the [secretary] that the notice  
47 requirements of section of this Act have been completed by the applicant. The certification of notice  
48 to the person may be made by affidavit of personal service, the return receipt card or other postal  
49 receipt for certified mailing.

1 (n) All persons receiving notice under this section may file written comments with the  
2 [secretary] as to the location or construction of the applicant's proposed well work within [thirty  
3 days] after the application is filed with the [secretary].

4 (o) (1) The [secretary] shall promptly review all written comments filed by the people  
5 entitled to notice under subsection (b), section ten of this article. The [secretary] shall notify the  
6 applicant of the character of the written comments submitted no later than fifteen days after the close  
7 of the comment period.

8 (2) Any objections of the affected coal operators and coal seam owners and lessees  
9 shall be addressed through the processes and procedures that exist under sections fifteen, seventeen  
10 and forty, article six of this chapter, as applicable and as incorporated into this article by section five  
11 of this article. The written comments filed by the parties entitled to notice under subdivisions (1),  
12 (2), (4), (5) and (6), subsection (b), section ten of this article shall be considered by the [secretary] in  
13 the permit issuance process, but the parties are not entitled to participate in the processes and  
14 proceedings that exist under sections fifteen, seventeen or forty, article six of this chapter, as  
15 applicable and as incorporated into this article by section five of this article.

16 (3) The [secretary] shall retain all applications, plats and other documents filed with  
17 the [secretary], any proposed revisions thereto, all notices given and proof of service thereof and all  
18 orders issued and all permits issued. Subject to the provisions of article one, chapter twenty-nine-b  
19 of this code, the record prepared by the [secretary] is open to inspection by the public.

#### 20 21 Section 5. [*Horizontal Well Permits.*]

22 (a) Every permit application filed under this section shall be on a form as may be prescribed  
23 by the [secretary], shall be verified and shall contain the following information:

24 (1) The names and addresses of the well operator, the agent required to be designated  
25 under subsection (h) of this section and every person whom the applicant shall notify under any  
26 section of this article, together with a certification and evidence that a copy of the application and all  
27 other required documentation has been delivered to all such persons;

28 (2) The names and addresses of every coal operator operating coal seams under the  
29 tract of land on which the well is or may be located, and the coal seam owner of record and lessee of  
30 record required to be given notice by [insert citation], if any, if said owner or lessee is not yet  
31 operating said coal seams;

32 (3) The number of the well or such other identification as the [secretary] may require;

33 (4) The well work for which a permit is requested;

34 (5) The approximate total depth to which the well is to be drilled or deepened, or the  
35 actual depth if the well has been drilled; the proposed angle and direction of the well; the actual  
36 depth or the approximate depth at which the well to be drilled deviates from vertical, the angle and  
37 direction of the non-vertical well bore until the well reaches its total target depth or its actual final  
38 depth and the length and direction of any actual or proposed horizontal lateral or well bore;

39 (6) Each formation in which the well will be completed if applicable;

40 (7) A description of any means used to stimulate the well;

41 (8) If the proposed well work will require casing or tubing to be set, the entire casing  
42 program for the well, including the size of each string of pipe, the starting point and depth to which  
43 each string is to be set and the extent to which each such string is to be cemented;

44 (9) If the proposed well work is to convert an existing well, all information required  
45 by this section, all formations from which production is anticipated and any plans to plug any  
46 portion of the well;

47 (10) If the proposed well work is to plug or replug the well, all information necessary

1 to demonstrate compliance with the legislative rules promulgated by the [secretary] in accordance  
2 with section thirteen of this article;

3 (11) If the proposed well work is to stimulate a horizontal well, all information  
4 necessary to demonstrate compliance with the requirements of subdivision (7), subsection (a),  
5 section five of this article;

6 (12) The erosion and sediment control plan required under subsection (c) of this  
7 section for applications for permits to drill;

8 (13) A well site safety plan to address proper safety measures to be employed for the  
9 protection of people on the site as well as the general public. The plan shall encompass all aspects of  
10 the operation, including the actual well work for which the permit was obtained, completion  
11 activities and production activities, and shall provide an emergency point of contact for the well  
12 operator. The well operator shall provide a copy of the well site safety plan to the [local emergency  
13 planning committee] established pursuant [insert citation], for the emergency planning district in  
14 which the well work will occur at least seven days before commencement of well work or site  
15 preparation work that involves any disturbance of land;

16 (14) A certification from the operator that (i) it has provided the owners of the surface  
17 described in subdivisions (1), (2) and (4), subsection (b), section ten of this article, the information  
18 required by subsections (b) and (c), section sixteen of this article; (ii) that the requirement was  
19 deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to  
20 subsection (a), section ten of this article; or (iii) the notice requirements of subsection (b), section  
21 sixteen of this article were waived in writing by the surface owner; and

22 (15) Any other relevant information which the secretary may reasonably require.

23 (c) (1) An erosion and sediment control plan shall accompany each application for a well  
24 work permit under this Act. The plan shall contain methods of stabilization and drainage, including a  
25 map of the project area indicating the amount of acreage disturbed. The erosion and sediment control  
26 plan shall meet the minimum requirements of the [Erosion and Sediment Control Manual] as  
27 adopted and from time to time amended by the [department]. The erosion and sediment control plan  
28 shall become part of the terms and conditions of any well work permit that is issued pursuant to this  
29 article and the provisions of the plan shall be carried out where applicable in the operation. The  
30 erosion and sediment control plan shall set out the proposed method of reclamation which shall  
31 comply with the requirements of [insert citation].

32 (2) For well sites that disturb three acres or more of surface, excluding pipelines,  
33 gathering lines and roads, the erosion and sediment control plan submitted in accordance with this  
34 section shall be certified by a registered professional engineer.

35 (d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering  
36 lines and roads, the operator shall submit a site construction plan that shall be certified by a  
37 registered professional engineer and contains information that the [secretary] may require by rule.

38 (e) In addition to the other requirements of this section, if the drilling, fracturing or  
39 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of  
40 this state in amounts that exceed [two hundred ten thousand gallons during any thirty day period],  
41 the application for a well work permit shall include a water management plan, which may be  
42 submitted on an individual well basis or on a watershed basis, and which shall include the following  
43 information:

44 (1) The type of water source, such as surface or groundwater, the county of each  
45 source to be used by the operation for water withdrawals, and the latitude and longitude of each  
46 anticipated withdrawal location;

47 (2) The anticipated volume of each water withdrawal;

48 (3) The anticipated months when water withdrawals will be made;

49 (4) The planned management and disposition of wastewater after completion from



1 fracturing, refracturing, stimulation and production activities;

2 (5) A listing of the anticipated additives that may be used in water utilized for  
3 fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually  
4 used in the fracturing or stimulating of the well shall be submitted as part of the completion log or  
5 report required by subdivision (14), subsection (a), section five of this article;

6 (6) For all surface water withdrawals, a water management plan that includes the  
7 information requested in subdivisions (1) through (5) of this subsection and the following:

8 (A) Identification of the current designated and existing water uses, including  
9 any public water intakes within one mile downstream of the withdrawal location;

10 (B) For surface waters, a demonstration, using methods acceptable to the  
11 secretary, that sufficient in-stream flow will be available immediately downstream of the point of  
12 withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the  
13 identified use of the stream is preserved immediately downstream of the point of withdrawal; and

14 (C) Methods to be used for surface water withdrawal to minimize adverse  
15 impact to aquatic life; and

16 (7) This subsection is intended to be consistent with and does not supersede, revise,  
17 repeal or otherwise modify [insert citation] and does not revise, repeal or otherwise modify the  
18 common law doctrine of riparian rights in this state.

19 (f) An application may propose and a permit may approve two or more activities defined  
20 as well work, however, a separate permit shall be obtained for each horizontal well drilled.

21 (g) The application for a permit under this section shall be accompanied by the applicable  
22 bond as required by [insert citation] and a permit fee of [\$10,000] for the initial horizontal well  
23 drilled at a location and a permit fee of [\$5,000] for each additional horizontal well drilled on a  
24 single well pad at the same location.

25 (h) The well operator named in the application shall designate the name and address of an  
26 agent for the operator who is the attorney-in-fact for the operator and who is a resident of this state  
27 upon whom notices, orders or other communications issued pursuant to this Act or [insert citation]  
28 may be served, and upon whom process may be served. Every well operator required to designate an  
29 agent under this section shall, within [five days] after the termination of the designation, notify the  
30 [secretary] of the termination and designate a new agent.

31 (i) As part of the permit application for horizontal wells, the operator shall submit a letter of  
32 certification from the Division of Highways that the operator has, pursuant to the Division of  
33 Highways Oil and Gas Road Policy, entered into an agreement with the Division of Highways  
34 pertaining to the state local service roads associated with the proposed well work set forth in the  
35 permit application or has certified that no such agreement is required by the Oil and Gas Road Policy  
36 and the reasons therefor.

37  
38 Section 6. *[Secretary of Department of Environmental Protection; Powers and Duties.]*

39 (a) The [secretary] is vested with jurisdiction over all aspects of this Act, including, but not  
40 limited to, the following powers and duties:

41 (1) All powers and duties conferred upon the [[secretary]] pursuant to [insert citation]

42 (2) To control and exercise regulatory authority over all gas operations regulated by  
43 this article;

44 (3) To utilize any oil and gas inspectors or other employees of the department in the  
45 enforcement of the provisions of this article;

46 (4) To propose any necessary legislative rules, in accordance with the provisions of  
47 chapter twenty-nine-a of this code to implement the provisions of this article;



1 (5) To make investigations and inspections necessary to ensure compliance with the  
2 provisions of this article;

3 (b) Except for the duties and obligations conferred by statute upon the shallow gas well  
4 review board pursuant to article eight, chapter twenty-two-c of this code, the coalbed methane  
5 review board pursuant to article twenty-one of this chapter, and the oil and gas conservation  
6 commission pursuant to [insert citation], the [secretary] has sole and exclusive authority to regulate  
7 the permitting, location, spacing, drilling, fracturing, stimulation, well completion activities,  
8 operation, any and all other drilling and production processes, plugging and reclamation of oil and  
9 gas wells and production operations within the state.

10 (c) The [secretary] shall, on a monthly basis, make a written report to the Governor  
11 disclosing, for all well work permits issued in a particular month, the average number of days  
12 elapsed between the date on which a complete application for a well work permit was filed and the  
13 date on which such well work permit was issued. This report shall be posted to the website required  
14 to be established and maintained pursuant to section twenty-one of this article.

15 (d) The [secretary] shall review each application for a well work permit and shall determine  
16 whether or not a permit is issued.

17 (e) The [secretary] shall promptly review all written comments filed by persons entitled to  
18 notice pursuant to [insert citation]. If after review of the application and all written comments  
19 received from people entitled to notice pursuant to [insert citation], the application for a well work  
20 permit is approved, and no timely objection has been filed with the [secretary] by the coal operator  
21 operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner  
22 or lessee is not yet operating said coal seams, or made by the [secretary] under the provisions of  
23 [insert citation], the permit shall be issued, with conditions, if any. This section does not supersede  
24 the provisions of section seven or subdivisions (6) through (9), subsection (a), section five of this  
25 article.

26 (f) No permit may be issued less than [thirty days] after the filing date of the application for  
27 any well work except plugging or replugging; and no permit for plugging or replugging may be  
28 issued less than [five days] after the filing date of the application except a permit for plugging or  
29 replugging a dry hole, provided, that if the applicant certifies that all people entitled to notice of the  
30 application under the provisions of [insert citation] have been served in person or by certified mail,  
31 return receipt requested, with a copy of the well work application, including the erosion and  
32 sediment control plan, if required, and the well plat, and further files written statements of no  
33 objection by all such persons, the [secretary] may issue the well work permit at any time.

34  
35 (g) No permit may be issued pursuant to this article unless a bond as described in subsection  
36 (d) of this section which is required for a particular activity by this article is or has been furnished as  
37 provided in this section.

38 (h) A separate bond as described in subsection (d) of this section may be furnished for each  
39 horizontal well drilled. Each of these bonds shall be in the sum of \$50,000 payable to the [insert  
40 state], conditioned on full compliance with all laws, rules relating to the drilling, redrilling,  
41 deepening, casing and stimulating of horizontal wells and to the plugging, abandonment and  
42 reclamation of horizontal wells and for furnishing reports and information required by the  
43 [secretary].

44 (i) When an operator makes or has made application for permits to drill or stimulate a  
45 number of horizontal wells, the operator may, in lieu of furnishing a separate bond, furnish a blanket  
46 bond in the sum of \$250,000 payable to the State of [insert state], and conditioned as provided in  
47 subsection (b) of this section.

48 (j) The form of the bond required by this article shall be approved by the [secretary] and may  
49 include, at the option of the operator, surety bonding, collateral bonding, including cash and

1 securities, letters of credit, establishment of an escrow account, self-bonding or a combination of  
2 these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral  
3 securities or certificates as follows: Bonds of the United States or its possessions, of the federal land  
4 bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the  
5 State of [insert state] or other states or of any county, district or municipality of the [insert state] or  
6 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the  
7 department. The cash deposit or market value of the securities or certificates shall be equal to or  
8 greater than the amount of the bond. The [secretary] shall, upon receipt of any deposit of cash,  
9 securities or certificates, promptly place the same with the Treasurer of the [insert state] whose duty  
10 it is to receive and hold them in the name of the state in trust for the purpose of which the deposit is  
11 made when the permit is issued. The operator is entitled to all interest and income earned on the  
12 collateral securities filed by the operator. The operator making the deposit is entitled from time to  
13 time to receive from the State Treasurer, upon the written approval of the [secretary], the whole or  
14 any portion of any cash, securities or certificates so deposited, upon depositing with the State  
15 Treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having  
16 value equal to or greater than the amount of the bond.

17 (k) When an operator has furnished a separate bond from a corporate bonding or surety  
18 company to drill, fracture or stimulate a horizontal well and the well produces oil or gas or both, its  
19 operator may deposit with the [secretary] cash from the sale of the oil or gas or both until the total  
20 deposited is \$50,000. When the sum of the cash deposited is \$50,000, the separate bond for the well  
21 shall be released by the [secretary]. Upon receipt of that cash, the [secretary] shall immediately  
22 deliver that amount to the State Treasurer, who shall hold the cash in the name of the state in trust  
23 for the purpose for which the bond was furnished and the deposit was made. The operator is entitled  
24 to all interest and income which may be earned on the cash deposited so long as the operator is in  
25 full compliance with all laws and rules relating to the drilling, redrilling, deepening, casing,  
26 plugging, abandonment and reclamation of the well for which the cash was deposited and so long as  
27 the operator has furnished all reports and information required by the [secretary]. The [secretary]  
28 may establish procedures under which an operator may substitute a new bond for an existing bond or  
29 provide a new bond under certain circumstances specified in a legislative rule promulgated in  
30 accordance with chapter twenty-nine-a of this code.

31 (l) Any separate bond furnished for a particular well prior to the effective date of this article  
32 continues to be valid for all work on the well permitted prior to the effective date of this article; but  
33 no permit may be issued on such a particular well without a bond complying with the provisions of  
34 this section. Any blanket bond furnished prior to the effective date of this article shall be replaced  
35 with a new blanket bond conforming to the requirements of this section, at which time the prior bond  
36 is discharged by operation of law; and if the [secretary] determines that any operator has not  
37 furnished a new blanket bond, the [secretary] shall notify the operator by registered mail or by any  
38 method of delivery that requires a receipt or signature confirmation of the requirement for a new  
39 blanket bond, and failure to submit a new blanket bond within sixty days after receipt of the notice  
40 from the [secretary] works a forfeiture under subsection (i) of this section of the blanket bond  
41 furnished prior to the effective date of this article.

42 (m) Any such bond shall remain in force until released by the [secretary], and the [secretary]  
43 shall release the same upon satisfaction that the conditions thereof have been fully performed. Upon  
44 the release of that bond, any cash or collateral securities deposited shall be returned by the  
45 [secretary] to the operator who deposited it.

46 (n) (1) Whenever the right to operate a well is assigned or otherwise transferred, the  
47 assignor or transferor shall notify the department of the name and address of the assignee or  
48 transferee by registered mail or by any method of delivery that requires a receipt or signature

1 confirmation not later than thirty days after the date of the assignment or transfer. No assignment or  
2 transfer by the owner relieves the assignor or transferor of the obligations and liabilities unless and  
3 until the assignee or transferee files with the department the well name and the permit number of the  
4 subject well, the county and district in which the subject well is located, the names and addresses of  
5 the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or  
6 transfer accompanied by the applicable bond, cash, collateral security or other forms of security  
7 described in this section, and the name and address of the assignee's or transferee's designated agent  
8 if the assignee or transferee would be required to designate an agent under this article if the assignee  
9 or transferee were an applicant for a permit under this article. Every well operator required to  
10 designate an agent under this section shall, within five days after the termination of the designation,  
11 notify the department of the termination and designate a new agent.

12 (2) Upon compliance with the requirements of this section by the assignor or  
13 transferor and assignee or transferee, the [secretary] shall release the assignor or transferor from all  
14 duties and requirements of this article and shall give written notice of release to the assignor or  
15 transferor of any bond and return to the assignor or transferor any cash or collateral securities  
16 deposited pursuant to this section.

17 (o) If any of the requirements of this article or rules promulgated pursuant thereto or the  
18 orders of the [secretary] has not been complied with within the time limit set by any notice of  
19 violation issued pursuant to this article, the performance bond shall then be forfeited.

20 (p) When any bond is forfeited pursuant to the provisions of this article or rules promulgated  
21 pursuant thereto, the [secretary] shall collect the forfeiture without delay.

22 (q) All forfeitures shall be deposited in the Treasury of the [insert state] in the Oil and Gas  
23 Reclamation Fund as defined in section twenty-nine, article six of this chapter.

24 (r) Prior to the issuance of any permit, the [secretary] shall ascertain from the [insert agency]  
25 and the [insurance commissioner] whether the applicant is in default pursuant to the provisions of  
26 [insert citation], and in compliance with regard to any required subscription to the [Unemployment  
27 Compensation Fund] or mandatory [Workers' Compensation insurance], the payment of premiums  
28 and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate  
29 deposits. If the applicant is delinquent or defaulted, or has been terminated by the [insert agency] or  
30 the [insurance commissioner], the permit may not be issued until the applicant returns to compliance  
31 or is restored by the [insert agency] or the [insurance commissioner] under a reinstatement  
32 agreement, provided that in all inquiries, the [insert agency] and the [insurance commissioner] shall  
33 make response to the [department of environmental protection] within [fifteen calendar days];  
34 otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the  
35 failure will not be used to preclude issuance of the permit.

36 (s) The [secretary] may cause such inspections to be made of the proposed well work  
37 location as necessary to assure adequate review of the application. The permit may not be issued, or  
38 may be conditioned including conditions with respect to the location of the well and access roads  
39 prior to issuance if the director determines that:

40 (1) The proposed well work will constitute a hazard to the safety of persons;

41 (2) The plan for soil erosion and sediment control is not adequate or effective;

42 (3) Damage would occur to publicly owned lands or resources; or

43 (4) The proposed well work fails to protect fresh water sources or supplies.

44 (t) In addition to the considerations set forth in subsection (d) of this section, in determining  
45 whether a permit should be issued, issued with conditions, or denied, the [secretary] shall determine  
46 that:

47 (1) The well location restrictions of [insert citation] have been satisfied, unless the  
48 requirements have been waived by written consent of the surface owner or the [secretary] has  
49 granted a variance to the restrictions, each in accordance with [insert citation];

1 (2) The water management plan submitted to the [secretary], if required by [insert  
2 citation], has been received and approved.

3 (u) Each permit issued by the [secretary] pursuant to this Act shall require the operator at a  
4 minimum to:

5 (1) Plug all wells in accordance with the requirements of this article and the rules  
6 promulgated pursuant thereto when the wells become abandoned;

7 (2) With respect to disposal of cuttings at the well site, all drill cuttings and associated  
8 drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste  
9 facility, or if the surface owner consents, the drill cuttings and associated drilling mud may be  
10 managed on-site in a manner approved by the [secretary];

11 (3) Grade, terrace and plant, seed or sod the area disturbed that is not required in  
12 production of the horizontal well where necessary to bind the soil and prevent substantial erosion  
13 and sedimentation;

14 (4) Take action in accordance with industry standards to minimize fire hazards and  
15 other conditions which constitute a hazard to health and safety of the public;

16 (5) Protect the quantity and the quality of water in surface and groundwater systems  
17 both during and after drilling operations and during reclamation by:

18 (A) Withdrawing water from surface waters of the state by methods deemed  
19 appropriate by the [secretary], so as to maintain sufficient in-stream flow immediately downstream of  
20 the withdrawal location. In no case shall an operator withdraw water from ground or surface waters  
21 at volumes beyond which the waters can sustain;

22 (B) Casing, sealing or otherwise managing wells to keep returned fluids from  
23 entering ground and surface waters;

24 (C) Conducting oil and gas operations so as to prevent, to the extent possible  
25 using the best management practices, additional contributions of suspended or dissolved solids to  
26 streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of  
27 requirements set by applicable state or federal law; and

28 (D) Registering all water supply wells drilled and operated by the operator  
29 with the [Office of Oil and Gas]. All drinking water wells within [one thousand five hundred feet] of  
30 a water supply well shall be flow and quality tested by the operator upon request of the drinking well  
31 owner prior to operating the water supply well. The [secretary] shall propose legislative rules to  
32 identify appropriate methods for testing water flow and quality.

33 (6) In addition to the other requirements of this subsection, an operator proposing to  
34 drill any horizontal well requiring the withdrawal of more than two hundred ten thousand gallons in  
35 a thirty day period shall have the following requirements added to its permit:

36 (A) Identification of water withdrawal locations. Within [forty-eight hours]  
37 prior to the withdrawal of water, the operator shall identify to the [department] the location of  
38 withdrawal by latitude and longitude and verify that sufficient flow exists to protect designated uses  
39 of the stream. The operator shall use methods deemed appropriate by the [secretary] to determine if  
40 sufficient flow exists to protect designated uses of the stream.

41 (B) Signage for water withdrawal locations. All water withdrawal locations  
42 and facilities identified in the water management plan shall be identified with a sign that identifies  
43 that the location is a water withdrawal point, the name and telephone number of the operator and the  
44 permit numbers(s) for which the water withdrawn will be utilized.

45 (C) Recordkeeping and reporting. For all water used for hydraulic fracturing  
46 of horizontal wells and for flowback water from hydraulic fracturing activities and produced water  
47 from production activities from horizontal wells, an operator shall comply with the following record  
48 keeping and reporting requirements:

(i) For production activities, the following information shall be recorded and retained by the well operator:

(I) The quantity of flowback water from hydraulic fracturing the well;

(II) The quantity of produced water from the well; and

(III) The method of management or disposal of the flowback and produced water.

(ii) For transportation activities, the following information shall be recorded and maintained by the operator:

(I) The quantity of water transported;

(II) The collection and delivery or disposal locations of water; and

(III) The name of the water hauling company.

(iii) The information maintained pursuant to this subdivision shall be available for inspection by the [department] along with other required permits and records and maintained for three years after the water withdrawal activity.

(iv) This subdivision is intended to be consistent with and does not supersede, revise, repeal or otherwise [insert citation] and does not revise, repeal or otherwise modify the common law doctrine of riparian rights in state law.

(v) The [secretary] shall mail a copy of the permit as issued or a copy of the order denying a permit to any person entitled to submit written comments pursuant to subsection [insert citation] and who requested a copy.

(w) Upon the issuance of any permit pursuant to the provisions of this Act, the [secretary] shall transmit a copy of the permit to the office of the assessor for the county in which the well is located.

(x) The well owner or operator shall install the permit number as issued by the [secretary] and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the [secretary].

(y) The [secretary] may waive the requirements of [insert citation] in any emergency situation, if the [secretary] deems the action necessary. In such case the secretary may issue an emergency permit which is effective for not more than [thirty days], unless reissued by the [secretary].

(z) The [secretary] shall deny the issuance of a permit if the [secretary] determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this Act, and in each instance has failed to abate or seek review of the violation within the time prescribed by the [secretary] pursuant to the provisions of subdivisions (1) and (2), subsection (a), section five of this article and the rules promulgated hereunder, which time may not be unreasonable.

In the event the [secretary] finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the [secretary] may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the [secretary] may reinstate the permit without further notice, at which time the well work may be continued. The [secretary] shall make written findings of any such suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of this Act. The [secretary] shall make a written finding of any such determination.



1           Section 7. [*Casing and Cement Standards.*]

2           (a) [An] operator may only drill through fresh groundwater zones in a manner that will  
3 minimize any disturbance of the zones. Further, the operator shall construct the well and conduct  
4 casing and cementing activities for all horizontal wells in a manner that will provide for control of  
5 the well at all times, prevent the migration of gas and other fluids into the fresh groundwater and  
6 coal seams, and prevent pollution of or diminution of fresh groundwater.

7           (b) The [secretary] shall propose legislative and emergency rules in accordance with the  
8 provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this  
9 section.

10          (c) Rules promulgated by the [secretary] pursuant to this section shall include provisions to  
11 accomplish the following:

- 12               (1) Effective control of the horizontal well by the operator;  
13               (2) Prevention of the migration of gas or other fluids into sources of fresh  
14 groundwater or into coal seams;  
15               (3) Prevention of pollution of or diminution of fresh groundwater;  
16               (4) Prevention of blowouts, explosions, or fires; and  
17               (5) Appropriate disposition of brines and discharges from the drilling or operation of  
18 horizontal well.

19          (d) Procedures for the filing, approval, and revision of casing program:

20               (1) The operator shall prepare a casing program demonstrating how the horizontal  
21 well is to be drilled, cased, and cemented. The program shall comply with rules promulgated by  
22 the [secretary].

23               (2) The rules regarding the casing program shall require the following information:

24                       (A) The anticipated depth and thickness of any producing formation, expected  
25 pressures, anticipated fresh groundwater zones, and the method or information by which the depth of  
26 the deepest fresh groundwater was determined;

27                       (B) The diameter of the borehole;

28                       (C) The casing type, whether the casing to be utilized is new or used, and the  
29 depth, diameter, wall thickness, and burst pressure rating for the casing;

30                       (D) The cement type, yield, additives, and estimated amount of cement to be  
31 used;

32                       (E) The estimated location of centralizers;

33                       (F) The proposed borehole conditioning procedures; and

34                       (G) Any alternative methods or materials required by the [secretary] as a  
35 condition of the well work permit.

36               (3) A copy of casing program shall be kept at the well site.

37               (4) Supervisory oil and gas inspectors and oil and gas inspectors may approve  
38 revisions to previously approved casing programs when conditions encountered during the drilling  
39 process so require: Provided, That any revisions to casing programs approved by inspectors as  
40 aforesaid shall ensure that the revised casing programs are at least as protective of the environment  
41 as the casing and cementing standards required by this section. Any revisions to the casing program  
42 made as a result of on-site modifications shall be documented in the program by the inspector  
43 approving the modification. The person making any revisions to the program shall initial and date  
44 the revisions and make the revised program available for inspection by the department.

45          (e) The rules promulgated by the [secretary] shall provide procedures for the following:

46               (1) Appropriate installation and use of conductor pipe, which shall be installed in a  
47 manner that prevents the subsurface infiltration of surface water or fluids;



(2) Installation of the surface and coal protection casing including remedial procedures addressing lost circulation during surface or coal casing;

(3) Installation of intermediate production casing;

(4) Correction of defective casing and cementing, including requirements that the operator report the defect to the [secretary] within twenty-four hours of discovery by the operator;

(5) Investigation of natural gas migration, including requirements that the operator promptly notify the [secretary] and conduct an investigation of the incident; and

(6) Any other procedure or requirements considered necessary by the [secretary].

(f) Minimum casing standards.

(1) All casing installed in the well, whether new or used, shall have a pressure rating that exceeds the anticipated maximum pressure to which the casing will be exposed and meet appropriate nationally recognized standards.

(2) The casing shall be of sufficient quality and condition to withstand the effects of tension and maintain its structural integrity during installation, cementing, and subsequent drilling and production operations.

(3) Centralizers shall be used, with the proper spacing for such well, during the casing installation to ensure that the casing is centered in the hole.

(4) Casing may not be disturbed for a period of at least eight hours after the completion of cementing operations.

(5) No gas or oil production or pressure may exist on the surface casing or the annulus or the coal protection casing annulus.

(g) Minimum cement standards.

(1) All cement used in the well must meet the appropriate nationally recognized standards and must secure the casing to the wellbore, isolate the wellbore from all fluids, contain all pressures during all phases of drilling and operation of the well, and protect the casing from corrosion and degradation.

(2) Cement used in conjunction with surface and coal protection casing must provide zonal isolation in the casing annulus.

(h) Notwithstanding the minimum casing and cementing standards set forth in subsections

(1) Revise the casing and cementing standards applicable to horizontal wells from time to time through the legislative rulemaking process so long as the revised casing and cementing standards are at least as protective of the environment; and

(2) Approve alternative casing programs submitted with applications for well work permits so long as the [secretary] determines that the casing program submitted with the application is at least as protective of the environment as the casing and cementing standards required by this section.

#### Section 8. [*Karst Terrain; Rulemaking.*]

(a) Because drilling horizontal wells in naturally occurring karst terrain may require precautions not necessary in other parts of the state, the [secretary] of environmental protection] may require additional safeguards to protect this geological formation. When drilling horizontal wells in naturally occurring karst terrain, such additional safeguards may include changing proposed well locations to avoid damage to water resources, special casing programs, and additional or special review of drilling procedures.

(b) In order to carry out the purposes of this Act, the [secretary] of environmental protection], in consultation with the state geologist, shall propose emergency and legislative rules in accordance with the provisions of [insert citation] to establish designated geographic regions of the state where the provisions of this section are applicable and to establish standards for drilling horizontal wells in

1 naturally occurring karst terrain. For horizontal wells drilled into naturally occurring karst terrain in  
2 such designated geographic regions, the rules shall, at a minimum:

3 (1) Require operators to perform certain predrilling testing to identify the location of  
4 caves and other voids, faults and relevant features in the strata and the location of surface features  
5 prevalent in naturally occurring karst terrain such as sink holes; and

6 (2) Provide any other requirements deemed necessary by the [secretary] of  
7 environmental protection] to protect the unique characteristics of naturally occurring karst terrain,  
8 which requirements may include baseline water testing within an established distance from a drilling  
9 site.

10 (c) Nothing in this section allows the [department of environmental protection] to prevent  
11 drilling in naturally occurring karst terrain.

12  
13 Section 9. [*Reclamation requirements.*]

14 (a) The operator of a horizontal well shall reclaim the land surface within the area disturbed  
15 in siting, drilling, completing or producing the well in accordance with the following requirements:

16 (1) Except as provided elsewhere in this article, within six months after a horizontal  
17 well is drilled and completed on a well pad designed for a single horizontal well, the operator shall  
18 fill all the pits and impoundments that are not required or allowed by state or federal law or rule or  
19 agreement between the operator and the surface owner that allows the impoundment to remain open  
20 for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this  
21 article) and remove all concrete bases, drilling supplies and drilling equipment: Provided, That  
22 impoundments or pits for which certificates have been approved pursuant to section nine of this  
23 article shall be reclaimed at a time and in a manner as provided in the applicable certificate and  
24 section nine. Within that six -month period, the operator shall grade or terrace and plant, seed or sod  
25 the area disturbed that is not required in production of the horizontal well in accordance with the  
26 erosion and sediment control plan. No pit may be used for the ultimate disposal of salt water. Salt  
27 water and oil shall be periodically drained or removed and properly disposed of from any pit that is  
28 retained so the pit is kept reasonably free of salt water and oil. Pits may not be left open  
29 permanently.

30 (2) For well pads designed to contain multiple horizontal wells, partial reclamation  
31 shall begin upon completion of the construction of the well pad. For purposes of this section, the  
32 term partial reclamation means grading or terracing and planting, or seeding the area disturbed that is  
33 not required in drilling, completing or producing any of the horizontal wells on the well pad in  
34 accordance with the erosion and sediment control plan. This partial reclamation satisfies the  
35 reclamation requirements of this section for a maximum of twenty-four months between the drilling  
36 of horizontal wells on a well pad designed to contain multiple horizontal wells, provided that the  
37 maximum aggregate period in which partial reclamation satisfies the reclamation requirements of  
38 this section is five years from completion of the construction of the well pad. Within six months after  
39 the completion of the final horizontal well on the pad or the expiration of the five-year maximum  
40 aggregate partial reclamation period, whichever occurs first, the operator shall complete final  
41 reclamation of the well pad as set forth in this subsection.

42 (3) Within six months after a horizontal well that has produced oil or gas is plugged  
43 or after the plugging of a dry hole, the operator shall remove all production and storage structures,  
44 supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within  
45 that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed  
46 where necessary to bind the soil and prevent substantial erosion and sedimentation.

1 (4) The operator shall reclaim the area of land disturbed in siting, drilling, completing  
2 or producing the horizontal well in accordance with the erosion and sediment control plans approved  
3 by the [secretary] or the [secretary]'s designee pursuant to this article.

4 (b) The [secretary], upon written application by an operator showing reasonable cause, may  
5 extend the period within which reclamation must be completed, but not to exceed a further six-  
6 month period. If the [secretary] refuses to approve a request for extension, the refusal shall be by  
7 order, which may be appealed pursuant to the provisions of subdivision twenty-three, subsection (a),  
8 section five of this article.

9  
10 Section 10. [*Plugging horizontal wells.*]

11 The [secretary] shall propose legislative rules for promulgation to govern the procedures for  
12 plugging horizontal wells, including rules relating to the methods of plugging the wells and the  
13 notices required to be provided in connection with plugging the wells.

14  
15 Section 11. [*Certificates required for large pits or impoundment construction; annual*  
16 *registration fees; application and terms; and other requirements.*]

17 (a) The Legislature finds that large impoundments and pits (i.e. impoundments or pits with a  
18 capacity of two hundred ten thousand gallons or more) not associated with a specific well work  
19 permit must be properly regulated and controlled. It is the intent of the Legislature by this section to  
20 provide for the regulation and supervision of large impoundments or pits not associated with a well  
21 work permit. This section does not apply to large pits or impoundments authorized under a well  
22 work permit.

23 (b) It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon  
24 any freshwater impoundment or pit with capacity of two hundred ten thousand gallons or more used  
25 in association with any horizontal well operation until he or she has first secured from the secretary a  
26 certificate of approval for the same: *Provided*, That routine repairs that do not affect the safety of the  
27 impoundment are not subject to the application and approval requirements. A separate application  
28 for a certificate of approval shall be submitted by a person for each impoundment he or she desires  
29 to place, construct, enlarge, alter, repair, remove or abandon, but one application may be valid for  
30 more than one impoundment that supports one or more well pads.

31 (c) The application fee for placement, construction, enlargement, alteration, repair or removal  
32 of an impoundment pursuant to this section is \$300, and the fee shall accompany the application for  
33 certificate of approval. Operators holding certificates of approval shall be assessed an annual  
34 registration fee of \$100, which is valid for more than one impoundment that supports one or more  
35 well pads.

36 (d) Any certificate of approval required by this section shall be issued or denied no later than  
37 sixty days from the submission of an application containing the information required by this section.  
38 However, if the application for a certificate of approval is submitted with the application for a  
39 horizontal well permit, the certificate shall be issued or denied no later than thirty days from the  
40 submission of the permit application.

41 (e) The initial term of a certificate of approval issued pursuant to this section is one year.  
42 Existing certificates of approval shall be extended for one year upon receipt of the annual  
43 registration fee, an inspection report, a monitoring and emergency action plan, and a maintenance  
44 plan: *Provided*, That where an approved, up-to-date inspection report, monitoring and emergency  
45 action plan, and maintenance plan are on file with the department, and where no outstanding  
46 violation of the requirements of the certificate of approval or any plan submitted pursuant to this  
47 article related to the impoundment exist, then the certificate of approval shall be extended without  
48 resubmission of the foregoing documents upon receipt of the annual registration fee.

1 (f) Every application for a certificate of approval shall be made in writing on a form  
2 prescribed by the secretary and shall be signed and verified by the applicant. The application shall  
3 include a monitoring and emergency action plan and a maintenance plan, the required contents of  
4 which shall be established by the secretary by legislative rule. The application shall contain and  
5 provide information that may reasonably be required by the secretary to administer the provisions of  
6 this article.

7 (g) Plans and specifications for the placement, construction, erosion and sediment control,  
8 enlargement, alteration, repair or removal and reclamation of impoundments shall be the charge of a  
9 registered professional engineer licensed to practice in [insert state]. Any plans or specifications  
10 submitted to the department shall bear the seal of a registered professional engineer.

11 (h) Each certificate of approval issued by the secretary pursuant to the provisions of this  
12 article may contain other terms and conditions the secretary prescribes.

13 (i) The secretary may revoke or suspend any certificate of approval whenever the secretary  
14 determines that the impoundment for which the certificate was issued constitutes an imminent  
15 danger to human life or property. If necessary to safeguard human life or property, the secretary may  
16 also amend the terms and conditions of any certificate by issuing a new certificate containing the  
17 revised terms and conditions.

18 (1) Before any certificate of approval is amended, suspended or revoked by the  
19 secretary without the consent of the operator holding the certificate, the secretary shall hold a  
20 hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

21 (2) Any person adversely affected by an order entered following this hearing has the  
22 right to appeal to the Environmental Quality Board pursuant to the provisions of [insert citation] of  
23 this code.

24 (j) Upon expiration of the certificate of approval, the operator shall within six months, or  
25 upon its revocation by the secretary, the operator shall within sixty days, fill all impoundments that  
26 are not required or allowed by state or federal law or rule or agreement between the operator and the  
27 surface owner allowing the impoundment to remain open for the use and benefit of the surface  
28 owner and reclaim the site in accordance with the approved erosion and sediment control plan.

29 (k) This section does not apply to:

30 (1) Farm ponds constructed by the operator with the written consent of the surface  
31 owner, which will be used after completion of the drilling activity primarily for agricultural  
32 purposes, including without limitation livestock watering, irrigation, retention of animal wastes and  
33 fish culture. Any impoundment that is intended to be left permanent as a farm pond under this  
34 subdivision shall meet the requirements set forth by the United States Department of Agriculture's  
35 Natural Resources Conservation Service "Conservation Practice Standard - Ponds" (Code 378).

36 (2) Farm ponds subject to certificates of approval under article fourteen of this  
37 chapter.

38 (l) The secretary is authorized to propose rules for legislative approval in accordance with the  
39 provisions of [insert citation], necessary to effectuate the provisions of this section.

40  
41 Section 12. *[Establishment of public website information and electronic notification registry*  
42 *regarding horizontal well permit applications.]*

43 (a) No later than ninety days after the effective date of this article, the [secretary] shall  
44 establish resources on the department's public website which will list searchable information related  
45 to all horizontal well applications filed in this state, including information sufficient to identify the  
46 county and approximate location of each horizontal well for which a permit application is filed, the  
47 referenced well application number, date of application, name of the applicant, and any written  
48 comments submitted by the public.

(b) The [secretary] shall also establish a registration and e-notification process by which individuals, corporations and agencies may register to receive electronic notice of horizontal well applications filings and notices, by county of interest. Once established, individuals, agencies and corporations interested who are properly registered to receive e-notices of filings and actions on horizontal well permits shall receive electronic notifications of applications and notices of permits issued for horizontal drilling in their designated county or counties of interest.

Section 13. [*Compensation of surface owners for drilling operations.*]

(a) The oil and gas developer is obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation, or to which access is prevented by the drilling operation, to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land and commences drilling operations until the date reclamation is completed;

(2) The market value of crops, including timber, destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the market value of the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all co-owners. The resolution of a claim for compensation provided in this article operates as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

(d) Nothing in [insert citation] or elsewhere in this article diminishes in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

(e) An oil and gas developer is entitled to offset compensation agreed to be paid or awarded to a surface owner under [insert citation] of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(f) An oil and gas developer is entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

Section 14. [*Compensation of surface owners for drilling operations; notification of claim.*]

Any surface owner, to receive compensation under this Act, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas



1 developer files notice that final reclamation is commencing under of this chapter. The notice of  
2 reclamation shall be given to surface owners by registered or certified mail, return receipt requested,  
3 and is complete upon mailing. If more than three tenants in common or other co-owners hold  
4 interests in the lands, the oil and gas developer may give the notice to the person described in the  
5 records of the sheriff required to be maintained pursuant to [insert citation] or publish in the county  
6 in which the well is located or to be located a Class II legal advertisement as described in [insert  
7 citation], containing the notice and information the [secretary] prescribes by rule.  
8

9 Section 15. [*Agreement; offer of settlement.*]

10 (a) Unless the parties provide otherwise by written agreement, within sixty days after the oil  
11 and gas developer received the notification of claim specified in this Act, the oil and gas developer  
12 shall either make an offer of settlement to the surface owner seeking compensation, or reject the  
13 claim. The surface owner may accept or reject any offer so made: Provided, That the oil and gas  
14 developer may make a final offer within seventy-five days after receiving the notification of claim  
15 specified in section five of this article.

16 (b) At least ten days prior to filing a permit application, an operator shall, by certified mail  
17 return receipt requested or hand delivery, give the surface owner notice of its intent to enter upon the  
18 surface owner's land for the purpose of drilling a horizontal well: Provided, That notice given  
19 pursuant to [insert citation] of this article satisfies the requirements of this subsection as of the date  
20 the notice was provided to the surface owner: Provided, however, That the notice requirements of  
21 this subsection may be waived in writing by the surface owner. The notice, if required, shall include  
22 the name, address, telephone number, and if available, facsimile number and electronic mail address  
23 of the operator and the operator's authorized representative.

24 (c) No later than the date for filing the permit application, an operator shall, by certified mail  
25 return receipt requested or hand delivery, give the surface owner whose land will be used for the  
26 drilling of a horizontal well notice of the planned operation. The notice required by this subsection  
27 shall include:

28 (1) A copy of this code section;

29 (2) The information required to be provided by subsection (b), section ten of this  
30 article to a surface owner whose land will be used in conjunction with the drilling of a horizontal  
31 well; and

32 (3) A proposed surface use and compensation agreement containing an offer of  
33 compensation for damages to the surface affected by oil and gas operations to the extent the damages  
34 are compensable under article six-b of this chapter.

35 (d) The notices required by this section shall be given to the surface owner at the address  
36 listed in the records of the sheriff at the time of notice.  
37

38 Section 16. [*Rejection; legal action; arbitration; fees and costs.*]

39 (a) (1) Unless the oil and gas developer has paid the surface owner a negotiated settlement of  
40 compensation within seventy-five days after the date the notification of claim was mailed under  
41 [insert citation] of this article, the surface owner may, within eighty days after the notification mail  
42 date, either:

43 (i) Bring an action for compensation in the circuit court of the county in which the  
44 well is located; or

45 (ii) elect instead, by written notice delivered by personal service or by certified mail,  
46 return receipt requested, to the designated agent named by the oil and gas developer under the  
47 provisions of [insert citation], to have his, her or its compensation finally determined by binding  
48 arbitration pursuant to [insert citation].



1 (2) Settlement negotiations, offers and counter-offers between the surface owner and  
2 the oil and gas developer are not admissible as evidence in any arbitration or judiciary proceeding  
3 authorized under this article, or in any proceeding resulting from the assertion of common law  
4 remedies.

5 (b) The compensation to be awarded to the surface owner shall be determined by a panel of  
6 three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party's  
7 notice of election under this section to the oil and gas developer; the second arbitrator shall be  
8 chosen by the oil and gas developer within ten days after receipt of the notice of election; and the  
9 third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If  
10 they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall  
11 immediately submit the matter to the court under the provisions of [insert citation], so that, among  
12 other things, the third arbitrator can be chosen by the judge of the circuit court of the county in  
13 which the surface estate lies.

14 (c) The following persons are considered interested and may not be appointed as arbitrators:  
15 Any person who is personally interested in the land on which horizontal drilling is being performed  
16 or has been performed, or in any interest or right therein, or in the compensation and any damages to  
17 be awarded therefor, or who is related by blood or marriage to any person having such personal  
18 interest, or who stands in the relation of guardian and ward, master and servant, principal and agent,  
19 or partner, real estate broker, or surety to any person having such personal interest, or who has  
20 enmity against or bias in favor of any person who has such personal interest or who is the owner of,  
21 or interested in, the land or the oil and gas development of the land. A person is not considered  
22 interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district  
23 or municipal corporation in which the land is located, or holding an interest in any other land therein.

24 (d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits  
25 necessary to determine the amount of compensation to be paid to the surface owner. However, no  
26 award of compensation may be made to the surface owner unless the panel of arbitrators has first  
27 viewed the surface estate in question. A transcript of the evidence may be made but is not required.

28 (e) Each party shall pay the compensation of the party's arbitrator and one half of the  
29 compensation of the third arbitrator, or each party's own court costs as the case may be.  
30

31 Section 17. [*Application of article.*]

32 The remedies provided by this article do not preclude any person from seeking other  
33 remedies allowed by law.  
34

35 Section 18. [*Reimbursement of property taxes of encumbered properties.*]

36 In addition to any compensation owed by the operator to the surface owner pursuant to the  
37 provisions of article six-b of this chapter, the operator shall pay the surface owner a one-time  
38 payment of \$2,500 to compensate for payment of real property taxes for surface lands and  
39 surrounding lands that are encumbered or disturbed by construction or operation of the horizontal  
40 well pad regardless of how many wells are drilled on a single pad or how many permits are issued  
41 for the pad.  
42

43 Section 19. [*Civil action for contamination or deprivation of fresh water source or supply;*  
44 *presumption; water rights and replacement; waiver of replacement.*]

45 (a) Nothing in this article affects in any way the rights of any person to enforce or protect,  
46 under applicable law, the person's interest in water resources affected by an oil or gas operation.

47 (b) Unless rebutted by one of the defenses established in subsection (c) of this section, in any  
48 action for contamination or deprivation of a fresh water source or supply within one thousand five  
49 hundred feet of the center of the well pad for horizontal well, there is a rebuttable presumption that

1 the drilling and the oil or gas well or either was the proximate cause of the contamination or  
2 deprivation of the fresh water source or supply.

3 (c) In order to rebut the presumption of liability established in subsection (b) of this section,  
4 the operator must prove by a preponderance of the evidence one of the following defenses:

5 (1) The pollution existed prior to the drilling or alteration activity as determined by  
6 a predrilling or pre-alteration water well test.

7 (2) The landowner or water purveyor refused to allow the operator access to the  
8 property to conduct a predrilling or pre-alteration water well test.

9 (3) The water supply is not within one thousand five hundred feet of the well.

10 (4) The pollution occurred more than six months after completion of drilling or  
11 alteration activities.

12 (5) The pollution occurred as the result of some cause other than the drilling or  
13 alteration activity.

14 (d) Any operator electing to preserve its defenses under subdivision (1), subsection (c) of this  
15 section shall retain the services of an independent certified laboratory to conduct the predrilling or  
16 pre-alteration water well test. A copy of the results of the test shall be submitted to the department  
17 and the surface owner or water purveyor in a manner prescribed by the [secretary].

18 (e) Any operator shall replace the water supply of an owner of interest in real property who  
19 obtains all or part of that owner's supply of water for domestic, agricultural, industrial or other  
20 legitimate use from an underground or surface source with a comparable water supply where the  
21 [secretary] determines that the water supply has been affected by contamination, diminution or  
22 interruption proximately caused by the oil or gas operation, unless waived in writing by that owner.

23 (f) The [secretary] may order the operator conducting the oil or gas operation to:

24 (1) Provide an emergency drinking water supply within twenty-four hours;

25 (2) Provide temporary water supply within seventy-two hours;

26 (3) Within thirty days begin activities to establish a permanent water supply or submit  
27 a proposal to the [secretary] outlining the measures and timetables to be used in establishing a  
28 permanent supply. The total time in providing a permanent water supply may not exceed two years.  
29 If the operator demonstrates that providing a permanent replacement water supply cannot be  
30 completed within two years, the [secretary] may extend the time frame on case-by-case basis; and

31 (4) Pay all reasonable costs incurred by the real property owner in securing a water  
32 supply.

33 (g) A person as described in subsection (b) of this section aggrieved under the provisions of  
34 subsections (b), (e) or (f) of this section may seek relief in court.

35 (h) The [secretary] shall propose rules for legislative approval in accordance with the  
36 provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this  
37 section.

38 (i) Notwithstanding the denial of the operator of responsibility for the damage to the real  
39 property owner's water supply or the status of any appeal on determination of liability for the  
40 damage to the real property owner's water supply, the operator may not discontinue providing the  
41 required water service until authorized to do so by the [secretary] or a court of competent  
42 jurisdiction.

#### 43 Section 20. *[Air quality study and rulemaking.]*

44 The [secretary] shall, by [insert date], report to the Legislature on the need, if any, for further  
45 regulation of air pollution occurring from well sites, including the possible health impacts, the need  
46 for air quality inspections during drilling, the need for inspections of compressors, pits and  
47 impoundments, and any other potential air quality impacts that could be generated from this type of  
48

drilling activity that could harm human health or the environment. If he or she finds that specialized permit conditions are necessary, the [secretary] shall promulgate legislative rules establishing these new requirements.

Section 21. *[Report to legislature.]*

To assist in maximizing the economic opportunities available with horizontal drilling, the [council] established under the Act shall make a report to the [Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability] on or before [November 1 of each year through 2016], detailing a comprehensive review of the direct and indirect economic impact of employers engaged in the production of horizontal wells in this state, which shall include:

- (A) The total number of jobs created;
- (B) The total payroll of all jobs created;
- (C) The average salary per job type;
- (D) The number of employees domiciled in this state;
- (E) An estimate of the total economic impact;
- (F) The council's recommendations for the establishment of an overall workforce investment public education agenda with goals and benchmarks toward maximizing job creation opportunities in the state;
- (G) A review of number of jobs created for minorities based on race, ethnicity and gender;
- (H) A review of number of jobs created for individuals re-employed from the state's unemployment rosters;
- (I) A review of number of jobs created for returning veterans; and
- (J) A review of number of jobs created for legal residents and non-state residents.
- (K) To the extent permitted by federal law, and to the extent necessary for the [council] to comply with this section, the council, the Division of Labor, House and the Office of the Insurance Commissioner may enter into agreements providing for the sharing of job data and related information.

Section 22. *[Impoundment and pit safety study; rulemaking.]*

The [secretary] shall, by [insert date], report to the Legislature on the safety of pits and impoundments utilized pursuant to section nine of this article including an evaluation of whether testing and special regulatory provision is needed for radioactivity or other toxins held in the pits and impoundments. Upon a finding that greater monitoring, safety and design requirements or other specialized permit conditions are necessary, the [secretary] shall propose for promulgation legislative rules establishing these new requirements.

Section 23. *[Offenses; civil and criminal penalties.]*

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated under this article or any permit issued pursuant to this article is subject to a civil penalty not exceeding \$5,000. Each day a violation continues after notice by the department constitutes a separate offense. The penalty shall be recovered by a civil action brought by the department, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All the civil penalties collected shall be credited to the General Fund of the state.

(b) Notwithstanding the provisions of subsection (a) and (c) of this section, any person, firm, partnership, partnership association or corporation who willfully disposes of waste fluids, drill cuttings or any other liquid substance generated in the development of a horizontal well in violation

1 of this article or any rule or order promulgated under this article or in violation of any other state or  
2 federal statutes, rules or regulations, and which disposal was found to have had a significant adverse  
3 environmental impact on surface or groundwater by the [secretary], is subject to a civil penalty not  
4 exceeding \$100,000. The penalty shall be recovered by a civil action brought by the department, in  
5 the name of the state, before the circuit court of the county in which the subject well or facility is  
6 located. All the civil penalties collected shall be credited to the General Fund of the state.

7 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, any person or  
8 persons, firm, partnership, partnership association or corporation willfully violating any of the  
9 provisions of this article which prescribe the manner of drilling and casing or plugging and filling  
10 any well or which prescribe the methods of conserving gas from waste, shall be guilty of a  
11 misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding five thousand  
12 dollars, or imprisonment in jail not exceeding twelve months, or both, in the discretion of the court,  
13 and prosecution under this section may be brought in the name of the [insert state] in the court  
14 exercising criminal jurisdiction in the county in which the violation of such provisions of the article  
15 or terms of such order was committed, and at the instance and upon the relation of any citizens of  
16 this state.

17 (d) Any person who intentionally misrepresents any material fact in an application, record,  
18 report, plan or other document filed or required to be maintained under the provisions of this article  
19 or any rules promulgated by the [secretary] under this article shall be fined not less than \$1,000 nor  
20 more than \$10,000.

# Licensure by Endorsement/Military/Spouses

This Act allows military-trained applicants who have been awarded a military occupational specialty and military-spouse applicants who are licensed in another jurisdiction to receive certain occupational licenses in this state. The applicants must meet requirements, either in the military or in another jurisdiction, that are substantially equivalent to or exceed this state's requirements for licensure. The Act generally requires state occupational licensing boards to issue occupational licenses to military-trained applicants and military-spouse applicants who meet this state's statutory requirements. The Act authorizes licensing boards in the state to issue temporary practice permits to such applicants until a license is granted or a notice to deny a license is issued.

Submitted as:

North Carolina

[SESSION LAW 2012-196](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act to allow licensure by endorsement for military personnel and  
2           military spouses.

3  
4           Section 2. [*Licensure for individuals with military training and experience; licensure by*  
5           *endorsement for military spouses; temporary license.*]

6           (a) Notwithstanding any other provision of law, an occupational licensing board, as defined  
7           in [insert citation], shall issue a license, certification, or registration to a military-trained applicant to  
8           allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to  
9           an occupational licensing board, the applicant satisfies the following conditions:

10           (1) Has been awarded a military occupational specialty and has done all of the  
11           following at a level that is substantially equivalent to or exceeds the requirements for licensure,  
12           certification, or registration of the occupational licensing board from which the applicant is seeking  
13           licensure, certification, or registration in this State: completed a military program of training,  
14           completed testing or equivalent training and experience as determined by the board, and performed  
15           in the occupational specialty.

16           (2) Has engaged in the active practice of the occupation for which the person is  
17           seeking a license, certification, or permit from the occupational licensing board in this State for at  
18           least two of the five years preceding the date of the application under this section.

19           (3) Has not committed any act in any jurisdiction that would have constituted grounds  
20           for refusal, suspension, or revocation of a license to practice that occupation in this State at the time  
21           the act was committed.

22           (4) Pays any fees required by the occupational licensing board for which the applicant  
23           is seeking licensure, certification, or registration in this State.

24           (b) Notwithstanding any other provision of law, an occupational licensing board, as defined  
25           in [insert citation], shall issue a license, certification, or registration to a military spouse to allow the  
26           military spouse to lawfully practice the military spouse's occupation in this State if, upon application  
27           to an occupational licensing board, the military spouse satisfies the following conditions:

1 (1) Holds a current license, certification, or registration from another jurisdiction, and  
2 that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent  
3 to or exceed the requirements for licensure, certification, or registration of the occupational licensing  
4 board for which the applicant is seeking licensure, certification, or registration in this State.

5 (2) Can demonstrate competency in the occupation through methods as determined by  
6 the Board, such as having completed continuing education units or having had recent experience for  
7 at least two of the five years preceding the date of the application under this section.

8 (3) Has not committed any act in any jurisdiction that would have constituted grounds  
9 for refusal, suspension, or revocation of a license to practice that occupation in this State at the time  
10 the act was committed.

11 (4) Is in good standing and has not been disciplined by the agency that had  
12 jurisdiction to issue the license, certification, or permit.

13 (5) Pays any fees required by the occupational licensing board for which the applicant  
14 is seeking licensure, certification, or registration in this State.

15 (c) All relevant experience of a military service member in the discharge of official duties or,  
16 for a military spouse, all relevant experience, including full-time and part-time experience,  
17 regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of  
18 practice in an occupation as required under subsection (a) or (b) of this section.

19 (d) A nonresident licensed, certified, or registered under this section shall be entitled to the  
20 same rights and subject to the same obligations as required of a resident licensed, certified, or  
21 registered by an occupational licensing board in this State.

22 (e) Nothing in this section shall be construed to apply to the practice of law as regulated  
23 under [insert citation].

24 (f) An occupational licensing board may issue a temporary practice permit to a military-  
25 trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the  
26 military-trained applicant or military spouse is satisfying the requirements for licensure under  
27 subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration  
28 standards substantially equivalent to the standards for licensure, certification, or registration of an  
29 occupational licensing board in this State. The military-trained applicant or military spouse may  
30 practice under the temporary permit until a license, certification, or registration is granted or until a  
31 notice to deny a license, certification, or registration is issued in accordance with rules adopted by  
32 the occupational licensing board.

33 (g) An occupational licensing board may adopt rules necessary to implement this section.

34 (h) Nothing in this section shall be construed to prohibit a military-trained applicant or  
35 military spouse from proceeding under the existing licensure, certification, or registration  
36 requirements established by an occupational licensing board in this State.

37 (i) For the purposes of this section, the State Board of Education shall be considered an  
38 occupational licensing board when issuing teacher licenses under [insert citation].

39 (j) For the purposes of this section, the [insert state] Medical Board shall not be considered  
40 an occupational licensing board.”

41  
42 Section 3. *[Study by the Legislative Research Commission.]*

43 The Legislative Research Commission shall study the issue of allowing licensure by the  
44 [insert state] Medical Board for individuals with military training and experience, for military  
45 spouses by endorsement, and for temporary licenses for military-trained applicants or military-  
46 spouse applicants. The Commission shall make a report on this issue, including any  
47 recommendations or legislative proposals, to the [insert year] Regular Session of the General  
48 Assembly upon its convening.



- 1       Section 4. [*Severability.*] Insert severability clause.
- 2
- 3       Section. 5 [*Repealer.*] Insert repealer clause.
- 4
- 5       Section 6. [*Effective Date.*] Insert effective date.

# Medicaid Accountable Care Organization Demonstration Project

This Act establishes a three-year Medicaid Accountable Care Organization (ACO) Demonstration Project (demonstration project) in the Department of Human Services (DHS).

Under the Act, participants in the demonstration project are to be nonprofit corporations organized and operated for the primary purpose of improving health outcomes and the quality and efficiency of care provided to Medicaid fee-for-service recipients residing in a “designated area” (defined as a municipality or defined geographic area in which no fewer than 5,000 Medicaid recipients reside). The bill also permits voluntary participation in the demonstration project by Medicaid managed care organizations for the membership they serve.

A certified Medicaid ACO is eligible to receive and distribute gainsharing or cost savings payments in accordance with a gainsharing plan approved by DHS. DHS, with input from the Department of Health and Human Services, is to approve only those gainsharing plans that promote: improvements in health outcomes and quality of care, as measured by objective benchmarks as well as patient experience of care; expanded access to primary and behavioral health care services; and the reduction of unnecessary and inefficient costs associated with care rendered to Medicaid recipients residing in the designated area of the ACO. (An ACO may request approval of its gainsharing plan at the time of certification or at any time within one year of certification, and may seek to amend its gainsharing plan by submitting amendments to DHS for approval.)

The demonstration project is to allow nonprofit corporations, organized with the voluntary support and participation of local general hospitals, clinics, health centers, qualified primary care and behavioral health care providers, and public health and social services agencies, to apply for certification and participation in the project.

Submitted as:

New Jersey

[Chapter 114 of 2011](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Medicaid Accountable Care  
2 Organization Demonstration Project Act.”

3  
4           Section 2. [*Findings.*] Insert findings clause.

5  
6           Section 3. [*Definitions relative to a Medicaid Accountable Care Organization.*]

7           As used in this act:

- 8           1. "ACO" means an accountable care organization.  
9           2. "Behavioral health care provider" means a provider licensed or approved by the Department  
10          of Human Services to render services to [insert state] residents.  
11          3. "Department" means the Department of Human Services.  
12          4. "Designated area" means a municipality or defined geographic area in which no fewer than  
13          5,000 Medicaid recipients reside.

- 1 5. "Disproportionate share hospital" means a hospital designated by the Commissioner of  
2 Human Services pursuant to [insert citation].
- 3 6. "Medicaid" means the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1  
4 et seq.).
- 5 7. "Medicaid ACO Demonstration Project" or "demonstration project" means the demonstration  
6 project established pursuant to this act.
- 7 8. "Primary care provider" includes the following licensed individuals: physicians, physician  
8 assistants, advanced practice nurses, and nurse midwives whose professional practice  
9 involves the provision of primary care, including internal medicine, family medicine,  
10 geriatric care, pediatric care, or obstetrical/gynecological care.
- 11 9. "Qualified behavioral health care provider" means a behavioral health care provider who  
12 participates in the Medicaid program and renders clinic-based and home-based services to  
13 individuals residing in the designated area served by the Medicaid ACO.
- 14 10. "Qualified primary care provider" means a primary care provider who participates in the  
15 Medicaid program and who spends at least 25% of his professional time or 10 hours per  
16 seven-day week, whichever is less, rendering clinical or clinical supervision services at an  
17 office or clinic setting located within the designated area served by a Medicaid ACO.  
18

19 Section 3. [*Establishment of three-year Medicaid ACO Demonstration Project.*]

20 A. The Department of Human Services shall establish a three-year Medicaid ACO  
21 Demonstration Project in which nonprofit corporations organized with the voluntary support and  
22 participation of local general hospitals, clinics, pharmacies, health centers, qualified primary care  
23 and behavioral health care providers, and public health and social services agencies may apply to the  
24 department for certification and participation in the project. The department shall consult with the  
25 Department of Health and Senior Services with respect to establishment and oversight of the  
26 demonstration project.

27 Nothing in this act shall preclude the department, Medicaid managed care organizations,  
28 qualified primary care and behavioral health care providers, licensed health care facilities, or any  
29 other provider or payer of health care services from participating in other ACOs, health or behavioral  
30 health ACO models, medical home programs, or projects.

31 B. Applicants for participation in the demonstration project shall be nonprofit corporations  
32 created and operated for the primary purpose of improving the quality and efficiency of care  
33 provided to Medicaid recipients residing in a given designated area.  
34

35 Section 4. [*Applications for certification as a Medicaid ACO.*]

36 A. The department shall accept applications for certification from demonstration project  
37 applicants beginning 60 days following the effective date of this act, and shall certify an applicant as  
38 a Medicaid ACO for participation in the demonstration project following its determination that the  
39 applicant meets the requirements specified in this section. The department may deny certification of  
40 any ACO applicant that the department determines does not meet the requirements of this act. The  
41 department may consider applications for approval, including revised applications submitted by an  
42 ACO not previously approved to participate in the demonstration project.

43 B. The department, in consultation with the Department of Health and Senior Services, may  
44 certify as many ACOs for participation in the demonstration project as it determines appropriate, but  
45 shall certify no more than one ACO for each designated area.

46 C. Prior to certification, a demonstration project applicant shall demonstrate that it meets  
47 the following minimum standards:

48 (1) The applicant has been formed as a nonprofit corporation pursuant to [insert  
49 citation], for the purposes described in this Act;

1 (2) The applicant's governing board includes:

2 (a) individuals representing the interests of: health care providers, including,  
3 but not limited to, general hospitals, clinics, private practice offices, physicians, behavioral health  
4 care providers, and dentists; patients; and other social service agencies or organizations  
5 located in the designated area; and

6 (b) voting representation from at least two consumer organizations capable of  
7 advocating on behalf of patients residing within the designated area of the ACO. At least one of the  
8 organizations shall have extensive leadership involvement by individuals residing within the  
9 designated area of the ACO, and shall have a physical location within the designated area.

10 Additionally, at least one of the individuals representing a consumer organization shall be an  
11 individual who resides within the designated area served by the ACO;

12 (3) The applicant has support of its application by: all of the general hospitals located  
13 in the designated area served by the ACO; no fewer than 75% of the qualified primary care providers  
14 located in the designated area; and at least four qualified behavioral health care providers located in  
15 the designated area;

16 (4) The applicant has a process for receipt of gainsharing payments from the  
17 department and any voluntarily participating Medicaid managed care organizations, and the  
18 subsequent distribution of such gainsharing payments in accordance with a quality improvement and  
19 gainsharing plan to be approved by the department, in consultation with the Department of  
20 Health and Senior Services;

21 (5) The applicant has a process for engaging members of the community and for  
22 receiving public comments with respect to its gainsharing plan;

23 (6) The applicant has a commitment to become accountable for the health outcomes,  
24 quality, cost, and access to care of Medicaid recipients residing in the designated area for a period of  
25 at least three years following certification; and

26 (7) The applicant has a commitment to ensure the use of electronic prescribing and  
27 electronic medical records by health care providers located in the designated area.

28 D. Nothing in this act shall be construed to prevent the department from certifying an  
29 applicant as a Medicaid ACO that also participates in a Medicare ACO demonstration project  
30 approved by the federal Centers for Medicare and Medicaid Services.

31  
32 Section 5. *[Eligibility to receive, distribute gainsharing payments.]*

33 A. A certified Medicaid ACO shall be eligible to receive and distribute gainsharing payments  
34 only after having received approval from the department of its gainsharing plan, which approval may  
35 be requested by the ACO at the time of certification or at any time within one year of certification.  
36 An ACO may seek to amend its gainsharing plan at any time following the plan's initial approval by  
37 submitting amendments to the department for approval.

38 B. The department, with input from the Department of Health and Senior Services and  
39 utilizing outcome evaluation data provided by the Rutgers Center for State Health Policy, shall  
40 approve only those gainsharing plans that promote: improvements in health outcomes and quality of  
41 care, as measured by objective benchmarks as well as patient experience of care; expanded access to  
42 primary and behavioral health care services; and the reduction of unnecessary and inefficient costs  
43 associated with care rendered to Medicaid recipients residing in the ACO's designated area. The  
44 department and the Department of Health and Senior Services shall provide all data necessary for  
45 analysis in support of the department's review of gainsharing plans. Criteria to be considered by the  
46 department and the Department of Health and Senior Services in approving a gainsharing plan shall  
47 include, but are not limited to:

(1) whether the plan promotes: care coordination through multi-disciplinary teams, including care coordination of patients with chronic diseases and the elderly; expansion of the medical home and chronic care models; increased patient medication adherence and use of medication therapy management services; use of health information technology and sharing of health information; and use of open access scheduling in clinical and behavioral health care settings;

(2) whether the plan encourages services such as patient or family health education and health promotion, home-based services, telephonic communication, group care, and culturally and linguistically appropriate care;

(3) whether the gainsharing payment system is structured to reward quality and improved patient outcomes and experience of care;

(4) whether the plan funds interdisciplinary collaboration between behavioral health and primary care providers for patients with complex care needs likely to inappropriately access an emergency department and general hospital for preventable conditions;

(5) whether the plan funds improved access to dental services for high-risk patients likely to inappropriately access an emergency department and general hospital for untreated dental conditions; and

(6) whether the plan has been developed with community input and will be made available for inspection by members of the community served by the ACO.

C. The gainsharing plan shall include an appropriate proposed time period beginning and ending on specified dates prior to the commencement of the demonstration project, which shall be the benchmark period against which cost savings can be measured on an annual basis going forward. Savings shall be calculated in accordance with a methodology that:

(1) identifies expenditures per recipient by the Medicaid fee-for-service program during the benchmark period, adjusted for characteristics of recipients and local conditions that predict future Medicaid spending but are not amenable to the care coordination or management activities of an ACO which shall serve as the benchmark payment calculation;

(2) compares the benchmark payment calculation to amounts paid by the Medicaid fee-for-service program for all such resident recipients during subsequent periods; and

(3) provides that the benchmark payment calculation shall remain fixed for a period of three years following approval of the gainsharing plan.

D. The percentage of cost savings identified pursuant to subsection c. of this section to be distributed to the ACO, retained by any voluntarily participating Medicaid managed care organization, and retained by the State, shall be identified in the gainsharing plan and shall remain in effect for a period of three years following approval of the gainsharing plan. Such percentages shall be designed to ensure that:

(1) the State can achieve meaningful savings and support the ongoing operation of the demonstration project, and

(2) the ACO receives a sufficient portion of the shared savings necessary to achieve its mission and expand its scope of activities.

E. Notwithstanding the provisions of this section to the contrary, the department shall not approve a gainsharing plan that provides direct or indirect financial incentives for the reduction or limitation of medically necessary and appropriate items or services provided to patients under a health care provider's clinical care in violation of federal law.

F. Notwithstanding the provisions of this section to the contrary, a gainsharing plan that provides for shared savings between general hospitals and physicians related to acute care admissions utilizing the methodological component of the Physician-Hospital Collaboration Demonstration awarded by the federal Centers for Medicare and Medicaid, shall not be required to be approved by the department. The department shall not be under any obligation to participate in the Physician-Hospital Collaboration Demonstration.

1 G. The department shall consider using a portion of any savings generated to expand the  
2 nursing, primary care, behavioral health care, and dental workforces and services in the area served  
3 by the ACO.

4 H. A gainsharing plan submitted to the department for this ACO demonstration project shall  
5 contain an assessment of the expected impact of revenues on hospitals that agree to participate. The  
6 assessment shall include estimates for changes in both direct patient care reimbursement and indirect  
7 revenue, such as disproportionate share payments, graduate medical education payments, and other  
8 similar payments. The assessment shall include a review of whether participation in the  
9 demonstration project could significantly impact the financial stability of any hospital through rapid  
10 reductions in revenue and how this impact will be mitigated. The gainsharing plan shall include a  
11 letter of support from all participating hospitals in order to be accepted by the department.

12  
13 Section 6. [*Remission of payment to ACO.*]

14 The department shall remit payment of cost savings to a participating Medicaid ACO  
15 following approval by the department, in consultation with the Department of Health and Senior  
16 Services, of the ACO's gainsharing plan and identification of cost savings and agreement from the  
17 federal government to share in the cost of the funds distributed.

18  
19 Section 7 [*Voluntary participation in demonstration project.*]

20 A. A managed care organization that has contracted with the department may voluntarily  
21 seek participation in the demonstration project by notifying the Medicaid ACO of its desire to  
22 participate. The ACO shall submit a separate Medicaid managed care organization gainsharing plan  
23 meeting the requirements of section 5 of this Act to the department for review and approval. The  
24 Medicaid managed care organization gainsharing plan may be identical to the gainsharing plan  
25 approved for use in connection with the Medicaid fee-for-service program, or may contain variations  
26 with respect to the manner in which health outcomes, quality, care coordination, and access are to be  
27 improved and the manner in which cost savings are achieved and distributed as gainsharing  
28 payments, but the managed care organization gainsharing plan shall not affect the calculation or  
29 distribution of shared savings pursuant to the approved gainsharing plan applicable to the Medicaid  
30 fee-for-service program or the calculation or distribution of shared savings pursuant to any other  
31 approved gainsharing plan used by the ACO.

32 B. A Medicaid managed care organization may withdraw from participation after one  
33 year by notifying the department in writing of its desire to withdraw.

34 C. Nothing in this act shall:

35 (1) alter or limit the obligations of a Medicaid managed care organization  
36 participating in the demonstration project pursuant to an approved gainsharing plan to comply with  
37 State and federal law applicable to the Medicaid managed care organization; or

38 (2) preclude an ACO from expanding its operations to include participation with new  
39 health care providers located within the ACO's designated area.

40  
41 Section 8. [*Duties of the department; authorization to seek grants.*]

42 A. The department, in consultation with the Department of Health and Senior Services,  
43 shall:

44 (1) design and implement the application process for approval of participating ACOs  
45 in the demonstration project;

46 (2) collect data from participants in the demonstration project; and



(3) approve a methodology proposed by the Medicaid ACO applicant for calculation of cost savings and for monitoring of health outcomes and quality of care under the demonstration project.

B. The department and the Department of Health and Senior Services shall be authorized to jointly seek public and private grants to implement and operate the demonstration project.

Section 9. [*Annual evaluation.*]

The department, in consultation with the Department of Health and Senior Services, shall evaluate the demonstration project annually to assess whether: cost savings, including, but not limited to, savings in administrative costs and savings due to improved health outcomes, are achieved through implementation of the demonstration project. The department, in consultation with the Department of Health and Senior Services, shall evaluate the demonstration project annually to assess whether there is improvement in the rates of health screening, the outcomes and hospitalization rates for persons with chronic illnesses, and the hospitalization and readmission rates for patients residing in the designated areas served by the ACOs.

Section 10. [*Application for State plan amendments, waivers.*]

A. The Commissioner of Human Services shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this act and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program, and shall take such additional steps as may be necessary to secure on behalf of participating ACOs such waivers, exemptions, or advisory opinions to ensure that such ACOs are in compliance with applicable provisions of State and federal laws related to fraud and abuse, including, but not limited to, anti-kickback, self-referral, false claims, and civil monetary penalties.

B. The Commissioners of Health and Senior Services and Human Services may apply for participation in federal ACO demonstration projects that align with the goals of this Act.

C. The provisions of this act shall not be construed to require State funding for any evaluation or start-up costs of an ACO.

Section 11. [*Construction of Act*].

Nothing in this Act shall be construed to limit the choice of a Medicaid recipient to access care for family planning services or any other type of health care services from a qualified health care provider who is not participating in the demonstration project.

Section 12. [*Continuation of payments for certain services.*]

A. Under the demonstration project, payment shall continue to be made to providers of services and suppliers participating in the Medicaid ACO for services provided to managed care recipients or individuals who receive services on a fee-for-service basis in the same manner as they would otherwise be made, except that the ACO is eligible to receive gainsharing payments under sections 5 and 6 of this act if it meets the requirements set forth therein.

B. Nothing in this act shall be construed to authorize the Departments of Human Services or Health and Senior Services to waive or limit any provisions of federal or State law or reimbursement methodologies governing Medicaid reimbursement to federally qualified health centers, including, but not limited to, Medicaid prospective payment reimbursement and any supplemental payments made to a federally qualified health center providing services to Medicaid managed care recipients.

Section 13. [*Certain licensure requirements waived.*]

Notwithstanding the requirements of [insert citation] a Medicaid ACO certified pursuant to this Act shall not be required to obtain licensure or certification from the Department of Banking and Insurance as an organized delivery system when providing services to Medicaid recipients.

1           Section 14. [*Report to Governor, Legislature.*]

2           Upon completion of the demonstration project, the Commissioners of Human Services and  
3 Health and Senior Services shall report to the Governor, and to the Legislature pursuant to [insert  
4 citation], on the demonstration project, and include in the report the findings of the evaluation  
5 carried out pursuant to section 9 of this Act. The commissioners shall make such recommendations  
6 as they deem appropriate. If, after three years following enactment of this act, the commissioners  
7 find the demonstration project was successful in reducing costs and improving health outcomes and  
8 the quality of care for Medicaid recipients, the commissioners may recommend that Medicaid ACOs  
9 be established on a permanent basis and in additional communities in which Medicaid recipients  
10 reside.

11  
12           Section 15. [*Rules, regulations.*]

13           The Commissioner of Human Services, in accordance with the "Administrative Procedure  
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and with input from the Commissioner of Health and  
15 Senior Services, shall, within 180 days of the effective date of this Act, adopt rules and regulations  
16 establishing the standards for gainsharing plans submitted by Medicaid ACOs. The Commissioner of  
17 Human Services shall also adopt, with input from the Commissioner of Health and Senior Services,  
18 such rules and regulations governing the ongoing oversight and monitoring of the quality of care  
19 delivered to Medicaid recipients in the designated areas served by the Medicaid ACOs, and such  
20 other requirements as the Commissioner of Human Services deems necessary to carry out the  
21 provisions of this Act.

22  
23           Section 16. [*Severability.*] Insert severability clause.

24  
25           Section 17. [*Repealer.*] Insert repealer clause.

26  
27           Section 18. [*Effective Date.*] Insert effective date.

# Medical Emergency Response Plans for Schools

This Act requires schools and charter schools to have a written medical emergency response plan to reduce the incidence of life-threatening emergencies and promote efficient responses to such emergencies. Each plan shall include:

- a method for establishing a rapid communication system linking all parts of the school campus, including outdoor facilities and practice fields, to the emergency medical services system and protocols to clarify when the emergency medical services system and other emergency contact people shall be called;
- a determination of emergency medical service response time to any location on campus;
- a list of relevant contacts and telephone numbers with a protocol indicating when each 19 person shall be called, including names of experts to help with post-event support;
- a method to efficiently direct emergency medical services personnel to any location on campus, including to the location of available rescue equipment;
- safety precautions to prevent injuries in classrooms and on the facilities;
- a method of providing access to training in cardiopulmonary resuscitation and first aid for teachers, athletic coaches and trainers and other school staff, which may include training high school students in cardiopulmonary resuscitation; and
- in the event the school possesses an automated external defibrillator, the location of said device, whether or not its location is either fixed or portable, and those personnel who are trained in its use.

Submitted as:

Massachusetts

[SB 2132](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relative to medical emergency response plans for schools.

2  
3           Section 2. [*Requirements.*]

4  
5           (a) Each school committee and commonwealth charter school board of trustees shall ensure  
6 that every school under its jurisdiction has a written medical emergency response plan to reduce the  
7 incidence of life-threatening emergencies and promote efficient responses to such emergencies. The  
8 plan shall be in addition to the multi-hazard evacuation plan required by [insert citation]. Each plan  
9 shall include:

10                   (1) a method for establishing a rapid communication system linking all parts of the  
11 school campus, including outdoor facilities and practice fields, to the emergency medical services  
12 system and protocols to clarify when the emergency medical services system and other emergency  
13 contact people shall be called;

14                   (2) a determination of emergency medical service response time to any location on  
15 campus;

16                   (3) a list of relevant contacts and telephone numbers with a protocol indicating when  
17 each person shall be called, including names of experts to help with post-event support;

1 (4) a method to efficiently direct emergency medical services personnel to any  
2 location on campus, including to the location of available rescue equipment;

3 (5) safety precautions to prevent injuries in classrooms and on the facilities;

4 (6) a method of providing access to training in cardiopulmonary resuscitation and first  
5 aid for teachers, athletic coaches and trainers and other school staff, which may include training high  
6 school students in cardiopulmonary resuscitation; and

7 (7) in the event the school possesses an automated external defibrillator, the location  
8 of said device, whether or not its location is either fixed or portable, and those personnel who are  
9 trained in its use.

10 Plans shall be developed in consultation with the school nurse, school athletic team  
11 physicians, coaches and trainers, and the local emergency medical services agency, as appropriate.  
12 Schools shall practice the response sequence at the beginning of each school year and periodically  
13 throughout the year and evaluate and modify the plan as needed. Plans shall be submitted once every  
14 three years to the department of elementary and secondary education on or before [insert date],  
15 beginning in the school year immediately following the effective date of this Act. Plans must also be  
16 updated in the case of new construction or physical changes to the school campus.

17 Included in each initial and subsequent filing of a medical emergency response plan, each  
18 school district shall report on the availability of automated external defibrillators in each school  
19 within the district, including, the total amount available in each school, the location of each within  
20 the school, whether or not said device is in a fixed location or is portable, those personnel or  
21 volunteers who are trained in its use, those personnel with access to said device during regular  
22 school hours and after, and the total estimated amount necessary to ensure access during school  
23 hours, after-school activities, and public events.

24 (b) The department of elementary and secondary education, in consultation with the  
25 department of public health, shall develop a model medical emergency response plan in order to  
26 promote best practices. In developing the model plan, the department shall refer to research prepared  
27 by the American Heart Association, the American Academy of Pediatrics and other relevant  
28 organizations that identifies the essential components of a medical emergency response plan. The  
29 department shall biennially update the model plan and post the plan on its website.

30  
31 Section 3. [*Legislative report submission.*]

32 The [state] department of education shall submit a report to the clerks of the senate and the  
33 house of representatives who shall forward the same to the chairs of the [relevant committees of  
34 jurisdiction] on the implementation of this initiative, the number of students and personnel certified  
35 each year in first-aid and cardio-pulmonary resuscitation, and the number of schools that opt out of  
36 instruction in cardiopulmonary resuscitation as required by [insert citation} by [insert date].

37  
38 Section 4. [*Severability.*] Insert severability clause.

39  
40 Section 5. [*Repealer.*] Insert repealer clause.

41  
42 Section 6. [*Effective Date.*] Insert effective date.

# Mortgage Payoff Statements

This Act requires the state finance commission to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements. The Act requires the finance commission to prescribe a standard payoff statement form and requires a mortgage servicer who receives a request for a payoff statement from a title insurance company to deliver the requested payoff statement within a time specified by the finance commission, which must allow the mortgage servicer at least seven business days after the date the request is received to deliver the payoff statement. It prohibits a mortgage servicer or mortgagee, with certain exceptions, from demanding that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement.

Submitted as:

Texas

[HB 558 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to Payoff Statements  
2     Provided in Connection with Certain Home Loans.”

3  
4           Section 2. [*Payoff Statements.*]

5           (A) In this section, “mortgagee,” “mortgage servicer,” and “mortgagor” have the meanings  
6     assigned by [insert citation.]

7           (B) The [finance commission] as defined under [insert citation] shall adopt rules governing  
8     requests by title insurance companies for payoff information from mortgage servicers related to  
9     home loans and the provision of that information, including rules prescribing a standard payoff  
10    statement form that must be used by mortgage servicers to provide those payoff statements.

11          (C) In this section, requests by title insurance companies for payoff information from  
12    mortgage servicers related to home loans and the provision of that information, including rules  
13    prescribing a standard payoff statement form that must be used by mortgage servicers to provide  
14    those payoff statements.

15          (D) In adopting rules under Subsection (B), the [finance commission] shall require a  
16    mortgage servicer who receives a request for a payoff statement with respect to a home loan from a  
17    title insurance company to deliver the requested payoff statement on the prescribed form within a  
18    time specified by [finance commission] rule, which must allow the mortgage servicer at least [seven  
19    business days] after the date the request is received to deliver the payoff statement.

20          (C) The standard payoff statement form prescribed by the [finance commission] under  
21    Subsection (B) must require that a completed form state the proposed closing date for the sale and  
22    conveyance of the real property securing the home loan or for any other transaction that would  
23    involve the payoff of the home loan, as specified by the title insurance company’s request; and  
24    provide a payoff amount that is valid through that date.

25          (D) Except as provided by Subsection (F) or (G), if the mortgage servicer provides a  
26    completed payoff statement form that meets the requirements of this section and rules adopted under

1 this section in response to a request for a payoff statement, the mortgage servicer or mortgagee may  
2 not, on or before the proposed closing date, demand that a mortgagor pay an amount in excess of the  
3 payoff amount specified in the payoff statement.

4 (F) If a mortgage servicer or mortgagee discovers that a payoff statement is incorrect, the  
5 mortgage servicer or mortgagee may correct and deliver the statement on or before the second  
6 business day before the specified proposed closing date. The corrected payoff statement must be  
7 delivered to the requestor by certified mail with return receipt requested and electronic means, if the  
8 requestor provides the mortgage servicer with a means to deliver the corrected statement  
9 electronically.

10 (G) If a mortgage servicer submits an incorrect payoff statement to a title insurance company  
11 that results in the mortgage servicer requesting an amount that is less than the correct payoff amount,  
12 the mortgage servicer or mortgagee does not deliver a corrected payoff statement in accordance with  
13 Subsection (F), and the mortgage servicer receives payment in the amount specified in the payoff  
14 statement:

15 (1) The difference between the amount included in the payoff statement and the  
16 correct payoff amount remains a liability of the former mortgagor owed to the mortgagee; and

17 (2) if the payoff statement is in connection with the sale of the real property:

18 (i) the deed of trust or other contract lien securing an interest in the property is  
19 released;

20 (ii) within a reasonable time after receipt of payment by the mortgagee or  
21 mortgage servicer, the mortgagee or mortgage servicer, as applicable, shall deliver to the title  
22 company a release of the deed of trust or other contract lien securing an interest in the property; and

23 (iii) any proceeds disbursed at closing to or for the benefit of the mortgagor,  
24 excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of  
25 the mortgagee to the extent of the underpayment; or

26 (B) a refinance by the mortgagor of the existing home loan:

27 (i) the lien securing the existing home loan becomes subordinate to the  
28 lien securing the new home loan; and

29 (ii) any proceeds disbursed at closing to or for the benefit of the  
30 mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for  
31 the benefit of the mortgagee to the extent of the underpayment.

32 (H) As soon as practicable after the effective date of this Act, the [finance commission] shall  
33 adopt the rules, including the standard payoff statement form, required by this Act.

34 (I) A mortgage servicer is not required to comply with that section before the 90th day after  
35 the date the [finance commission] the rules required by this Act.

36  
37 Section 3. [*Severability*.] Insert severability clause.

38  
39 Section 4. [*Repealer*.] Insert repealer clause.

40  
41 Section 5. [*Effective Date*.] Insert effective date.



# Natural Gas Pipeline Replacement

The Act authorizes investor-owned natural gas utilities to petition its economic regulator (the State Corporation Commission) to implement a separate rider that will allow for recovery of certain costs associated with eligible pipeline replacement projects. Eligible infrastructure replacement projects are projects that:

- enhance safety or reliability by reducing system integrity risks associated with customer outages, corrosion, equipment failures, material failures, natural forces, or other outside force damage;
- do not increase revenues by directly connecting the infrastructure replacement to new customers;
- reduce greenhouse gas emissions;
- are not included in the natural gas utility's rate base in its most recent rate case; and
- are commenced on or after a specified date. The costs recoverable from an eligible infrastructure replacement project include a return on the investment, a revenue conversion factor, depreciation, property taxes, and carrying costs on the over- or under-recovery of the eligible infrastructure replacement costs.

Submitted as:

Virginia

[Chapter 142 of 2010](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relating to natural gas utilities; cost recovery for certain  
2 infrastructure improvement costs.

3  
4           Section 2. [*Definitions.*]

5           As used in this chapter:

- 6           1. "Commission" means the [insert appropriate state utility regulatory agency].
- 7           2. "Eligible infrastructure replacement" means natural gas utility facility replacement projects  
8 that: (i) enhance safety or reliability by reducing system integrity risks associated with  
9 customer outages corrosion, equipment failures, material failures, or natural forces; (ii) do  
10 not increase revenues by directly connecting the infrastructure replacement to new  
11 customers; (iii) reduce or have the potential to reduce greenhouse gas emissions; (iv) are  
12 commenced on or after [insert date]; and (v) are not included in the natural gas utility's rate  
13 base in its most recent rate case using the cost of service methodology set forth in [insert  
14 citation], or the natural gas utility's rate base included in the rate base schedules filed with a  
15 performance-based regulation plan authorized by [insert citation], if the plan did not include  
16 the rate base.
- 17          3. "Eligible infrastructure replacement costs" includes the following:
- 18           A. Return on the investment. In calculating the return on the investment, the Commission  
19 shall use the natural gas utility's regulatory capital structure as calculated utilizing the weighted  
20 average cost of capital, including the cost of debt and the cost of equity used in determining the  
21 natural gas utility's base rates in effect during the construction period of the eligible infrastructure

1 replacement project. If the natural gas utility's cost of capital underlying the base rates in effect at the  
2 time its proposed SAVE plan is filed has not been changed by order of the Commission within the  
3 preceding five years, the Commission may require the natural gas utility to file an updated weighted  
4 average cost of capital, and the natural gas utility may propose an updated weighted average cost of  
5 capital. The natural gas utility may recover the external costs associated with establishing its updated  
6 weighted average cost of capital through the SAVE rider. Such external costs shall include legal  
7 costs and consultant costs;

8 B. A revenue conversion factor, including income taxes and an allowance for bad debt  
9 expense, shall be applied to the required operating income resulting from the eligible infrastructure  
10 replacement costs;

11 C. Depreciation. In calculating depreciation, the Commission shall use the natural gas  
12 utility's current depreciation rates;

13 D. Property taxes; and

14 E. Carrying costs on the over- or under-recovery of the eligible infrastructure replacement  
15 costs. In calculating the carrying costs, the Commission shall use the natural gas utility's regulatory  
16 capital structure as determined in subsection 2 of the definition of eligible infrastructure replacement  
17 costs.

18 4. "Investment" means costs incurred on eligible infrastructure replacement projects including  
19 planning, development, and construction costs; costs of infrastructure associated therewith;  
20 and an allowance for funds used during construction. In calculating the allowance for funds  
21 used during construction, the Commission shall use the natural gas utility's actual regulatory  
22 capital structure as determined in subsection 2 of the definition of eligible infrastructure  
23 replacement costs.

24 5. "Natural gas utility" means any investor-owned public service company engaged in the  
25 business of furnishing natural gas service to the public.

26 6. "Natural gas utility facility replacement project" means the replacement of storage, peak  
27 shaving, transmission or distribution facilities used in the delivery of natural gas, or  
28 supplemental or substitute forms of gas sources by a natural gas utility.

29 7. "SAVE" means Steps to Advance [insert state, Virginia] Energy Plan.

30 8. "SAVE plan" means a plan filed by a natural gas utility that identifies proposed eligible  
31 infrastructure replacement projects and a SAVE rider.

32 9. "SAVE rider" means a recovery mechanism that will allow for recovery of the eligible  
33 infrastructure replacement costs, through a separate mechanism from the customer rates  
34 established in a rate case using the cost of service methodology set forth in [insert citation],  
35 or a performance-based regulation plan authorized by [insert citation].

36  
37 Section 3. *[Filing of petition with Commission to establish or amend a SAVE plan; recovery*  
38 *of certain costs; procedure.]*

39 A. Notwithstanding any provisions of law to the contrary, a natural gas utility may file a  
40 SAVE plan as provided in this chapter. Such a plan shall provide for a timeline for completion of the  
41 proposed eligible infrastructure replacement projects, the estimated costs of the proposed eligible  
42 infrastructure projects, and a schedule for recovery of the related eligible infrastructure replacement  
43 costs through the SAVE rider, and demonstrate that the plan is prudent and reasonable. The  
44 Commission may approve such a plan after such notice and opportunity for hearing as the  
45 Commission may prescribe, subject to the provisions of this chapter.

46 B. The Commission shall approve or deny, within 180 days, a natural gas utility's initial  
47 application for a SAVE plan. A plan filed pursuant to this section shall not require the filing of rate  
48 case schedules. The Commission shall approve or deny, within 120 days, a natural gas utility's

1 application to amend a previously approved plan. If the Commission denies such a plan or  
2 amendment, it shall set forth with specificity the reasons for such denial, and the utility shall have  
3 the right to refile, without prejudice, an amended plan or amendment within 60 days, and the  
4 Commission shall thereafter have 60 days to approve or deny the amended plan or amendment. The  
5 time period for Commission review provided for in this subsection shall not apply if the SAVE plan  
6 is filed in conjunction with a rate case using the cost of service methodology set forth in [insert  
7 citation], or a performance-based regulation plan authorized by [insert citation].

8 C. Any SAVE plan and any SAVE rider that is submitted to and approved by the  
9 Commission shall be allocated and charged in accordance with appropriate cost causation principles  
10 in order to avoid any undue cross-subsidization between rate classes.

11 D. No other revenue requirement or ratemaking issues may be examined in consideration of  
12 the application filed pursuant to the provisions of this chapter.

13 E. At the end of each 12-month period the SAVE rider is in effect, the natural gas utility shall  
14 reconcile the difference between the recognized eligible infrastructure replacement costs and the  
15 amounts recovered under the SAVE rider, and shall submit the reconciliation and a proposed SAVE  
16 rider adjustment to the Commission to recover or refund the difference, as appropriate, through an  
17 adjustment to the SAVE rider. The Commission shall approve or deny, within 90 days, a natural gas  
18 utility's proposed SAVE rider adjustment.

19 F. A natural gas utility that has implemented a SAVE rider pursuant to this chapter shall file  
20 revised rate schedules to reset the SAVE rider to zero, when new base rates and charges that  
21 incorporate eligible infrastructure replacement costs previously reflected in the currently effective  
22 SAVE rider become effective for the natural gas utility, following a Commission order establishing  
23 customer rates in a rate case using the cost of service methodology set forth in [insert citation], or a  
24 performance-based regulation plan authorized by [insert citation].

25 G. Costs recovered pursuant to this chapter shall be in addition to all other costs that the  
26 natural gas utility is permitted to recover, shall not be considered an offset to other Commission-  
27 approved costs of service or revenue requirements, and shall not be included in any computation  
28 relative to a performance-based regulation plan revenue-sharing mechanism. Further, if the  
29 Commission approves (i) an updated weighted average cost of capital for use in calculating the  
30 return on investment, (ii) the carrying costs on the over- or under-recovery of the eligible  
31 infrastructure replacement costs, (iii) the allowance for funds used during construction, (iv) or any  
32 combination thereof, such weighted average cost of capital shall be used only for the purpose of the  
33 eligible infrastructure replacement costs for the SAVE rider shall not be used for any purpose in any  
34 other proceeding.

35  
36 Section 4. [*Severability*.] Insert severability clause.

37  
38 Section 5. [*Repealer*.] Insert repealer clause.

39  
40 Section 6. [*Effective Date*.] Insert effective date.

# Nonpublic Alternative High Schools Accreditation

The Act requires the department of education to waive accreditation standards for an accredited nonpublic alternative high school that contracts with a school corporation to provide alternative education services for students who:

- have dropped out of high school
- have been expelled
- have been sent to the nonpublic alternative school due to the students' lack of success in the public school environment to accommodate the nonpublic alternative school's program and student population

Submitted as:

Indiana

[SB 283](#)

Status: Became law in March 2012

## Section 1. [*Nonpublic schools.*]

(a) It is the policy of the state that the state:

(1) recognizes that nonpublic schools provide education to children in [*the state*];  
(2) has an interest in ensuring that all [*state*] children are well educated in both curricular and extracurricular programs; and

(3) should facilitate the transferability of comparable academic credit between appropriate nonpublic schools and state supported educational institutions.

(b) The state board shall implement a system of recognition of the educational programs of nonpublic schools to fulfill the policy set forth in subsection (a).

(c) The system of recognition described under subsection (b) must:

(1) be voluntary in nature with respect to the nonpublic school;  
(2) recognize the characteristics that distinguish nonpublic schools from public schools; and  
(3) be a recognition system that is separate from the accreditation standards required of public schools and available to nonpublic schools under [*Insert citation*] of this chapter.

(d) This section does not prohibit a nonpublic school from seeking accreditation under section [*Insert citation*] of this chapter.

(e) The state board shall adopt rules under [*Insert citation*] to implement this section.

(f) The department shall waive accreditation standards for an accredited nonpublic alternative school that enters into a contract with a school corporation to provide alternative education services for students who have:

(1) dropped out of high school;  
(2) been expelled; or  
(3) been sent to the nonpublic alternative school due to the students' lack of success in the public school environment; to accommodate the nonpublic alternative school's program and student population. A nonpublic alternative school to which this subsection applies is not subject to being placed in a category or designation under [*Insert citation.*] However, the nonpublic alternative school must comply with all state reporting requirements and submit a school improvement growth model on the anniversary date of the nonpublic alternative school's original accreditation.

## Section 2. [*Onsite Education.*]

(a) As used in this section, "attend school" means to:

(1) physically attend a school in a building owned and operated by a school corporation; or

(2) be educated onsite at a facility.

(b) If a student resides in a facility and cannot leave the facility based on a medical decision that the student is a risk to the student or a risk to others, the school corporation in which the facility is located shall provide the student educational services onsite at the facility.

(c) A student educated onsite at a facility is entitled to the following:

(1) An educational opportunity comparable to that of a student attending a school operated by the school corporation.

(2) To receive the same level of educational services from the school corporation in which the facility is located as received by a student who physically attends school in a school operated by the school corporation. Unless provided otherwise in a student's individualized education program, educational services must include at least the following:

(A) An instructional day that meets the requirements of *[Insert citation.]*

(B) A school year with a minimum of one hundred eighty (180) student instructional days under *[Insert citation.]*

(C) Educationally appropriate textbooks and other materials offered to the student at the same cost assessed to a student attending a school operated by the school corporation.

(D) Licensed teachers who are qualified to teach the grade level of the student and the subject matter of the student's curriculum.

### Section 3. *[Tuition under Legal Settlements.]*

(a) This section applies to a school corporation that enrolls a student who has legal settlement in another school corporation for the purpose of the student receiving services from an accredited nonpublic alternative high school described in Section 1(f).

(b) A school corporation is entitled to receive state tuition support for a student described in subsection (a) in an amount equal to:

(1) the amount received by the school corporation in which the student is enrolled for ADM purposes; or

(2) the amount received by the school corporation in which the student has legal settlement; whichever is greater.

# Online Gaming Note

The growth in popularity of interactive and online gaming has led several states to pursue new legislative measures to capture the potential revenue streams and opportunities that IT technology could provide. New Jersey and Nevada passed authorizing legislation for these activities, in addition to new interstate compact language, that could be of interest to other states.

## New Jersey

The Casino Control Act ([Assembly Bill 2578](#)), which became law in February 2013, allows Atlantic City's casinos to run websites that take bets on games such as blackjack, slots and poker. Under the law, however, bettors must be physically present in the state. An analysis by the New Jersey Assembly Appropriations Committee summarized the provisions of the Act as follows:

### The Assembly Appropriations Committee reports favorably Assembly Bill No. 2578

This bill authorizes Internet gaming at Atlantic City casinos to enable certain individuals who have established a wagering account with a casino licensee to place wagers on casino games via the Internet.

The bill provides that all authorized games, including poker, that may be played at a casino in Atlantic City, as well as variations or composites thereof, may be offered through Internet gaming.

The bill provides that equipment used by a licensee to conduct Internet gaming, including but not limited to computers, servers, monitoring rooms, and hubs, must be located in a restricted area on the premises of the casino hotel within the territorial limits of Atlantic City, and all Internet wagers will be deemed to be placed when received in Atlantic City by the licensee regardless of the player's physical location within this State.

The bill provides that to participate in Internet gaming, a player must be physically present in New Jersey whenever a wager is placed by that player, except that wagers may be accepted from persons located outside of the State if the Division of Gaming Enforcement in the Department of Law and Public Safety determines that activity is not inconsistent with federal law or the law of the jurisdiction in which any such person making a wager is located, or determines that activity is conducted pursuant to an interstate compact that is not inconsistent with federal law.

The bill provides that each licensee that conducts Internet gaming must be able to verify that a player is physically present in New Jersey when placing a wager. The bill specifies that the Division of Gaming Enforcement must confirm on a continuing basis that a licensee's equipment is able to verify that the player is physically present in this State each time a wager is placed.

The bill provides that Internet gaming in this State will be subject to the provisions of, and preempted and superseded by, any applicable federal law.

The bill imposes an annual tax on Internet gaming gross revenues in the amount of 20 percent of such gross revenues and requires the revenues collected from the tax to be paid into the casino revenue fund. The bill defines Internet gaming gross revenues as the total of all sums actually received by a casino licensee from Internet gaming operations, less only the total of all sums actually paid out as winnings to patrons, provided that the cash equivalent value of any merchandise or thing



of value included in a jackpot or payout is not included in the total of all sums paid out as winnings to players for purposes of determining Internet gaming gross revenue.

The bill provides that the eight percent tax on casino gross revenues will not apply to Internet gaming gross revenues, and provides that the investment alternative tax will apply to Internet gaming gross revenues, except that the investment alternative tax on these revenues will be 10 percent and the investment alternative will be five percent, with the proceeds thereof used as provided by law.

The bill provides that the Division of Gaming Enforcement may establish an Office of Internet Gaming to which it may delegate authority for the administration of Internet gaming. The bill specifies that the division will be responsible for recommending regulations concerning Internet gaming for consideration and possible adoption by the New Jersey Casino Control Commission.

The bill provides an application process for a licensed casino to obtain a permit to establish Internet gaming, with the permit valid for one year and subject to renewal. The bill specifies that as part of the application process, a casino licensee must submit a description of its system of internal procedures and administrative and accounting controls for Internet gaming, including provisions that provide for real time monitoring of all games. The bill specifies that a casino licensee also must submit its gaming hardware, software, and other Internet gaming equipment to the Division of Gaming Enforcement for testing to ensure compliance with technical standards for such equipment set by the New Jersey Casino Control Commission.

The bill provides that companies seeking to provide goods or services to a casino in connection with Internet gaming must be licensed as casino service industry enterprises. The bill specifies casino service industry enterprises will be permitted to enter into participation agreements with casino licensees in connection with the operation of Internet gaming.

The bill establishes certain procedures that must be followed for the crediting and debiting of a wagering account.

The bill provides that it is lawful for a casino licensee to provide marketing information by means of the Internet to players engaged in Internet gaming and to offer those players incentives to visit the licensee's casino in Atlantic City.

The bill provides that required features of Internet gaming must be in place to assist the wagering account holder.

The bill provides that required features to assist problem gamblers and potential problem gamblers must be in place, including the provision of assistance with problem gambling at log on and log off times.

The bill imposes certain penalties for violations of the provisions of the bill.

The bill provides that an annual fee for Internet gaming permit holders for the initial permit and permit renewal will be assessed to cover the costs of regulation by the New Jersey Casino Control Commission and the Division of Gaming Enforcement, with the initial fee to be at least \$200,000 and the renewal fee to be at least \$100,000.

The bill provides that an annual fee for Internet gaming permit holders of \$100,000 will be assessed and allocated to programs to prevent compulsive gambling and to assist compulsive gamblers.

Except as otherwise provided by the bill, a licensed casino's Internet gaming operation will be subject to the existing provisions of the Casino Control Act and the regulations promulgated thereunder, including, but not limited to: the licensure of all employees with gaming-related duties or responsibilities; penalties for a violation of the act; and supplemental sanctions deemed appropriate by the New Jersey Casino Control Commission for violations.

The bill provides that the Division of Gaming Enforcement will adopt regulations for the implementation and conduct of Internet gaming that are consistent with regulations governing casino gambling.

The bill provides that no organization or commercial enterprise, other than a casino located in Atlantic City that has been issued a permit to conduct Internet gaming and has located all of its equipment used to conduct Internet gaming, including computers, servers, monitoring rooms, and hubs, in Atlantic City, will be able to make its premises available for placing wagers at casinos using the Internet or advertise that its premises may be used for such purpose. The bill specifies that violations are punishable by a penalty of \$1,000 per player per day for making premises available for placing wagers at casinos using the Internet and of \$10,000 per violation for advertising that premises may be used for such purpose.

## **Nevada**

[Assembly Bill 258](#), which became law in 2011, requires the Nevada Gaming Commission to establish by regulation certain provisions authorizing the intrastate licensing and operation of Internet poker. This bill further provides that a license to operate interstate interactive gaming does not become effective until: (1) the passage of federal legislation authorizing interactive gaming; or (2) the United States Department of Justice notifies the Commission or the State Gaming Control Board that interactive gaming is permissible under federal law.

Another Act, [Assembly Bill 114](#) became law in 2013 and would repeal the previous state law requiring federal approval before allowing online gaming and it also allowed the state to enter into an interstate compact exclusively for online poker. The bill extends the existing operating licensing fee of \$500,000 to online poker operations, but it allows the state's Gaming Commission to increase the licensing fees to up to \$1 million or lower them to \$150,000. Under the Act, operating licenses for gaming establishments would only be available to a "resort hotel that holds a non-restricted license to operate games and gaming devices." It also includes a 5 year operating license ban for companies that illegally participated in online gaming markets from 2006-2011. The Gaming Commission can waive those prohibitions if it determines that a gaming operation complied with federal or state laws after December 31, 2006 involving US patrons.

# Prescription Drug Authorization Form

This Act requires the department of managed health care and the department of insurance to develop a standard form health care service plans and health insurers can use to authorize filling drug prescriptions. The Act requires health service plans and health insurers use such forms to authorize filling drug prescriptions for patients.

Submitted as:

California

[Chapter 648 of 2011](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relating to prescription drug authorization forms and setting  
2 requirements for filling drug prescriptions.

3  
4           Section 2. [*Authorization.*]

5           (A) Notwithstanding any other provision of law, on and after [insert date], a health care  
6 service plan that provides prescription drug benefits shall accept only the prior authorization form  
7 developed pursuant to subdivision (C) when requiring prior authorization for prescription drug  
8 benefits. This section does not apply in the event that a physician or physician group has been  
9 delegated the financial risk for prescription drugs by a health care service plan and does not use a  
10 prior authorization process. This section does not apply to a health care service plan, or to its  
11 affiliated providers, if the health care service plan owns and operates its pharmacies and does not use  
12 a prior authorization process for prescription drugs.

13           (B) If a health care service plan fails to utilize or accept the prior authorization form, or fails  
14 to respond within two business days upon receipt of a completed prior authorization request from a  
15 prescribing provider, pursuant to the submission of the prior authorization form developed as  
16 described in subdivision (C), the prior authorization request shall be deemed to have been granted.  
17 The requirements of this subdivision shall not apply to contracts entered into pursuant to [insert  
18 citation].

19           (C) On or before [insert date], the department and the Department of Insurance shall jointly  
20 develop a uniform prior authorization form. Notwithstanding any other provision of law, on and after  
21 [insert date], or six months after the form is developed, whichever is later, every prescribing provider  
22 shall use that uniform prior authorization form to request prior authorization for coverage of  
23 prescription drug benefits and every health care service plan shall accept that form as sufficient to  
24 request prior authorization for prescription drug benefits.

25           (D) The prior authorization form developed pursuant to subdivision (C) shall meet the  
26 following criteria:

27                   (1) The form shall not exceed two pages.

28                   (2) The form shall be made electronically available by the department and the health  
29 care service plan.

30                   (3) The completed form may also be electronically submitted from the prescribing  
31 provider to the health care service plan.

1 (4) The department and the Department of Insurance shall develop the form with  
2 input from interested parties from at least one public meeting.

3 (5) The department and the Department of Insurance, in development of the  
4 standardized form, shall take into consideration the following:

5 (a) Existing prior authorization forms established by the federal Centers for  
6 Medicare and Medicaid Services and the State Department of Health Care Services.

7 (b) National standards pertaining to electronic prior authorization.

8 (E) For purposes of this section, a “prescribing provider” shall include a provider authorized to write  
9 a prescription, pursuant to [insert citation], to treat a medical condition of an enrollee.

10  
11 Section 3. [*Requirements.*]

12 (A) Notwithstanding any other provision of law, on and after [insert citation], a health insurer  
13 that provides prescription drug benefits shall utilize and accept only the prior authorization form  
14 developed pursuant to subdivision (C) when requiring prior authorization for prescription drug  
15 benefits.

16 (B) If a health insurer fails to utilize or accept the prior authorization form, or fails to respond  
17 within two business days upon receipt of a completed prior authorization request from a prescribing  
18 provider, pursuant to the submission of the prior authorization form developed as described in  
19 subdivision (C), the prior authorization request shall be deemed to have been granted. The  
20 requirements of this subdivision shall not apply to contracts entered into pursuant to [insert citation].

21 (C) On or before [insert date], the department and the Department of Managed Health Care  
22 shall jointly develop a uniform prior authorization form.

23 Notwithstanding any other provision of law, on and after [insert date], or six months after the  
24 form is developed, whichever is later, every prescribing provider shall use that uniform prior  
25 authorization form to request prior authorization for coverage of prescription drug benefits and that  
26 every health insurer shall accept that form as sufficient to request prior authorization for prescription  
27 drug benefits.

28 (D) The prior authorization form developed pursuant to subdivision (C) shall meet the  
29 following criteria:

30 (1) The form shall not exceed two pages.

31 (2) The form shall be made electronically available by the department and the health  
32 insurer.

33 (3) The completed form may also be electronically submitted from the prescribing  
34 provider to the health insurer.

35 (4) The department and the Department of Managed Health Care shall develop the  
36 form with input from interested parties from at least one public meeting.

37 (5) department and the Department of Managed Health Care, in development of the  
38 standardized form, shall take into consideration the following:

39 (a) Existing prior authorization forms established by the federal Centers for  
40 Medicare and Medicaid Services and the State Department of Health Care Services.

41 (b) National standards pertaining to electronic prior authorization.

42 (E) For purposes of this section, a “prescribing provider” shall include a provider authorized  
43 to write a prescription, pursuant to [insert citation], to treat a medical condition of an insured.

44  
45 Section 4. [*Severability.*] Insert severability clause.

46  
47 Section 5. [*Repealer.*] Insert repealer clause.

48  
49 Section 6. [*Effective Date.*] Insert effective date.

# Pulse Oximetry Screening of Newborns

This Act directs the state commissioner of health and senior services to require each birthing facility licensed by the department of health and senior services to perform a pulse oximetry screening, a minimum of 24 hours after birth, on every newborn in its care.

Submitted as:

New Jersey

[Chapter 74 of 2011](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act concerning pulse oximetry screening of newborns.

2  
3           Section 2. [*Findings.*]

4  
5           Section 3. [*Birthing facilities required to perform pulse oximetry screening; rules,*  
6 *regulations.*]

7           (A)The Commissioner of Health and Senior Services shall require each birthing facility  
8 licensed by the Department of Health and Senior Services to perform a pulse oximetry screening, a  
9 minimum of 24 hours after birth, on every newborn in its care.

10          (B) As used in this section, “birthing facility” means an inpatient or ambulatory health  
11 care facility licensed by the Department of Health and Senior Services that provides birthing  
12 and newborn care services.

13          (C) The commissioner shall adopt rules and regulations, pursuant to the “Administrative  
14 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out the purposes of  
15 this Act.

16  
17          Section 4. [*Severability.*] Insert severability clause.

18  
19          Section 5. [*Repealer.*] Insert repealer clause.

20  
21          Section 6. [*Effective Date.*] Insert effective date.

# Remote Net Metering by Farm and Non-Residential Customer-Generators

This Act generally permits farmers and certain other customers who use solar electric generating equipment, farm waste electric generating equipment, or wind electric generating equipment, to designate all or a portion of the net metering credits generated by such equipment to meters at any property their own or lease within the service territory of the same electric corporation to which their net energy meters are interconnected.

Submitted as:

New York

[Chapter 35 of 2011](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act providing for remote net metering by farm and non-  
2 residential customer-generators

3  
4           Section 2. [*Authorization.*]

5           (a) A customer who owns or operates a farm operation as such term is defined in [insert  
6 citation], or a non-residential customer-generator as defined by [insert citation] that locates solar  
7 electric generating equipment or farm waste electric generating equipment with a net energy meter  
8 on property owned or leased by such customer-generator may designate all or a portion of the net  
9 metering credits generated by such equipment to meters at any property owned or leased by such  
10 customer-generator within the service territory of the same electric corporation to which the  
11 customer-generator's net energy meters are interconnected and being within the same load zone as  
12 determined by the location based marginal price as of the date of initial request by the customer-  
13 generator to conduct net metering. The electric corporation will credit the accounts of the customer  
14 by applying any credits to the highest use meter first, then subsequent highest use meters until all  
15 such credits are attributed to the customer. Any excess credits shall be carried over to the following  
16 month.

17           (b) A customer who owns or operates land used in agricultural production as defined in  
18 [insert citation], or a non-residential customer-generator as defined in [insert citation] that locates  
19 wind electric generating equipment with a net energy meter on property owned or leased by such  
20 customer-generator may designate all or a portion of the net metering credits generated by such  
21 equipment to meters, at any property owned or leased by such customer-generator within the service  
22 territory of the same electric corporation to which the customer-generator's net energy meters are  
23 interconnected and being within the same load zone as determined by the location based marginal  
24 price as of the date of initial request by the customer-generator to conduct net metering. The electric  
25 corporation will credit the accounts of the customer by applying any credits to the highest use meter  
26 first, then subsequent highest use meters until all such credits are attributed to the customer. Any  
27 excess credits shall be carried over to the following month.

28  
29           Section 3. [*Severability.*] Insert severability clause.



- 1       Section 4. [*Repealer.*] Insert repealer clause.
- 2
- 3       Section 5. [*Effective Date.*] Insert effective date.

# Renewable Energy Storage Capacity

This Act generally defines “net renewable generation capacity” in state law to mean the gross generation *or* storage capacity of the renewable energy resource. This ensures that renewable energy placed into storage via batteries, compressed air, flywheels, etc., is still considered renewable energy when it is actually used.

Submitted as:

Kansas:

[HB 2708 \(Introduced version\)](#)

Status: Enacted into law in 2012 as part of Conference Committee report.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act shall be cited as “The Renewable Energy Storage Capacity Act.”

Section 2. [*Definitions.*]

As used in [insert citation]:

(1) “Affected utility” means any [electric public utility] [as defined in insert citation].

(2) “Commission” means the [state corporation commission] [as defined in insert citation].

(3) “Net renewable generation capacity” means the gross generation or storage capacity of the renewable energy resource over a [four-hour] period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.

(4) “Peak demand” means the demand imposed by the affected utility’s retail load in the state.

(5) “Renewable energy credit” means a credit representing energy produced by renewable energy resources issued as part of a program that has been approved by the [state corporation commission].

(6) “Renewable energy resources” means net renewable generation capacity from:

(a) wind;

(b) solar thermal sources;

(c) photovoltaic cells and panels;

(d) dedicated crops grown for energy production;

(e) cellulosic agricultural residues;

(f) plant residues;

(g) methane from landfills or from wastewater treatment;

(h) clean and untreated wood products such as pallets;

(i) hydropower;

(j) fuel cells using hydrogen produced by one of the above-named renewable energy resources;

(k) energy storage that is connected to any renewable generation by means of energy storage equipment including, but not limited to, batteries, fly wheels, compressed air storage and pumped hydro; and

1                   (l) other sources of energy, not including nuclear power, that become available after  
2 the effective date of this section, and that are certified as renewable by rules and regulations  
3 established by the [commission] pursuant to [insert citation].  
4

5 Section 3. [*Severability*.] Insert severability clause.  
6

7 Section 4. [*Repealer*.] Insert repealer clause.  
8

9 Section 5. [Effective date]. Insert effective date.

# Retainer Medical Practices

This Act defines a medical retainer practice and sets criteria for becoming a certified medical retainer practice.

Submitted as:

Oregon

[SB 86 \(Enrolled\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relating to retainer medical practices; and declaring an  
2 emergency.

3  
4           Section 2. [Definitions.]

5           (1) “Control” means the possession, directly or indirectly, of the power to direct or cause the  
6 direction of the management and policies of a person, whether through the ownership of voting  
7 stock, by contract or otherwise. A person who is the owner of 10 percent or more ownership interest  
8 in a retainer medical practice or applicant for a certificate to operate a retainer medical practice is  
9 presumed to have control.

10           (2) “Primary care” means outpatient, non-specialty medical services or the coordination of  
11 health care for the purpose of:

12                   (A) Promoting or maintaining mental and physical health and wellness; and

13                   (B) Diagnosis, treatment or management of acute or chronic conditions caused by  
14 disease, injury or illness.

15           (3) “Provider” means a health care professional licensed or certified under [insert citation]  
16 who provides primary care in the ordinary course of business or practice of a profession.

17           (4) “Retainer medical agreement” means a written agreement between a retainer medical  
18 practice and a patient or a legal representative or guardian of a patient specifying a defined and  
19 predetermined set of primary care services to be provided in consideration for a retainer medical fee.

20           (5) “Retainer medical fee” means any fee paid to a retainer medical practice pursuant to a  
21 medical retainer agreement.

22           (6) “Retainer medical practice” means a provider, a group of providers or a person that  
23 employs or contracts with a provider or a group of providers to provide services under the terms of a  
24 retainer medical agreement.

25  
26           Section 3. [*Requirements for retainer medical practices.*]

27           (a) A retainer medical practice must be certified by the [insert appropriate agency]. To  
28 qualify to become a certified retainer medical practice or to renew a certificate, the practice:

29                   (1) May not have or have ever had a certificate of authority to transact insurance in  
30 this state.

31                   (2) May not be or have ever been licensed, certified or otherwise authorized in this  
32 state or any other state to act as an insurer, managed care organization, health care service contractor  
33 or similar entity.

34                   (b) May not be controlled by an entity described in paragraph (a) or (b) of this subsection.

1 (c) A certified retainer medical practice:

2 (1) Must provide only primary care and must limit the scope of services provided or  
3 the number of patients served to an amount that is within the capacity of the practice to provide  
4 in a timely manner;

5 (2) May not bill an insurer, a self-insured plan or the state medical assistance program  
6 for a service provided by the practice to a patient pursuant to a retainer medical agreement;

7 (3) Must be financially responsible and have the necessary business experience or  
8 expertise to operate the practice;

9 (4) Must give the written disclosures described in subsection (d) of this section;

10 (5) May not use or disseminate misleading, deceptive or false statements in  
11 marketing, advertising, promotional, sales or informational materials regarding the practice or in  
12 communications with patients or prospective patients;

13 (6) May not engage in dishonest, fraudulent or illegal conduct in any business or  
14 profession; and

15 (7) May not discriminate based on race, religion, gender, sexual identity, sexual  
16 preference or health status.

17 (d) A certified retainer medical practice must make the following written information  
18 available to prospective patients by prominently disclosing, in the manner prescribed by the  
19 department by rule, in marketing materials and retainer medical agreements:

20 (1) That the practice is not insurance;

21 (2) That the practice provides only the limited scope of primary care services  
22 specified in the retainer medical agreement;

23 (3) That a patient must pay for all services not specified in the retainer medical  
24 agreement; and

25 (4) Any other disclosures required by the department by rule.

26 (e) The department may by written order deny, suspend or revoke a retainer medical practice  
27 certificate or may refuse to renew a retainer medical practice certificate if the department finds that:

28 (1) The retainer medical practice does not meet the criteria in subsections (c) to (d) of  
29 this section;

30 (2) The retainer medical practice has provided false, misleading, incomplete or  
31 inaccurate information in the application for a certificate or renewal of a certificate;

32 (3) The retainer medical practice provides medical services through a provider whose  
33 license to provide the medical services offered on behalf of the retainer medical practice is revoked;

34 (4) The authority of the retainer medical practice to operate a retainer medical  
35 practice or similar practice in another jurisdiction is denied, suspended, revoked or not renewed;

36 (5) The retainer medical practice, a person who has control over the retainer medical  
37 practice or a health care provider providing services on behalf of the retainer medical practice is  
38 charged with a felony or misdemeanor involving dishonesty; or

39 (6) The retainer medical practice fails to comply with subsection (g) of this section.

40 (f) With respect to a certified retainer medical practice or a retainer medical practice  
41 operating without a certificate, the department is authorized to:

42 (1) Investigate;

43 (2) Subpoena documents and records related to the business of the practice; and

44 (3) Take any actions authorized by the Insurance Code that are necessary to  
45 administer and enforce this section.

46 (g) A retainer medical practice subject to an investigation under subsection (e) of this  
47 section must:

48 (1) Within five business days, respond to inquiries in the form and manner specified  
49 by the department; and

1 (2) Reimburse the expenses incurred by the department in conducting the  
2 investigation.

3 (h) A retainer medical practice may contest any order made under subsection (e) of this  
4 section in accordance with [insert citation].

5 (i) A certificate issued under subsection (a) of this section is effective for one year or for a  
6 longer period as prescribed by the department by rule.

7 (j) The department may adopt rules necessary or appropriate to implement the provisions  
8 of this section.

9  
10 Section 4. [*Notifications by certified retainer medical practices.*]

11 (a) A certified retainer medical practice shall:

12 (1) Notify the [insert appropriate state agency] immediately whenever:

13 (i) The license of a provider who has provided services on behalf of the  
14 practice is denied, suspended, revoked or not renewed in this state or in any other jurisdiction; or

15 (ii) The authority of the practice to operate in another jurisdiction is denied,  
16 suspended, revoked or not renewed.

17 (2) Notify the department no later than 30 days after any change to the name, address  
18 or contact information that is provided in the application for certification under this Act.

19  
20 Section 5. [*Exceptions.*]

21 The requirements of this Act shall not apply to any of the following to the extent of the  
22 subject matter of the exemption:

23 (1) A bail bondsman, other than a corporate surety and its agents.

24 (2) A fraternal benefit society that has maintained lodges in this state and other states for 50  
25 years prior to [insert year], and for which a certificate of authority was not required on that date.

26 (3) A religious organization providing insurance benefits only to its employees, if the  
27 organization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal  
28 Revenue Code on September 13, 1975.

29 (4) Public bodies, as defined in [insert citation], that either individually or jointly establish a  
30 self-insurance program for tort liability in accordance with [insert citation].

31 (5) Public bodies, as defined in [insert citations], that either individually or jointly establish a  
32 self-insurance program for property damage in accordance with [insert citation].

33 (6) Cities, counties, school districts, community college districts, community college service  
34 districts or districts, as defined in [insert citation], that either individually or jointly insure for health  
35 insurance coverage, excluding disability insurance, their employees or retired employees, or their  
36 dependents, or students engaged in school activities, or combination of employees and dependents,  
37 with or without employee or student contributions, if all of the following conditions are met:

38 (a) The individual or jointly self-insured program meets the following minimum  
39 requirements:

40 (A) In the case of a school district, community college district or community college  
41 service district, the number of covered employees and dependents and retired employees and  
42 dependents aggregates at least 500 individuals;

43 (B) In the case of an individual public body program other than a school district,  
44 community college district or community college service district, the number of covered employees  
45 and dependents and retired employees and dependents aggregates at least 500 individuals; and

46 (C) In the case of a joint program of two or more public bodies, the number of  
47 covered employees and dependents and retired employees and dependents aggregates at least 1,000  
48 individuals;



(b) The individual or jointly self-insured health insurance program includes all coverages and benefits required of group health insurance policies under [insert citation];

(c) The individual or jointly self-insured program must have program documents that define program benefits and administration;

(d) Enrollees must be provided copies of summary plan descriptions including:

(A) Written general information about services provided, access to services, charges and scheduling applicable to each enrollee's coverage;

(B) The program's grievance and appeal process; and

(C) Other group health plan enrollee rights, disclosure or written procedure requirements established under [insert citation];

(e) The financial administration of an individual or jointly self-insured program must include the following requirements:

(A) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program;

(B) The program must maintain adequate reserves. Reserves may be invested in accordance with the provisions of [insert citation]. Reserve adequacy must be calculated annually with proper actuarial calculations including the following:

(i) Known claims, paid and outstanding;

(ii) A history of incurred but not reported claims;

(iii) Claims handling expenses;

(iv) Unearned contributions; and

(v) A claims trend factor; and

(C) The program must maintain adequate reinsurance against the risk of economic loss in accordance with the provisions of [insert citation] unless the program has received written approval for an alternative arrangement for protection against economic loss from the Director of the [insert appropriate state agency];

(f) The individual or jointly self-insured program must have sufficient personnel to service the employee benefit program or must contract with a third party administrator licensed under [insert citation] as a third party administrator to provide such services;

(g) The individual or jointly self-insured program shall be subject to assessment in accordance with [insert citation] and former enrollees shall be eligible for portability coverage in accordance with [insert citation];

(h) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the [insert appropriate state agency] copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by [insert citation] may be used to satisfy the financial report filing requirement; and

(i) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool.

(7) All ambulance services.

(8) A person providing any of the services described in this subsection. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

(a) Towing service.

1 (b) Emergency road service, which means adjustment, repair or replacement of the  
2 equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be  
3 operated under its own power.

4 (c) Transportation and arrangements for the transportation of human remains,  
5 including all necessary and appropriate preparations for and actual transportation provided to return  
6 a decedent's remains from the decedent's place of death to a location designated by a person with  
7 valid legal authority under [insert citation].

8 (9)(a) A person described in this subsection who, in an agreement to lease or to finance the  
9 purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in  
10 paragraph

11 (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft  
12 or other occurrence, as specified in the agreement. The exemption established in this subsection  
13 applies to the following persons:

14 (A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle  
15 retail installment contract.

16 (B) The lessor of the motor vehicle.

17 (C) The lender who finances the purchase of the motor vehicle.

18 (D) The assignee of a person described in this paragraph.

19 (c) The amount waived pursuant to the agreement shall be the difference, or portion thereof,  
20 between the amount received by the seller, lessor, lender or assignee, as applicable, that represents  
21 the actual cash value of the motor vehicle at the date of loss, and the amount owed under  
22 the agreement.

23 (10) A self-insurance program for tort liability or property damage that is established by two  
24 or more affordable housing entities and that complies with the same requirements that public bodies  
25 must meet under [insert citation]. As used in this subsection:

26 (a) "Affordable housing" means housing projects in which some of the dwelling units  
27 may be purchased or rented, with or without government assistance, on a basis that is affordable to  
28 individuals of low income.

29 (b) "Affordable housing entity" means any of the following:

30 (A) A housing authority created under the laws of this state or another  
31 jurisdiction and any agency or instrumentality of a housing authority, including but not limited to a  
32 legal entity created to conduct a self-insurance program for housing authorities that complies with  
33 [insert citation].

34 (B) A nonprofit corporation that is engaged in providing affordable housing.

35 (C) A partnership or limited liability company that is engaged in providing  
36 affordable housing and that is affiliated with a housing authority described in subparagraph (A) of  
37 this paragraph or a nonprofit corporation described in subparagraph (B) of this paragraph if the  
38 housing authority or nonprofit corporation:

39 (i) Has, or has the right to acquire, a financial or ownership interest in  
40 the partnership or limited liability company;

41 (ii) Has the power to direct the management or policies of the  
42 partnership or limited liability company;

43 (iii) Has entered into a contract to lease, manage or operate the  
44 affordable housing owned by the partnership or limited liability company; or

45 (iv) Has any other material relationship with the partnership or limited  
46 liability company.

1 (11) A community-based health care initiative approved by the Administrator of the [insert  
2 appropriate state agency] operating a community-based health care improvement program approved  
3 by the administrator.

4 (12) Except as provided in sections this Act, a person certified by the [insert appropriate state  
5 agency] to operate a retainer medical practice.

6  
7 Section 6. [*Marketing materials by a retainer medical practice.*]

8 A retainer medical practice certified by the [insert appropriate state agency] under this Act or  
9 a retainer medical practice applying for a certificate or the renewal of a certificate is permitted to  
10 exhaust the practice's supply of marketing materials created prior to the effective date of this Act.

11  
12 Section 7. [*Severability.*] Insert severability clause.

13  
14 Section 8. [*Repealer.*] Insert repealer clause.

15  
16 Section 9. [*Effective Date.*] Insert effective date.

# Retirement Options for Non-profit Organizations

This Act allows non-profit organizations with fewer than 20 employees to enter into a contributory retirement plan. There is no state money used to fund the retirement plan, which will be overseen by the state treasurer. To establish the plan, the treasurer may create a trust to receive qualified contributions from non-profit employers and employees, and must establish a non-profit defined contribution committee that will include the treasurer and four other members.

Submitted as:

Massachusetts

[HB 3754](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act to provide retirement options for nonprofit organizations.

2  
3           Section 2. [*Establishment and management of the not-for-profit retirement plan; contribution*  
4 *committee.* ]

5           (a) As used in this section, the term “not-for-profit employer” shall include eligible  
6 organizations incorporated under section 501(c) of the Internal Revenue Code, but does not include a  
7 governmental employer.

8           (b) The state treasurer may conduct research regarding the current status of retirement  
9 programs available to not-for-profit employees and the appeal of creating a program for their benefit.

10          (c) The treasurer and receiver general, on behalf of the [insert state], may sponsor a qualified  
11 defined contribution plan within the meaning of section 414(i) of the Internal Revenue Code, in this  
12 section called the Code, that may be adopted by not-for-profit employers for their employees in  
13 accordance with section 401(a) of the Code, regulations provided under that section and applicable  
14 guidance from the Internal Revenue Service. The treasurer shall obtain approval from the Internal  
15 Revenue Service with respect to the plan and shall ensure the administration of the plan is in  
16 compliance with the Code and other applicable federal and state laws including the Employee  
17 Retirement Income Security Act of 1974, in this section called ERISA. The plan shall provide for a  
18 qualified trust under said section 401(a), with contributions made to the trust by the not-for-profit  
19 employer, the employer's employees, or both. Under the trust instrument, any part of the corpus or  
20 income shall not be used for, or diverted to, purposes other than the exclusive benefit of employees  
21 or their beneficiaries at any time prior to the satisfaction of all liabilities with respect to employees  
22 and their beneficiaries. In order to participate in the plan, a not-for-profit employer shall execute a  
23 participation agreement, agree to the terms of the plan and operate the plan in compliance with the  
24 Code and ERISA. The treasurer may require that the not-for-profit employer sign a service  
25 agreement and use forms and procedures prescribed by the treasurer. The treasurer may also require  
26 that certain employers seek approval of their plans from the Internal Revenue Service.

27          (d) The treasurer may contract with practitioners, administrators, investment managers and  
28 other entities, including the [insert state] Pension Reserves Investment Management Board, in order  
29 to design, administer and provide investment options under the plan. The treasurer shall, before  
30 making any such contract, solicit bids from companies authorized to conduct business within the  
31 commonwealth, which shall be sealed and opened at a time and place designated by the treasurer. A

submitted bid shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which shall be paid to salespersons, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer may require. A contract entered into between an employee and the not-for-profit employer pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand. Upon a determination by the treasurer as to which provider offers the investment options most beneficial to the employee in each category for which bids were solicited, the employee may choose the investment option for the employee's account.

Notwithstanding any provision to the contrary, the treasurer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's defined contribution plan account provided:

- (i) that the treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's defined contribution plan account in the same investment products as provided through a deferred compensation plan for employees of the commonwealth administered by the treasurer, and
- (ii) that such plan resulted from the solicitation of bids in accordance with the requirements under this section.

(e) There shall be in the office of the treasurer and receiver general a not-for-profit defined contribution committee. The committee shall consist of the treasurer or a designee, who shall serve as chairperson, and 4 additional members appointed by the treasurer, 2 of whom shall have practical experience in the human services, educational or public and societal benefit sector of the non-profit community and 2 of whom shall be currently employed by not-for-profit corporations. Each member shall be appointed for a term of 3 years and shall be eligible for reappointment. In the case of a vacancy, a successor shall be appointed for a full term or for the unexpired portion thereof, as the case may be. A member of the committee shall be eligible for reappointment. The committee shall annually elect 1 of its members to serve as vice-chairperson. The committee shall meet from time to time and assist the treasurer in the development of general policy regarding the program, and shall provide technical advice and input to the state treasurer. The members of the committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(f) The treasurer is hereby authorized to adopt rules and regulations related to this section and do all things convenient to carry out the provisions and purposes of this section.

### Section 3. [*Appointment of current not-for-profit employees.*]

Notwithstanding any general or special law to the contrary, in making his initial appointments to the not-for-profit defined contribution committee pursuant to [insert citation], the treasurer shall appoint 1 member currently employed by a not-for-profit corporation to serve for a term of 2 years.

### Section 4. [*Severability.*] Insert severability clause.

### Section 5. [*Repealer.*] Insert repealer clause.

### Section 6. [*Effective Date.*] Insert effective date.

# Rural County Attorney Recruitment

The Act offers lawyers an annual subsidy to live and work in rural areas of the state based on the national incentive program used for doctors, nurses and dentists.

Submitted as:

South Dakota

[HB 1096 \(as enrolled\)](#)

Status: Signed into law in March 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Title.*] An Act to provide for the transfer and appropriation of funds upon the  
2 occurrence of certain events and to assist rural counties in the recruitment of attorneys.

3  
4           Section 2. [*Pilot program.*]

5           The Unified Judicial System may establish a pilot program to assist rural counties in  
6 recruiting attorneys.

7  
8           Section 3. [*Eligibility.*]

9           A county eligible to participate in the recruitment assistance pilot program is any county in  
10 this state which:

- 11  
12 (1) Has a population of ten thousand persons or less;  
13 (2) Agrees to provide its portion of the incentive payment pursuant to the provisions of this Act;  
14 and  
15 (3) Is determined to be eligible by the Unified Judicial System.

16  
17           Each interested county shall apply to the Unified Judicial System. Before making a  
18 determination of eligibility, the Unified Judicial System shall conduct a county assessment designed  
19 to evaluate the county's need for an attorney and its ability to sustain and support an attorney. The  
20 Unified Judicial System shall maintain a list of counties that have been assessed and that are eligible  
21 for participation in the recruitment assistance pilot program established by this Act. The Unified  
22 Judicial System may revise any county assessment or conduct a new assessment as necessary to  
23 reflect any change in conditions within a county.

24  
25           Section 4. [*Selection.*]

26           In making the selection of the participating counties, the Unified Judicial System shall be  
27 guided by:

- 28 (1) Demographics of the county;  
29 (2) Age and number of the current membership of the county bar;  
30 (3) Recommendation of the presiding circuit judge;  
31 (4) Programs of economic development within the county;  
32 (5) Geographical location to other counties receiving assistance;  
33 (6) Evaluation of the attorney seeking assistance under this program;  
34 (7) Existing or previous ties of the applicant to the county; and  
35 (8) Prior participation by the county in this pilot program.



1           Section 5. [*Participation requirements.*]

2           An attorney licensed to practice in [insert state] is eligible to participate in the recruitment  
3 assistance pilot program established pursuant to this Act. The attorney shall agree to practice in an  
4 eligible rural county for at least five years. No more than a total of sixteen attorneys may participate  
5 in the program. No attorney may be added to the program after [insert future date].  
6

7           Section 6. [*Payment.*]

8           Any attorney who fulfills the requirements of the recruitment assistance pilot program  
9 established pursuant to this Act, is entitled to receive an incentive payment in five equal annual  
10 installments, each in an amount equal to ninety percent of the [Insert publicly supported law school]  
11 resident tuition and fees as determined on [Insert date].  
12

13          Section 7. [*Rural county program obligations.*]

14          Any agreement for the payment of recruitment assistance pursuant to this Act shall obligate  
15 the rural county served by the attorney to provide thirty-five percent of the total amount of the  
16 incentive payment in five equal annual installments. After the rural county certifies to the Unified  
17 Judicial System that it has paid the attorney the annual amount for which it is obligated and the State  
18 Bar of [insert state] or its designee has paid fifteen percent of the annual installment to the Unified  
19 Judicial System, the Unified Judicial System shall pay to the attorney the remaining balance of the  
20 total installment payment amount for that year. The Unified Judicial System shall pay the required  
21 amount out of funds appropriated in section 10 of this Act and the funds received from the State Bar  
22 of [Insert state] pursuant to this Act. A county may prepay its portion of the incentive payment at  
23 any time during the five-year period.  
24

25          If the attorney has received a payment pursuant to this Act and subsequently breeches the  
26 agreement, the attorney shall repay all sums received pursuant to this Act under the terms and  
27 conditions set by the Unified Judicial System. Failure to make repayment is grounds for discipline  
28 by the State Bar of [Insert state] and the Supreme Court.  
29

30          Section 8. [*Authorization of rural county appropriation and agreements.*]

31          Any rural county may appropriate funds for the purpose of carrying out the provisions of this  
32 Act. A rural county may enter an agreement with any county, municipality, school district, or  
33 nonprofit entity to assist the county in carrying out the provisions of this Act.  
34

35          Section 9. [*Effective date of assistance.*]

36          No recruitment assistance agreement entered into pursuant to the provisions of this Act is  
37 effective until it is filed with and approved by the Unified Judicial System. The agreement shall  
38 provide that the attorney practice law full-time in the eligible county for at least five years. The  
39 Supreme Court may promulgate rules necessary to implement the provisions of this Act pursuant to  
40 [insert citation].  
41

42          Section 10. [*Limitations.*]

43          No person may participate in the program established pursuant to the provisions of this Act if  
44 the person has previously participated in the program, or any other state or federal scholarship, loan  
45 repayment, or tuition reimbursement program that obligates the person to provide attorney services  
46 within an underserved area.  
47

48          Section 11. [*Authorization of appropriations*] Insert appropriations amount and clause.  
49

1           Section 12. [*Authorization of program vouchers.*]

2           The Chief Justice shall approve vouchers and the state auditor shall draw warrants to pay  
3 expenditures authorized by this Act.  
4

5           Section 13. [*Requirement of obligated funds be lawfully expended.*]

6           Any amounts appropriated in this Act not lawfully expended or obligated shall revert in  
7 accordance with the procedures prescribed in chapter 4-8.  
8

9           Section 14. [*Legislative report.*]

10          The Unified Judicial System shall annually file with the [insert state legislative research  
11 agency] report on the status of the program.  
12

13          Section 15. [*Authorization to receive funds.*]

14          In order to fully fund the incentive payment, the Unified Judicial System is specially  
15 authorized to receive from the State Bar of [insert state] fifteen percent of the total amount of an  
16 incentive payment authorized pursuant to this Act in five equal annual installments and place the  
17 funds in the Unified Judicial System other fund fiduciary fund.

# Safe 2 Tell Program

The Safe2Tell Program, first created in 2004, is a 501c3 not-for-profit organization based on the Colorado Prevention Initiative for School Safety with initial funding from The Colorado Trust. The primary purpose of the Safe2Tell Program is to provide students and the community with the means to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate law enforcement and public safety agencies and school officials.

The suggested state legislation below amends the enabling statute for the program by clarifying that all students may report information anonymously via various media including text messaging, emails, web forms, etc. and that the information is protected from being publicly released. Further, only certain circumstances will allow the information to be subpoenaed in legal proceedings.

Submitted as:

Colorado

[SB 12-079](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as the “Safe2Tell Program Act.”

2  
3           Section 2. [*Definitions.*] As used in this Act:

4           (1) "In camera review" means an inspection of materials by the court, in chambers, to  
5 determine what, if any, materials are discoverable

6           (2) "Materials" means any records, reports, claims, writings, documents, means any records,  
7 reports, claims, writings, documents, or information anonymously reported or information related to  
8 the source of the materials.

9           (3) "Safe2tell", "safe2tell program", or "program" means the program described in [citation]  
10 that provides students and the community with the means to relay information anonymously  
11 concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of  
12 these activities, to appropriate law enforcement and public safety agencies and school officials.

13  
14          Section 3. [*Program duties and functions.*]

15          (A) Establish and maintain methods of anonymous reporting concerning unsafe,  
16 potentially harmful, dangerous, violent, or criminal activities, or the threat of such activities;

17          (B) Establish methods and procedures to ensure that the identity of the reporting party  
18 remains unknown to all persons and entities, including law enforcement officers and  
19 employees or other persons operating the program;

20          (C) Establish methods and procedures so that information obtained from a reporting party  
21 who voluntarily discloses his or her identity and verifies that he or she is willing to be identified may  
22 be shared with law enforcement officers, employees or other persons operating the program, and  
23 with school officials;

24          (D) Establish methods and procedures to ensure that a reporting party's identity that  
25 becomes known through any means other than voluntary disclosure is not further disclosed; and

1 (E) Promptly forward information received by the program to the appropriate law  
2 enforcement or public safety agency or school officials.

3  
4 Section 4. [*In camera review, confidentiality of materials, criminal penalty*]

5 (A) (1) The Safe2Tell program and persons implementing and operating program  
6 shall not be compelled to produce any materials except on the motion of a criminal defendant to the  
7 court

8 in which the offense is being tried, supported by an affidavit establishing that the materials contain  
9 impeachment evidence or evidence that is exculpatory to the defendant in the trial of that offense.

10 (2) If the court determines that the produced materials contain impeachment evidence or  
11 evidence that is exculpatory to the defendant, the court shall order the materials to be produced to the  
12 defendant pursuant to a protective order that includes, at a minimum, the redaction of the reporting  
13 party's identity and limitations on the use of the materials, as needed, unless contrary to state or  
14 federal law

15 any materials excised pursuant to a judicial order following the in camera review shall be sealed and  
16 preserved in the records of the court, to be made available to the appellate court in the event of an  
17 appeal. After the time for appeal has expired, the court shall return the materials to the Safe2Tell  
18 program.

19 (B) (1) Materials created or obtained through the implementation or operation of the  
20 Safe2Tell program are confidential, and no person shall disclose the material. The Safe2Tell  
21 program and persons implementing or operating the Safe2Tell program may be compelled to  
22 produce the materials only before a court or other tribunal and only pursuant to court order for an in  
23 camera review. Any such review shall be limited to an inspection of materials that are material to the  
24 specific case pending before the court. The  
25 attorney general acting on behalf of the Safe2Tell program shall have standing in any action to  
26 oppose the disclosure of materials in the custody of the Safe2Tell program.

27 (2) A person who knowingly discloses confidential materials in violation of the provisions of  
28 this subsection (B) commits a class 1 misdemeanor.

29  
30 Section 5. [*Allowance or denial of inspection , grounds, procedure, appeal*]

31 Notwithstanding any provision to the contrary in [insert citation], the custodian shall deny  
32 the right of inspection of any materials received, made, or kept by the Safe2Tell program, as  
33 described in [insert citation] that are confidential pursuant to [insert citation].  
34

35 Section 6. [*Severability.*] Insert severability clause.

36  
37 Section 7. [*Repealer.*] Insert repealer clause.

38  
39 Section 8. [*Effective Date.*] Insert effective date.

# Self-Settled Spendthrift Trust

The Act authorizes the creation of self-settled spendthrift trusts, which protect trust assets against the claims of a settlor who is also a trust beneficiary. This bill allows a settlor to transfer assets to an irrevocable trust to be held for the joint benefit of the settlor and at least one other beneficiary. Currently, a spendthrift clause is ineffective to shield the beneficiary from creditors when the beneficiary is also the settlor. Current state law allows the creation of trusts that are protected from the claims of creditors against trust beneficiaries, and this bill extends that policy to trusts of which the settlor is also a discretionary beneficiary.

Submitted as:

Virginia

[S. 11](#)

Status: Became law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. This Act may be cited as the “Self-Settled Spendthrift Trusts.”

Section 2. *[Definitions.]*

As used in this Act:

A. "Independent qualified trustee" means a qualified trustee who is not, and whose actions are not, subject to direction by:

1. The settlor;
2. Any natural person who is not a resident of the Commonwealth;
3. Any entity that is not authorized to engage in trust business within the [insert state];
4. The settlor's spouse;
5. A parent of the settlor;
6. Any issue of the settlor;
7. A sibling of the settlor;
8. An employee of the settlor;
9. A business entity in which the settlor's holdings represent at least 30 percent of the total voting power of all interests entitled to vote;
10. A subordinate employee of the settlor; or
11. A subordinate employee of a business entity in which the settlor is an executive.

B. "Qualified interest" means a settlor's interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the settlor to receive distributions of income, principal, or both, in the sole discretion of an independent qualified trustee. A settlor may have a qualified interest in a qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified interest, and the rules shall apply to each interest of the settlor in the same trust other than the settlor's qualified interest.

C. "Qualified self-settled spendthrift trust" means a trust if:

1. The trust is irrevocable;
2. The trust is created during the settlor's lifetime;
3. There is, at all times when distributions could be made to the settlor pursuant to the settlor's qualified interest, at least one beneficiary other than the settlor (i) to whom income may be distributed, if the settlor's qualified interest relates to trust income, (ii) to whom principal may be distributed, if the settlor's qualified interest relates to trust principal, or (iii)

1 to whom both income and principal may be distributed, if the settlor's qualified interest  
2 relates to both trust income and principal;

3 4. The trust has at all times at least one qualified trustee, who may be, but need not  
4 be, an independent qualified trustee;

5 5. The trust instrument expressly incorporates the laws of the Commonwealth to  
6 govern the validity, construction, and administration of the trust;

7 6. The trust instrument includes a spendthrift provision that restrains both voluntary  
8 and involuntary transfer of the settlor's qualified interest; and

9 7. The settlor does not have the right to disapprove distributions from the trust.

10 D. "Qualified trustee" means any person who is a natural person residing within the [insert  
11 state] or a legal entity authorized to engage in trust business within the Commonwealth and who  
12 maintains or arranges for custody within the [insert state] of some or all of the property that has been  
13 transferred to the trust by the settlor, maintains records within the Commonwealth for the trust on an  
14 exclusive or nonexclusive basis, prepares or arranges for the preparation within the [insert state] of  
15 fiduciary income tax returns for the trust, or otherwise materially participates within the [insert state]  
16 in the administration of the trust. A trustee is not a qualified trustee if such trustee's authority to  
17 make distributions of income or principal or both are subject to the direction of someone who, were  
18 that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

19  
20 Section 3.[ *Self-Settled Spendthrift Trusts*]

21 A. A settlor may transfer assets to a qualified self-settled spendthrift trust and retain in that  
22 trust a qualified interest, and, except as otherwise provided shall not apply to such qualified interest.

23 B. This act shall continue to apply with respect to any interest held by a settlor in a qualified  
24 self-settled spendthrift trust, other than a qualified interest.

25 C. A settlor's transfer to a qualified self-settled spendthrift trust shall not, to the extent of the  
26 settlor's qualified interest, be deemed to have been made with intent to delay, hinder, or defraud  
27 creditors, merely because it is made to a trust with respect to which the settlor retains a qualified  
28 interest and merely because it is made without consideration. A settlor's transfer to a qualified self-  
29 settled spendthrift trust may, however, be set on other bases, such as if the transfer renders the settlor  
30 insolvent.

31 D. A settlor's creditor may bring an action to avoid a transfer to a qualified self-settled  
32 spendthrift trust or otherwise to enforce a claim that existed on the date of the settlor's transfer to  
33 such trust within five years after the date of the settlor's transfer to such trust to which such claim  
34 relates.

35 E. A creditor shall have only such rights with respect to a settlor's transfer to a qualified self-  
36 settled spendthrift trust as are provided in this section. No creditor and no other person shall have  
37 any claim or cause of action against any trustee, trust adviser, trust director, or any person involved  
38 in the counseling, drafting, preparation, or execution of, or transfers to a qualified self-settled  
39 spendthrift trust.

40 F. If a settlor makes more than one transfer to the same qualified self-settled spendthrift trust,  
41 the following rules shall apply:

42 1. The settlor's making of a subsequent transfer shall be disregarded in determining  
43 whether a creditor's claim with respect to a prior transfer is valid under this section;

44 2. With respect to each subsequent transfer by the settlor, the five-year limitations  
45 period commences on the date of such subsequent transfer; and

46 3. Any distribution to a beneficiary is deemed to have been made from the latest such  
47 transfer.



1           G. The movement to the [insert state] of the administration of an existing trust, which, after  
2 such movement to the [insert state], meets for the first time all of the requirements of a qualified  
3 self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by  
4 the settlor on the date of such movement of all of the assets previously transferred to the trust by the  
5 settlor.

6  
7 Section 4. [*Severability clause.*] Insert Severability clause.

8  
9 Section 5: [*Repealer clause.*] Insert repealer clause.

10  
11 Section 6: [*Effective date.*] Insert effective date

# Students and Foster Care

This Act requires the state department of elementary and secondary education to ensure specific criteria are implemented in every school district about the enrollment and educational success of foster care children.

If a foster care student transfers before or during the school year, the Act requires the receiving school to initially honor placement of the student in educational courses and programs based on the student's previous enrollment or educational assessments from the sending school, provide comparable services to a foster care student with disabilities based on their current Individualized Education Program, and make reasonable accommodations and modifications to address the needs of incoming foster care students with disabilities, subject to an existing 504 or Title II Plan, to provide equal access to education. The receiving district may conduct subsequent evaluations to ensure appropriate placements.

A school may waive the prerequisites or other preconditions for placement in a course or program and must waive specific courses required for graduation if similar course work has been satisfactorily completed at another school or provide reasonable justification for denying such a waiver. If a waiver is not granted, the receiving school must provide an alternative means of acquiring the required course work so that graduation may occur on time.

Submitted as:

Missouri

[HB1577 \(Truly Agreed to and Finally Passed\)](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relating to foster care students in elementary and secondary  
2 education.

3  
4           Section 2. [*Requirements.*]

5           (a) In order to remove barriers to educational success imposed on foster care children because  
6 of frequent moves, the department of elementary and secondary education shall ensure that the  
7 following criteria are implemented in every school district in this state regarding enrollment of foster  
8 care children:

9                   (1) Facilitate the timely enrollment of foster care children and ensure that they are not  
10 placed at a disadvantage due to difficulty in the transfer of education records from the previous  
11 school district or districts or variations in entrance and age requirements;

12                   (2) Facilitate the student placement process through which foster care children are not  
13 disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course  
14 content or assessment;

15                   (3) Facilitate the qualification and eligibility for enrollment, educational programs,  
16 and participation in extracurricular academic, athletic, and social activities;

17                   (4) Facilitate the on-time graduation of foster care children;

18                   (5) Provide for the promulgation and enforcement of administrative rules  
19 implementing the provisions of this section;

(6) Provide for the uniform collection and sharing of information between and among schools, foster care children, and their families under this section;

(7) Promote flexibility and cooperation between the educational system, foster parents, and the foster care student in order to achieve educational success for the student.

(b) For purposes of this section, the following terms shall mean:

(1) "Education records", those official records, files, and data directly related to a foster care student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs;

(2) "Extracurricular activities", a voluntary activity sponsored by the school. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities;

(3) "Foster care child", a school-aged child enrolled in kindergarten through twelfth grade who is residing in a foster care setting in this state;

(4) "Transition":

(A) The formal and physical process of transferring from school to school; or

(B) The period of time in which a foster care student moves from one school to another school.

### Section 3. [*Transfers of students in foster care.*]

(a) When a foster care student transfers before or during the school year, the receiving school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending school or educational assessments conducted at the sending school if the courses are offered. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses shall be paramount when considering placement. This requirement does not preclude the receiving school from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

(b) The receiving school shall initially honor placement of a foster care student in educational programs based on current educational assessments conducted at the sending school or participation or placement in like programs in the sending school. Such programs include, but are not limited to gifted and talented programs and English as a second language (ESL). This requirement does not preclude the receiving school from performing subsequent evaluations to ensure appropriate placement of the student.

(c) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq., the receiving school shall initially provide comparable services to a foster care student with disabilities based on his or her current Individualized Education Program (IEP). In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving school shall make reasonable accommodations and modifications to address the needs of incoming foster care students with disabilities, subject to an existing 504 or Title II Plan, to provide the foster care student with equal access to education. This requirement does not preclude the receiving school from performing subsequent evaluations to ensure appropriate placement of the student.

1 (d) Schools shall have flexibility in waiving course or program prerequisites, or other  
2 preconditions for placement in courses or programs offered at the school.  
3

4 Section 4. [*Facilitation of graduation.*]

5 (a) In order to facilitate the on-time graduation of foster care children, schools shall  
6 incorporate the following procedures:

7 (1) Schools shall waive specific courses required for graduation if similar course  
8 work has been satisfactorily completed in another school or shall provide reasonable justification for  
9 denial. If a waiver is not granted to a foster care student who would qualify to graduate from the  
10 sending school, the receiving school shall provide an alternative means of acquiring required course  
11 work so that graduation may occur on time;

12 (2) Receiving schools shall accept:

13 (A) Exit or end-of-course exams required for graduation from the sending  
14 school; or

15 (B) National norm-referenced achievement tests; or

16 (C) Alternative testing, in lieu of testing requirements for graduation in the  
17 receiving school.

18 If such alternatives cannot be accommodated by the receiving school for a foster care student  
19 transferring in his or her senior year, the provisions of subsection 5 of this section shall apply.  
20

21 Section 5. [*Recognition of graduation requirements from the sending school.*]

22 (a) If a foster care student transferring at the beginning or during his or her senior year is  
23 ineligible to graduate from the receiving school after all alternatives have been considered, the  
24 sending and receiving schools shall ensure the receipt of a diploma from the sending school, if the  
25 student meets the graduation requirements of the sending school.  
26

27 Section 6. [*Severability.*] Insert severability clause.

28  
29 Section 7. [*Repealer.*] Insert repealer clause.

30  
31 Section 8. [*Effective Date.*] Insert effective date.

# Student Housing Assistance for Former Foster Children

The Act requires higher education institutions help eligible students locate temporary housing between academic terms upon the students' request. Students are eligible if they were under the conservatorship of the state department of family and protective services immediately before turning 18 or becoming a legal adult, lacked housing between academic terms, and were enrolled full-time before or registered full-time after the period when housing assistance was needed. It also allows an institution to provide temporary housing or a stipend for temporary housing to eligible students.

The Act permits an institution to use gifts, grants, donations, or legislative appropriations to help provide such housing to former foster care children and it requiring using grants and donations to fund such housing before using appropriated funds.

Submitted as:

Texas

[HB 452 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] An Act relating to temporary housing between academic terms for  
2 certain postsecondary students who have been under the conservatorship of the state [insert child  
3 welfare agency].  
4

5           Section 2. [*Authorizations.*]

6           (a) In this section:

7               (1) "Institution of higher education" has the meaning assigned by [insert citation].

8               (2) "Academic term" includes a summer session.

9           (b) To be eligible to receive housing assistance from an institution of higher education under  
10 Subsection (c), a student must:

11               (1) have been under the conservatorship of the [insert child welfare agency] or its  
12 predecessor in function on the day preceding:

13                       (A) the student's 18th birthday; or

14                       (B) the date the student's disabilities of minority are removed by a court  
15 under [insert citation];

16               (2) be enrolled full-time at the institution during the academic term immediately  
17 preceding the period for which the student requests the housing assistance;

18               (3) be registered or otherwise have taken the actions required by the institution to  
19 permit the student to enroll full-time at the institution during the academic term immediately  
20 following the period for which the student requests the housing assistance; and

21               (4) lack other reasonable temporary housing alternatives between the academic terms  
22 described by Subdivisions (2) and (3), as determined by the institution.

23           (c) On the student's request, each institution of higher education shall assist an eligible  
24 student in locating temporary housing for any period beginning on the last day of an academic term

1 and ending on the first day of the immediately following academic term, according to the  
2 institution's academic calendar.

3 (d) For each eligible student under Subsection (b) who also demonstrates financial need, the  
4 institution may:

5 (1) provide a stipend to cover any reasonable costs of the temporary housing that are  
6 not covered by other financial aid immediately available to the student for that purpose; or

7 (2) provide temporary housing directly to the student for the applicable period.

8 (e) The receipt of a stipend under Subsection (d) does not prohibit the student from receiving  
9 additional stipends under that subsection in one or more subsequent periods, based on the student's  
10 demonstrated financial need.

11 (f) An institution of higher education may use any available revenue, including legislative  
12 appropriations, and may solicit and accept gifts, grants, and donations for the purposes of this  
13 section. The institution shall use any gifts, grants, and donations received for the purposes of this  
14 section before using other revenue.

15  
16 Section 3. [*Severability*.] Insert severability clause.

17  
18 Section 4. [*Repealer*.] Insert repealer clause.

19  
20 Section 5. [*Effective Date*.] Insert effective date.



# Suicide Prevention/Education Training

This Act requires two hours of training in youth suicide awareness and prevention as a requirement for the renewal of credentials of individuals employed in a middle school or high school in the state. The Act requires the Department of Education to develop training guidelines and materials to be used in local school districts.

Submitted as:

South Carolina

[Jason Flatt Act](#)

Status: Became law in May 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Title.*] This act may be cited as the "Jason Flatt Act".

2  
3           Section 2. [*Youth Suicide Prevention Teaching Training.*]

4  
5           (A) Beginning with the [*Insert school year*], the Department of Education shall require two  
6 hours of training in youth suicide awareness and prevention as a requirement for the renewal of  
7 credentials of individuals employed in a middle school or high school as defined in [*Insert citation.*]  
8 The required training shall count toward the [*Insert number of*] renewal credits specified in  
9 Department of Education regulations for renewal of credentials.

10          (B) (1) The department shall develop guidelines suitable for training and materials that may  
11 be used by schools and districts; however districts may approve materials to be used in providing  
12 training for employees.

13           (2) The training required in this section may be accomplished through self-review of  
14 suicide prevention materials that meet guidelines developed by the Department of Education.

15          (C) No person shall have a cause of action for any loss or damage caused by any act or  
16 omission resulting from the implementation of the provisions of this section or resulting from any  
17 training, or lack of training, required by this section unless the loss or damage was caused by wilful  
18 or wanton misconduct. The training, or lack of training, required by the provisions of this section  
19 must not be construed to impose any specific duty of care."  
20

21          Section 3. [*Severability.*] Insert severability clause.

22          Section 4. [*Repealer.*] Insert repealer clause.

23  
24          Section 5. [*Effective Date.*] Insert effective date.

# Teacher Tenure Reform Note

The subjects of reforming teacher tenure and promoting teacher effectiveness have been high-profile issues across several states due to significant implications for both education and fiscal policy. Legislation passed in Louisiana, Maine and New Jersey are recent examples other states may wish to consider when examining the potentially controversial issues surrounding the process of changing or modifying existing tenure programs for public educators.

## Louisiana

[HB 974](#), which became law in 2012, requires school superintendents to base all employment related decisions, including dismissal of teachers and administrators, primarily on performance and effectiveness. The bill limits tenure eligibility to teachers that have been rated “highly effective” for 5 years within a 6-year period starting September 1, 2012. It also requires that tenure be revoked if a tenured teacher receives an “ineffective” performance rating starting in the beginning of the 2013-2014 school year. Lastly, it prohibits a pay raise in the year following an “ineffective” performance rating received by a teacher or an administrator.

## Maine

Maine’s [H 1376](#), which became law in 2012, requires that each school administrative unit develop and implement a performance evaluation and professional growth system for educators. As under prior law, the school board determines the “method” of evaluation and the superintendent is responsible for implementing the school-board-adopted evaluation method. The evaluation and growth system must include multiple measures of effectiveness, including student learning and growth as well as other factors. Below is a summary of the Act developed by the Maine Office of Legislative Information:

This bill requires school administrative units to develop and implement comprehensive performance evaluation and professional growth systems for teachers and principals. The bill sets forth standards that must be met by the systems, including a requirement that multiple measures of effectiveness must be used in evaluations, that evaluators must be properly trained and that a system must include a process for using information from the evaluation process to inform professional development. The Department of Education is required to adopt rules regarding the requirements of the system. The requirement for development and implementation of the system is phased in with full implementation required in school year 2015-2016.

Effectiveness ratings must be treated as a significant factor in determining the order of layoff and recall when reductions in force occur. The bill provides that receipt of a rating of ineffective for 2 consecutive years constitutes just cause for nonrenewal of a teacher's contract. Any appeal or grievance of a rating or evaluation under the system is limited to matters of implementation, not professional judgment.

The bill establishes a new targeted funding component under the Essential Programs and Services formula, to be used for development and implementation of the required performance evaluation and professional growth system.

The bill requires the department to collect data on the success and retention of teachers who complete approved teacher preparation programs in the State. It also requires the State Board of Education to include in its certification rules a requirement that an applicant for a provisional teacher

certificate must complete a 10-week student teaching experience before attaining certification and a requirement that a person seeking an endorsement to teach either elementary or middle school must pass a rigorous test of mathematics and evidence-based reading instruction. Finally, the bill requires the State Board of Education to adopt rules setting forth a path to provisional certification for a person who has not completed a traditional teacher preparation program but who has a baccalaureate degree and demonstrates subject matter competency.

## **New Jersey**

[S 1455](#), which became law in 2012, seeks to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions. The bill establishes a mentoring program to enhance teacher knowledge of, and strategies related to, the core curriculum content standards in order to facilitate student achievement and growth; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching. An analysis by the New Jersey Assembly Budget Committee issued a summary of the legislation:

As amended, this bill requires each school district to submit annually to the Commissioner of Education, for review and approval, an evaluation rubric that the district will use to assess the effectiveness of its teaching staff members. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the bill. A board of education must: adopt a rubric approved by the commissioner by December 31, 2012; implement a pilot program to test the rubric beginning no later than January 31, 2013; and beginning with the 2013-2014 school year, ensure implementation of the rubric for all educators in the district.

Under current law, all teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This bill provides that all teaching staff members employed on or after the bill's effective date will become tenured after completing four years of employment in the school district. According to the provisions of the bill, teachers, principals, assistant principals, and vice-principals will have the following additional requirements for acquiring tenure:

- a teacher will be required to complete a district mentorship program and receive a rating of effective or highly effective in two annual summative evaluations within the first three years after the initial year in which the teacher completes the mentorship program; and
- a principal, assistant principal, or vice-principal will be required to be rated as effective or highly effective in two annual summative evaluations within the first three years of employment following the initial year of employment.

The bill provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the same district on or after the effective date of the bill must meet the current statutory requirement of two years of employment in the new position in order to acquire tenure in that position, but additionally the employee must be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position. In the case of any tenured teacher, principal, assistant principal, or vice-principal who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school in another district, that person will be eligible for tenure after being evaluated as effective or highly

effective in at least one annual summative evaluation within the first two years of employment in the underperforming school.

In order to ensure the effectiveness of its teachers, the bill directs each public school to convene a school improvement panel. The panel will include the principal, or his designee, an assistant or vice-principal, and a teacher. The principal's designee must be an individual employed in the district in a supervisory role and capacity who possesses a school administrator certificate, principal certificate, or supervisor certificate. The teacher will be selected in consultation with the majority representative and must have a demonstrated record of success in the classroom. The panel will: oversee the mentoring of teachers; conduct evaluations of teachers, provided that the teacher on the panel will not be included in the evaluation process unless the majority representative has agreed to the contrary; and identify professional development opportunities for all instructional staff members.

Under the bill, each board of education must implement a mentoring program in which effective experienced teachers are paired with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance. The bill also provides that the board of education, the principal or the superintendent must provide teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job. When a teaching staff member is rated ineffective or partially effective, a corrective action plan must also be developed to address deficiencies outlined in the employee's evaluation.

Under the provisions of the bill the superintendent of schools is required to promptly file a charge of inefficiency whenever a tenured teacher, principal, assistant principal, and vice-principal is rated ineffective or partially effective in an annual summative evaluation and in the following year the employee is rated ineffective. A charge of inefficiency must also be filed when the employee is rated partially effective in two years or is rated ineffective in one year's annual summative evaluation and in the next year is rated partially effective, however in this case, upon a written finding of exceptional circumstances, the superintendent may defer filing the tenure charge until after the next annual summative evaluation.

The bill requires binding arbitration for contested cases involving the dismissal or reduction in compensation of tenured employees in the school district. These contested cases will no longer be referred to Administrative Law Judges, and the final determination on the case will no longer be made by the Commissioner of Education, which is the process under current law. The bill provides that the Commissioner of Education will maintain a panel of 25 arbitrators, with eight designated by the New Jersey Education Association, three designated by the American Federation of Teachers, nine designated by the New Jersey School Boards Association, and five designated by the New Jersey Principals and Supervisors Association. The bill includes a cap on the costs of the arbitration, with the arbitrator being limited to no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator will be borne by the State. Arbitrators will be assigned by the commissioner randomly to hear cases.

The bill provides that for a charge of inefficiency filed against a teacher, principal, assistant principal, or vice-principal based on the rating given in an annual summative evaluation, as described above, the board of education must forward the charge to the commissioner within 30 days

of the filing, unless the board determines that the evaluation process has not been followed. If the charge is forwarded to the commissioner, the individual against whom the charges are filed will have 10 days to submit a written response to the charges to the commissioner, and the commissioner, unless he determines that the evaluation process has not been followed, is required to forward the case to the arbitrator within five business day following the period provided for the response to the charges. The hearing before the arbitrator must be held within 45 days of his assignment to the case, and he must render a decision within 45 days of the start of the hearing.

In rendering a decision on one of these cases, the arbitrator is only permitted to consider whether or not:

- the employee's evaluation failed to adhere substantially to the evaluation process;
- there is a mistake of fact in the evaluation;
- the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination, or other conduct prohibited by State or federal law; or
- the district's actions were arbitrary and capricious.

If the employee is able to demonstrate that any of these facts are applicable, the arbitrator must then determine if that fact materially affected the outcome of the evaluation and if it did not, the arbitrator is required to decide in favor of the board and the employee must be dismissed.

The provisions of this bill will take effect in the 2012-2013 school year, except that the provision of the bill that requires the State Board of Education to promulgate regulations to set standards for the approval of evaluation rubrics and sets forth the minimum requirements of the new evaluation rubric, will take effect immediately.

# Telecommunications and State-Owned Rail Trails

This Act establishes procedures and fees to enable telecommunications providers to install telecommunications facilities on rail-trail land under state ownership or control. It requires some of the money from such fees be used to develop and maintain rail-trails.

Submitted as:

Michigan

[Act No. 138, Public Acts of 2012](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] Insert title to cite the Act.

2  
3           Section 2. [*Requirements.*]

4           (1) If the state owns the land on which a rail-trail is located or if the land is under the long-  
5 term control of the state or a state governmental agency through a lease, easement, or other  
6 arrangement, the department shall, upon application of a telecommunication provider and payment  
7 of not more than \$500.00 in application fees, authorize the installation of telecommunication  
8 facilities on that land unless the installation is inconsistent with or prohibited by the lease, easement,  
9 or other arrangement. The authorization granted under this subsection shall be granted within 45  
10 days and shall require all of the following:

11           (a) All telecommunication facilities shall be installed underground or shall be  
12 attached to existing aboveground structures consistent with subdivision (c).

13           (b) The telecommunication provider shall notify the department, in writing, of the  
14 installation of the facilities and the anticipated completion date of the installation not less than 30  
15 days prior to beginning the installation. Within 5 days after its receipt of the notification, the  
16 department shall notify the telecommunication provider, in writing, of any use of  
17 the rail-trail for which a permit has been issued by the department.

18           (c) The use of the land for telecommunication facilities and the installation of the  
19 facilities or any repairs to the facilities shall not unreasonably interfere with the use or uses of the  
20 rail-trail.

21           (d) Following installation of the telecommunication facilities or any repairs to the  
22 facilities, the land shall be reasonably restored to its condition prior to the installation or repair.

23           (e) The telecommunication provider shall pay to the department a 1-time use fee of 5  
24 cents per longitudinal linear foot of the space to be occupied by the telecommunication facilities.  
25 The fee required under this subdivision shall not be required beginning 6 years after the effective  
26 date of the amendatory act that added this section. At no time during or after this 6-year time period  
27 shall a telecommunications provider that pays the fee be charged with any additional fee for the use  
28 of the land for telecommunication facilities.

29           (2) The department shall forward use fees collected under this section to the state treasurer  
30 for deposit as follows:

31           (a) If the land or rights in land on which the telecommunications facilities are  
32 installed was purchased with money from the [insert state] natural resources trust fund, money  
33 received under subsection (1)(e) shall be deposited into the [insert state] natural resources trust fund.



1 (b) All money not described in subdivision (a) shall be deposited into the fund.

2 (3) Notwithstanding any other provision of this part, money from the fund that is collected  
3 under this section shall be expended, upon appropriation, as follows:

4 (a) Money collected from application fees under subsection (1) shall be used by the  
5 department for the administrative costs of implementing this section.

6 (b) In each county in which money is collected under subsection (1)(e) for the  
7 installation of telecommunication facilities on rail-trails that are used for motorized use, the  
8 department shall expend the money for grants to organizations operating in that county that are  
9 involved with the motorized use of rail-trails if such organizations exist. Money provided under this  
10 subdivision to organizations involved with the motorized use of rail-trails shall be used for the  
11 development and maintenance of rail-trails located within the county for motorized recreational uses.

12 (c) In each county in which money is collected under subsection (1)(e) for the  
13 installation of telecommunication facilities, but which is not expended pursuant to subdivision (b),  
14 the department shall expend the money for grants to local units of government or other organizations  
15 operating in that county that are involved with the use of rail-trails. Money provided under this  
16 subdivision to local units of government or organizations involved with the use of rail-trails shall be  
17 used for the development and maintenance of rail-trails located within the county for motorized and  
18 non-motorized recreational uses.

19 (4) This section does not affect the rights and duties set forth in any arrangements or  
20 agreements for the installation of telecommunication facilities in a rail-trail described in subsection  
21 (1) between the department and a telecommunication provider entered before the effective date of  
22 the amendatory act that added this section. This section does not create a right for either the  
23 department or a telecommunication provider to terminate any preexisting arrangements or  
24 agreements.

25 (5) As used in this section:

26 (a) “[insert state] natural resources trust fund” means the [insert state] natural  
27 resources trust fund established in [insert citation].

28 (b) “Telecommunication facilities” means either or both of the following:

29 (i) Telecommunication facilities as defined in section [insert citation].

30 (ii) Facilities used by a video service provider as defined [insert citation].

31 (c) “Telecommunication provider” means either or both of the following:

32 (i) A telecommunication provider as defined in [insert citation].

33 (ii) A video service provider as defined in [insert citation].  
34

35 Section 3. [*Severability.*] Insert severability clause.

36  
37 Section 4. [*Repealer.*] Insert repealer clause.

38  
39 Section 5. [*Effective Date.*] Insert effective date.

# Temporary Workers Right to Know

This Act requires staffing agencies provide to employees a notice containing certain information about new assignments/placements. It requires that information be confirmed in writing and sent to the employees, in a form designated by the employees, before the end of the first pay period. However, any changes to the initial terms of employment must be immediately provided to the employees and the employees must acknowledge the change in terms.

The Act requires staffing agencies post in the agencies' business offices a notice of employee rights and the name and telephone number of the state labor department. It directs the department to provide a sample notice and to facilitate translating that notice to a language other than English when appropriate.

The Act does not apply to professional employees as defined in 34 USC section 152, or to employees who are secretaries or administrative assistants whose main or primary duties are described by the Bureau of Labor Statistics of the United States Department of Labor as involving one or more of the following: drafting or revising correspondence, scheduling appointments, creating, organizing, and maintaining paper and electronic files, and providing information to callers or visitors.

The Act prohibits staffing agencies or worksite employers from charging or accepting a fee from an employee for the cost of things such as registering with the staffing agency.

Submitted as:

Massachusetts

[HB 4304](#)

Status: Enacted into law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1       Section 1. [*Short Title.*] This Act shall be cited as “The Temporary Workers Right to Know  
2   Act.”

3  
4       Section 2. [*Requirements of staffing agencies.*]

5       (a) A staffing agency shall provide to each employee for new assignment or employment  
6   notice of the following:

7               (1) the name, address and telephone number of:

8                       (i) the staffing agency, or the contact information of the staffing agent  
9   facilitating the placement;

10                      (ii) its workers compensation carrier;

11                      (iii) the worksite employer; and

12                      (iv) the department;

13       (2) a description of the position and whether it shall require any special clothing,  
14   equipment, training, or licenses and any costs charged to the employee for supplies or training;

15       (3) the designated pay day, the hourly rate of pay and whether overtime pay may  
16   occur;

17       (4) the daily starting time and anticipated end time and, when known, the expected  
18   duration of employment;

(5) whether any meals shall be provided by the staffing agency or worksite employer and the charge, if any, to the employee; and

(6) details of the means of transportation to the worksite and any fees charged to the employee by the staffing agency or worksite employer for any transportation services;

Nothing in this subsection shall be construed to prohibit a staffing agency from directing an employee to employment by telephone; provided that the telephone message shall disclose the information in this subsection. The information concerning the employee's assignment shall be confirmed in writing and sent to the employee, in a form designated by the employee, before the end of the first pay period; provided, however, that any change to the initial terms of employment shall be immediately provided to the employee and the employee must acknowledge the change in terms.

The staffing agency shall post in a conspicuous place in each of its locations where it does business notice of an employee's rights under this section and the name and telephone number of the department. The department shall provide a sample posted notice that meets the requirements of this section and, when appropriate, shall facilitate the translation of the notice to a language other than English.

The provisions of this subsection shall not apply to a professional employee as defined in 34 USC section 152; or to employees who are secretaries or administrative assistants whose main or primary duties are described by the bureau of labor statistics of the United States department of labor as involving one or more of the following: drafting or revising correspondence, scheduling appointments, creating, organizing, and maintaining paper and electronic files, and providing information to callers or visitors.

(b) No staffing agency or worksite employer shall charge or accept a fee from an employee for:

(1) the cost of registration of the staffing agency or the cost of procuring employment;

(2) any good or service unless under the terms of a written contract with an employee, which clearly states in a language that the employee understands that the purchase is voluntary and which provides that the staffing agency will not gain a profit from any cost or fee charged to the employee;

(3) the provision of any of the following that exceed the actual cost per applicant or employee: bank card, debit card, payroll card, voucher, draft, money order or similar form of payment or wages, or any drug screen;

(4) a criminal record offender information request;

(5) transportation except as provided in subsection (c);

(6) any good or service the payment of which would cause the employee to earn less than the applicable minimum wage.

No staffing agency or work site employer or a person acting directly or indirectly in either's interest may deduct any costs or fees from the wages of an employee without the express written authorization of the employee. A staffing agency or work site employer shall furnish to the employee a copy of the signed authorization in a language that the employee can understand.

(c) If a staffing agency or work site employer or a person acting directly or indirectly in either's interest offers transportation services to an employee and charges a fee for such services, the staffing agency or work site employer shall charge such employee no more than the actual cost to transport such employee to or from the designated work site. The fee, if any, to cover the transportation service costs for each such employee shall not exceed 3 per cent of such employee's total daily wages, and shall not reduce the employee's total daily wages below the minimum wage earned for the day. If a staffing agency or work site employer or a person acting directly or indirectly in either's interest requires the use of such transportation services, no fee may be charged. Any staffing agency that sends an employee to a worksite employer for employment that day where in fact no employment exists shall fully refund the cost of transportation.

1 (d) A staffing agency shall not:  
2 (1) knowingly issue, distribute, circulate or provide any false, fraudulent, or  
3 misleading information, representation, promise, notice or advertisement to any applicant or  
4 employee;  
5 (2) use any name that has not been registered with the department under [insert  
6 citation] in the advertisement of its services;  
7 (3) assign or place an employee in employment by force or fraud, or for illegal  
8 purposes, or where the employment is in violation of state or federal laws governing minimum wage,  
9 child labor, compulsory school attendance, required licensure or certification, or at any location that  
10 is on strike or lockout without notifying the employee of this fact;  
11 (4) refuse to return on demand any personal property belonging to an employee or  
12 any fee or cost that is charged or accepted by a staffing agency or work site employer in excess of  
13 the amounts allowable under this section.  
14 (e) The department shall make rules and regulations and all inspections and investigations  
15 necessary for the enforcement of this section.  
16 (f) Whoever violates this section shall be punished or shall be subject to a civil citation or  
17 order as provided in [insert citation].  
18

19 Section 3. [*Severability*.] Insert severability clause.  
20

21 Section 4. [*Repealer*.] Insert repealer clause.  
22

23 Section 5. [*Effective Date*.] Insert effective date.

# Uniform Certificate of Title for Watercraft Act

This Act requires a vessel owner, within 20 days of becoming an owner or within 20 days of when the vessel becomes used principally on the waters of the state, to apply for a certificate of title. However, no application is required for a federally documented vessel, a foreign documented vessel, a barge, a vessel under construction, or a vessel owned by a dealer.

In general, the act covers all vessels at least 16 feet in length and all vessels propelled by an engine of at least 10 horsepower. Exceptions exist for seaplanes, amphibious vehicles for which a certificate of title is issued pursuant to a motor vehicle titling act, watercraft that operate only on a permanently fixed, manufactured course, certain houseboats, lifeboats used on another vessel, and watercraft owned by the United States, a state, or a foreign government.

Submitted as:

Virginia

[SB 1117](#)

Status: Became law in April 2013

## Suggested State Legislation

(Title, enacting clause, etc.)

### Section 1. *[Definitions.]*

As used in this Act:

- A. "Abandoned watercraft" means a watercraft that is left unattended on private property for more than 10 days without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property.
- B. "Barge" means a watercraft that is not self-propelled or fitted for propulsion by sail, paddle, oar, or similar device.
- C. "Buyer" means a person that buys or contracts to buy a watercraft.
- D. "Certificate of origin" means a record created by a manufacturer or importer as the manufacturer's or importer's proof of identity of a watercraft. The term includes a manufacturer's certificate or statement of origin and an importer's certificate or statement of origin. The term does not include a builder's certificate.
- E. "Certificate of title" means a record, created by the Department of Motor Vehicles under this article or by a governmental agency of another jurisdiction under the law of that jurisdiction that is designated as a certificate of title by the Department or agency and is evidence of ownership of a watercraft.
- F. "Documented vessel" means a watercraft covered by a certificate of documentation. The term does not include a foreign-documented vessel.
- G. "Electronic certificate of title" means a certificate of title consisting of information that is stored solely in an electronic medium and is retrievable in perceivable form.
- H. "Foreign-documented vessel" means a watercraft whose ownership is recorded in a registry maintained by a country other than the United States that identifies each person that has an ownership interest in a watercraft and includes a unique alphanumeric designation for the watercraft.
- I. "Lien creditor," with respect to a watercraft, means:
  - 1. A creditor that has acquired a lien on the watercraft by attachment, levy, or the like;

2. An assignee for benefit of creditors from the time of assignment;
  3. A trustee in bankruptcy from the date of the filing of the petition; or
  4. A receiver in equity from the time of appointment.
- J. "Secured party of record" means the secured party whose name is indicated as the name of the secured party in the files of the Department or, if the files indicate more than one secured party, the one first indicated.
- K. "Watercraft" means any vessel used or capable of being used as a means of transportation on water, except:
1. A seaplane;
  2. An amphibious vehicle for which a certificate of title is issued pursuant to [insert citation];
  3. Vessels less than 16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower;
  4. Vessels that operate only on a permanently fixed, manufactured course and whose movement is restricted to or guided by means of a mechanical device to which the vessel is attached or by which the vessel is controlled;
  5. A stationary floating structure that:
    - a. Does not have and is not designed to have a mode of propulsion of its own;
    - b. Is dependent for utilities upon a continuous utility hookup to a source originating on shore; and
    - c. Has a permanent, continuous hookup to a shoreside sewage system;
    - d. Vessels owned by the United States, a state, or a foreign government or a political subdivision of any of them;
    - e. A vessel used solely as a lifeboat on another vessel; and
    - f. Vessels measuring between 16 feet and 18 feet in length that are propelled solely by sail, paddle, or oar owned or purchased prior to [insert enactment date].

## Section 2. [*Law governing watercraft covered by certificate of title.*]

A. The law of the state or other jurisdiction under whose certificate of title a watercraft is covered governs all issues relating to the certificate from the time the watercraft becomes covered by the certificate until the watercraft becomes covered by another certificate or becomes a documented watercraft, even if no other relationship exists between the jurisdiction and the watercraft or its owner.

B. A watercraft becomes covered by a certificate of title when an application for the certificate and the applicable fee are delivered to the Department of Motor Vehicles in accordance with this article or to the governmental agency that creates a certificate in another jurisdiction in accordance with the law of that jurisdiction.

## Section 3. [*Certificate of title required.*]

A. No person shall operate a watercraft subject to titling under this chapter unless the owner has applied to the Department of Motor Vehicles for a certificate of title for the watercraft or has been issued a valid temporary registration certificate as provided for in [insert citation]. The owner of a watercraft for which [insert state] is the state of principal use shall deliver to the Department an application for a certificate of title for the watercraft, with the applicable fee, not later than 20 days after the later of:

1. The date of a transfer of ownership; or
2. The date [the state] becomes the state of principal use.

B. An application for a certificate of title is not required for:



1. A documented vessel;
2. A foreign-documented vessel;
3. A barge;
4. A watercraft before delivery if the watercraft is under construction or completed pursuant to contract; or
5. A watercraft held by a dealer for sale or lease.

C. A dealer transferring a watercraft required to be titled under this article shall assign the title to the new owner or, in the case of a new watercraft, assign the certificate of origin. The dealer shall forward all fees and applications to the Department of Motor Vehicles within 20 days of sale. Each dealer shall maintain a record for six years of any watercraft he bought, sold, exchanged, or received for sale or exchange. This record shall be available for inspection by Department representatives during reasonable business hours.

D. No dealer shall purchase or acquire a new watercraft without obtaining from the seller a certificate of origin. No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new watercraft to a dealer for purposes of display and resale without delivering to the dealer a certificate of origin. The certificate of origin shall be a uniform or standardized form prescribed by the Department of Motor Vehicles and shall contain:

1. On the front, a description of the watercraft including its trade name, if any, year, series or model, body type, and manufacturer's serial number; certification of date of transfer of watercraft and name and address of transferee; certification that this was the transfer of watercraft in ordinary trade and commerce; and the signature and address of a representative of the transferor; and
2. On the reverse side, an assignment form, including the name and address of the transferee, a certification that the watercraft is new, and a warranty that the title at the time of delivery is subject only to such liens and encumbrances as set forth and described in full in the assignment.

E. The Department of Motor Vehicles shall not issue, transfer, or renew pursuant to [insert citation], a certificate of number for a watercraft unless the Department has created a certificate of title for the watercraft or an application for a certificate for the watercraft and the applicable fee have been delivered to the Department. Any owner of a watercraft that was not previously required to be titled and whose certificate of number expires after [insert date], shall apply for a certificate of title at the time of renewal of the certificate of number.

#### Section 4. *[Application for certificate of title.]*

A. An application for a certificate of title shall be signed by the applicant and contain:

1. The applicant's name, the street address of the applicant's principal residence, and, if different, the applicant's mailing address;
2. The name and mailing address of each other owner of the watercraft at the time of application;
3. The motor vehicle driver's license number, social security number, or taxpayer identification number of each owner;
4. The hull identification number for the watercraft or, if none, an application for the issuance of a hull identification number for the watercraft;
5. The registration number for the watercraft or, if none issued by the Department, an application for a registration number;
6. A description of the watercraft as required by the Department, which shall include:
  - a. The official number for the watercraft, if any, assigned by the U.S. Coast Guard;
  - b. The name of the manufacturer, builder, or maker;

1 c. The model year or the year in which the manufacture or build of the  
 2 watercraft was completed;  
 3 d. The overall length of the watercraft;  
 4 e. The watercraft type;  
 5 f. The hull material;  
 6 g. The propulsion type;  
 7 h. The engine drive type, if any;  
 8 i. The motor identification, including manufacturer's name and serial number,  
 9 except on motors of 25 horsepower or less; and  
 10 j. The fuel type, if any;  
 11 7. An indication of all security interests in the watercraft known to the applicant and  
 12 the name and mailing address of each secured party;  
 13 8. A statement that the watercraft is not a documented vessel or a foreign-documented  
 14 vessel;  
 15 9. Any title brand known to the applicant and, if known, the jurisdiction under whose  
 16 law the title brand was created;  
 17 10. If the applicant knows that the watercraft is hull damaged, a statement that the  
 18 watercraft is hull damaged;  
 19 11. If the application is made in connection with a transfer of ownership, the  
 20 transferor's name, street address and, if different, mailing address, the sales price, if  
 21 any, and the date of the transfer; and  
 22 12. If the watercraft previously was registered or titled in another jurisdiction, a  
 23 statement identifying each jurisdiction known to the applicant in which the watercraft  
 24 was registered or titled.  
 25 B. In addition to the information required by subsection A, an application for a certificate of  
 26 title may contain an electronic communication address of the owner, transferor, or secured party.  
 27 C. Except as otherwise provided in [insert citation], an application for a certificate of title  
 28 shall be accompanied by:  
 29 1. A certificate of title that is signed by the owner shown on the certificate and that:  
 30 a. Identifies the applicant as the owner of the watercraft; or  
 31 b. Is accompanied by a record that identifies the applicant as the owner; or  
 32 2. If there is no certificate of title:  
 33 a. If the watercraft was a documented vessel, a record issued by the U.S. Coast  
 34 Guard that shows that the watercraft is no longer a documented vessel and  
 35 identifies the applicant as the owner;  
 36 b. If the watercraft was a foreign-documented vessel, a record issued by the  
 37 foreign country that shows that the watercraft is no longer a foreign-  
 38 documented vessel and identifies the applicant as the owner; or  
 39 c. In all other cases, a certificate of origin, bill of sale, or other record that to  
 40 the satisfaction of the Department of Motor Vehicles identifies the applicant  
 41 as the owner. Issuance of registration under the provisions of [insert citation]  
 42 is prima facie evidence of ownership of a watercraft and entitlement to a  
 43 certificate of title under the provisions of this article.  
 44 D. A record submitted in connection with an application is part of the application. The  
 45 Department shall maintain the record in its files.  
 46 E. The Department of Motor Vehicles shall require that an application for a certificate of title  
 47 be accompanied by payment or evidence of payment of all fees and taxes payable by the applicant  
 48 under law of the Commonwealth other than this article in connection with the application or the

1 acquisition or use of the watercraft. The Department shall charge \$7 for issue of each certificate of  
2 title, transfer of title, or for the recording of a supplemental lien. The Department shall charge \$2 for  
3 the issuance of each duplicate title or for changes to a previously issued certificate of title that are  
4 made necessary by a change of the motor on the watercraft. Any watercraft purchased and used by a  
5 nonprofit volunteer rescue squad shall be exempt from the fees imposed under this section.

6 F. The application shall be on forms prescribed and furnished by the Department and shall  
7 contain any other information required by the Director.

8 G. Whenever any person, after applying for or obtaining the certificate of title of a watercraft,  
9 moves from the address shown in the application or upon the certificate of title, he shall, within 30  
10 days, notify the Department in writing of his change of address. A fee of \$7 shall be imposed upon  
11 anyone failing to comply with this subsection within the time prescribed.

12  
13 Section 5. [*Creation and cancellation of certificate of title.*]

14 A. Unless an application for a certificate of title is rejected, the Department of Motor  
15 Vehicles shall create a certificate for the watercraft not later than 20 days after delivery to it of an  
16 application that complies with [insert citation].

17 B. If the Department creates electronic certificates of title, the Department shall create an  
18 electronic certificate unless in the application the secured party of record or, if none, the owner of  
19 record, requests that the Department create a written certificate.

20 C. Except as otherwise provided, the Department shall reject an application for a certificate  
21 of title only if:

- 22 1. The application does not comply with [insert citation];
- 23 2. The application does not contain documentation sufficient for the Department to  
24 determine whether the applicant is entitled to a certificate;
- 25 3. There is a reasonable basis for concluding that the application is fraudulent or  
26 issuance of a certificate would facilitate a fraudulent or illegal act; or
- 27 4. The application does not comply with the law of the Commonwealth other than this  
28 article.

29 D. The Department of Motor Vehicles shall reject an application for a certificate of title for a  
30 watercraft that is a documented vessel or a foreign-documented vessel.

31 E. The Department shall cancel a certificate of title created by it only if the Department:

- 32 1. Could have rejected the application for the certificate under subsection C;
- 33 2. Is required to cancel the certificate under another provision of this article; or
- 34 3. Receives satisfactory evidence that the watercraft is a documented vessel or a  
35 foreign-documented vessel.

36 F. The Department of Motor Vehicles shall provide an opportunity for an informal fact-  
37 finding proceeding at which the owner and any other interested party may present evidence in  
38 support of or opposition to cancellation of a certificate of title. The Department shall serve all  
39 owners and secured parties indicated in the files of the Department with notice of the opportunity for  
40 an informal fact-finding proceeding. Service shall be made personally or by mail through the U.S.  
41 Postal Service, properly addressed, postage paid, return receipt requested. Service by mail is  
42 complete on deposit with the U.S. Postal Service. The Department by rule may authorize service by  
43 electronic transmission if a copy is sent on the same day by first-class mail or by a commercial  
44 delivery company. If not later than 30 days after the notice was served, the Department receives a  
45 request for an informal fact-finding proceeding from an interested party, the Department shall hold  
46 the proceeding not later than 20 days after receiving the request.

47  
48 Section 6. [*Content of certificate of title.*]

49 A. A certificate of title shall contain:

1. The date the certificate was created;
2. The name of the owner of record and, if not all owners are listed, an indication that there are additional owners indicated in the files of the Department;
3. The mailing address of the owner of record;
4. The hull identification number;
5. The information listed in [insert citation];
6. Except as otherwise provided in [insert citation], the name and mailing address of the secured party of record, if any, and if not all secured parties are listed, an indication that there are other security interests indicated in the files of the Department; and
7. All title brands indicated in the files of the Department covering the watercraft, including brands indicated on a certificate created by a governmental agency of another jurisdiction and delivered to the Department.

B. The Department of Motor Vehicles may note on a certificate of title the name and mailing address of a secured party that is not a secured party of record.

C. For each title brand indicated on a certificate of title, the certificate shall identify the jurisdiction under whose law the title brand was created or the jurisdiction that created the certificate on which the title brand was indicated. If the meaning of a title brand is not easily ascertainable or cannot be accommodated on the certificate, the certificate may state: "Previously branded in (insert the jurisdiction under whose law the title brand was created or whose certificate of title previously indicated the title brand)."

D. If the files of the Department indicate that a watercraft previously was registered or titled in a foreign country, the Department shall indicate on the certificate of title that the watercraft was registered or titled in that country.

E. A written certificate of title shall contain a form that all owners indicated on the certificate may sign to evidence consent to a transfer of an ownership interest to another person. The form shall include a certification, signed under penalty of perjury, that the statements made are true and correct to the best of each owner's knowledge, information, and belief.

F. A written certificate of title shall contain a form for the owner of record to indicate, in connection with a transfer of an ownership interest, that the watercraft is hull damaged.

#### Section 7. [*Title brand.*]

A. Unless subsection C applies, at or before the time the owner of record transfers an ownership interest in a hull-damaged watercraft that is covered by a certificate of title created by the Department of Motor Vehicles, if the damage occurred while that person was an owner of the watercraft and the person has notice of the damage at the time of the transfer, the owner shall:

1. Deliver to the Department an application for a new certificate that complies with [insert citation] and includes the title brand designation "Hull Damaged"; or
2. Indicate on the certificate in the place designated for that purpose that the watercraft is hull damaged and deliver the certificate to the transferee.

B. Not later than 20 days after delivery to the Department of the application under subdivision A 1 or the certificate of title under subdivision A 2, the Department shall create a new certificate that indicates that the watercraft is branded "Hull Damaged."

C. Before an insurer transfers an ownership interest in a hull-damaged watercraft that is covered by a certificate of title created by the Department, the insurer shall deliver to the Department an application for a new certificate that complies with [insert citation] and includes the title brand designation "Hull Damaged." Not later than 20 days after delivery of the application to the

1 Department, the Department shall create a new certificate that indicates that the watercraft is  
2 branded "Hull Damaged."

3 D. An owner of record that fails to comply with subsection A, a person that solicits or  
4 colludes in a failure by an owner of record to comply with subsection A, or an insurer that fails to  
5 comply with subsection C is subject to a civil penalty of \$1,000.

6  
7 Section 8. [*Maintenance of and access to files.*]

8 A. For each record relating to a certificate of title submitted to the Department of Motor  
9 Vehicles, the Department shall:

- 10 1. Ascertain or assign the hull identification number for the watercraft;
- 11 2. Maintain the hull identification number and all the information submitted with the  
12 application pursuant to [insert citation] to which the record relates, including the date  
13 and time the record was delivered to the Department;
- 14 3. Maintain the files for public inspection subject to subsection E; and
- 15 4. Index the files of the Department as required by subsection B.

16 B. The Department shall maintain in its files the information contained in all certificates of  
17 title created under this article. The information in the files of the Department shall be searchable by  
18 the hull identification number of the watercraft, the registration number, the name of the owner of  
19 record, and any other method used by the Department.

20 C. The Department shall maintain in its files, for each watercraft for which it has created a  
21 certificate of title, all title brands known to the Department, the name of each secured party known to  
22 the Department, the name of each person known to the Department to be claiming an ownership  
23 interest, and all stolen-property reports the Department has received.

24 D. Upon request, for safety, security, or law-enforcement purposes, the Department shall  
25 provide to federal, state, or local government the information in its files relating to any watercraft for  
26 which the Department has issued a certificate of title.

27 E. Except as otherwise provided by law, the information required under is a public record.

28  
29 Section 9. [*Action required on creation of certificate of title.*]

30 A. On creation of a written certificate of title, the Department of Motor Vehicles promptly  
31 shall send the certificate to the secured party of record or, if none, to the owner of record at the  
32 address indicated for that person in the files of the Department. On creation of an electronic  
33 certificate of title, the Department promptly shall send a record evidencing the certificate to the  
34 owner of record and, if there is one, to the secured party of record at the address indicated for that  
35 person in the files of the Department. The Department shall send the record to the person's mailing  
36 address or, if indicated in the files of the Department, an electronic address.

37 B. If the Department creates a written certificate of title, any electronic certificate of title for  
38 the watercraft is canceled and replaced by the written certificate. The Department shall maintain in  
39 the files of the Department the date and time of cancellation.

40 C. Before the Department creates an electronic certificate of title, any written certificate for  
41 the watercraft shall be surrendered to the Department. If the Department creates an electronic  
42 certificate, the Department shall destroy or otherwise cancel the written certificate for the watercraft  
43 that has been surrendered to the Department and maintain in the files of the Department the date and  
44 time of destruction or other cancellation. If a written certificate being canceled is not destroyed, the  
45 Department shall indicate on the face of the certificate that it has been canceled.

46  
47 Section 10. [*Effect of certificate of title.*]

48 A certificate of title is prima facie evidence of the accuracy of the information in the record  
49 that constitutes the certificate.



1           Section 11. [*Effect of possession of certificate of title; judicial process; levy; penalty.*]

2           A. Possession of a certificate of title does not by itself provide a right to obtain possession of  
3 a watercraft. Garnishment, attachment, levy, replevin, or other judicial process against the certificate  
4 is not effective to determine possessory rights to the watercraft. This article does not prohibit  
5 enforcement under [state law] other than this article of a security interest in, levy on, or foreclosure  
6 of a statutory or common-law lien on a watercraft. Absence of an indication of a statutory or  
7 common-law lien on a certificate does not invalidate the lien.

8           B. A levy made by virtue of an execution, fieri facias, or other proper court order, upon a  
9 watercraft for which a certificate of title has been issued by the Department of Motor Vehicles, shall  
10 constitute a lien, when the officer making the levy reports to the Department at its principal office,  
11 on forms provided by the Department, that the levy has been made and that the vessel levied upon is  
12 in the custody of the officer. Should the lien thereafter be satisfied or should the vessel levied upon  
13 and seized thereafter be released by the officer, he shall immediately report that fact to the  
14 Department at its principal office. Any owner who, after such levy and seizure by an officer and  
15 before the report is made by the officer to the Department, fraudulently assigns or transfers his title  
16 to or interest in the watercraft, or causes the certificate of title to be assigned or transferred, or causes  
17 a security interest to be shown upon such certificate of title, is guilty of a Class 1 misdemeanor.

18  
19           Section 12. [*Perfection of security interest.*]

20           A. Except as otherwise provided in [insert citation], a security interest in a watercraft shall be  
21 perfected only by delivery to the Department of Motor Vehicles of an application for a certificate of  
22 title that identifies the secured party and otherwise complies with [insert citation]. The security  
23 interest is perfected on the later of delivery to the Department of the application and the applicable  
24 fee or attachment of the security interest under [insert citation].

25           B. If the interest of a person named as owner, lessor, consignor, or bailor in an application for  
26 a certificate of title delivered to the Department is a security interest, the application sufficiently  
27 identifies the person as a secured party. Identification on the application for a certificate of a person  
28 as owner, lessor, consignor, or bailor is not by itself a factor in determining whether the person's  
29 interest is a security interest.

30           C. If the Department has created a certificate of title for a watercraft, a security interest in the  
31 watercraft shall be perfected by delivery to the Department of an application, on a form the  
32 Department shall require, to have the security interest added to the certificate. The application shall  
33 be signed by an owner of the watercraft or by the secured party and shall include:

- 34           1. The name of the owner of record;  
35           2. The name and mailing address of the secured party;  
36           3. The hull identification number for the watercraft; and  
37           4. If the Department has created a written certificate of title for the watercraft, the  
38           certificate.

39           D. A security interest perfected under subsection C is perfected on the later of delivery to the  
40 Department of the application and all applicable fees or attachment of the security interest under  
41 [insert citation].

42           E. On delivery of an application that complies with subsection C and payment of all  
43 applicable fees, the Department shall create a new certificate of title pursuant to [insert citation] and  
44 deliver the new certificate or a record evidencing an electronic certificate pursuant to [insert  
45 citation]. The Department shall maintain in the files of the Department the date and time of delivery  
46 of the application to the Department.

47           F. If a secured party assigns a perfected security interest in a watercraft, the receipt by the  
48 Department of a statement providing the name of the assignee as secured party is not required to



1 continue the perfected status of the security interest against creditors of and transferees from the  
2 original debtor. A purchaser of a watercraft subject to a security interest that obtains a release from  
3 the secured party indicated in the files of the Department or on the certificate takes free of the  
4 security interest and of the rights of a transferee unless the transfer is indicated in the files of the  
5 Department or on the certificate.

6 G. This section does not apply to a security interest:

- 7 1. In a watercraft by a person during any period in which the watercraft is inventory  
8 held for sale or lease by the person or is leased by the person as lessor if the person is  
9 in the business of selling watercraft;
- 10 2. In a barge for which no application for a certificate of title has been delivered to the  
11 Department; or
- 12 3. In a watercraft before delivery if the watercraft is under construction, or completed,  
13 pursuant to contract and for which no application for a certificate has been delivered  
14 to the Department.

15 H. This subsection applies if a certificate of documentation for a documented vessel is  
16 deleted or canceled. If a security interest in the watercraft was valid immediately before deletion or  
17 cancellation against a third party as a result of compliance with [insert citation], the security interest  
18 is and remains perfected until the earlier of four months after cancellation of the certificate or the  
19 time the security interest becomes perfected under this article.

20 I. A security interest in a watercraft arising under [insert citations] is perfected when it  
21 attaches but becomes unperfected when the debtor obtains possession of the watercraft, unless before  
22 the debtor obtains possession the security interest is perfected pursuant to subsection A or C.

23 J. A security interest in a watercraft as proceeds of other collateral is perfected to the extent  
24 provided in [insert citation].

25 K. A security interest in a watercraft perfected under the law of another jurisdiction is  
26 perfected to the extent provided in [insert citation].

27  
28 Section 13. [*Termination statement; delivery of certificate of title; penalty.*]

29 A. A secured party indicated in the files of the Department of Motor Vehicles as having a  
30 security interest in a watercraft shall deliver a termination statement to the Department and, on the  
31 debtor's request, to the debtor by the earlier of:

- 32 1. Twenty days after the secured party receives a signed demand from an owner for a  
33 termination statement and there is no obligation secured by the watercraft subject to  
34 the security interest and no commitment to make an advance, incur an obligation, or  
35 otherwise give value secured by the watercraft; or
- 36 2. If the watercraft is consumer goods, 30 days after there is no obligation secured by  
37 the watercraft and no commitment to make an advance, incur an obligation, or  
38 otherwise give value secured by the watercraft.

39 B. If a written certificate of title has been created and delivered to a secured party and a  
40 termination statement is required under subsection A, the secured party, not later than the date  
41 required by subsection A, shall deliver the certificate to the debtor or to the Department with the  
42 statement. An owner, upon securing the release of any security interest upon a vessel shown upon  
43 the certificate of title issued for the watercraft, may exhibit the documents evidencing the release,  
44 signed by the person or persons making such release, and the certificate of title to the Department. If  
45 the certificate is lost, stolen, mutilated, destroyed, or is otherwise unavailable or illegible, the  
46 secured party shall deliver with the statement, not later than the date required by subsection A, an  
47 application for a replacement certificate meeting the requirements of [insert citation].

48 C. On delivery to the Department of a termination statement authorized by the secured party,  
49 the security interest to which the statement relates ceases to be perfected. If the security interest to

1 which the statement relates was indicated on the certificate of title, the Department shall create a  
2 new certificate and deliver the new certificate or a record evidencing an electronic certificate. The  
3 Department shall maintain in its files the date and time of delivery to the Department of the  
4 statement.

5 D. A secured party that fails to deliver a required termination statement is liable for any loss  
6 that the secured party had reason to know might result from its failure to comply and that could not  
7 reasonably have been prevented and for the cost of an application for a certificate of title under  
8 [insert citation].

9 E. It shall constitute a Class 1 misdemeanor for a secured party who holds a certificate of title  
10 to refuse or fail to surrender the certificate to the owner or his agent within 10 days after the security  
11 interest has been paid and satisfied.

12  
13 Section 14. [*Transfer of ownership.*]

14 A. On voluntary transfer of an ownership interest in a watercraft covered by a certificate of  
15 title, the following rules apply:

16 1. If the certificate is a written certificate of title and the transferor's interest is noted  
17 on the certificate, the transferor promptly shall sign the certificate and deliver it to the  
18 transferee. If the transferor does not have possession of the certificate, the person in  
19 possession of the certificate has a duty to facilitate the transferor's compliance with  
20 this subdivision. A secured party does not have a duty to facilitate the transferor's  
21 compliance with this subdivision if the proposed transfer is prohibited by the security  
22 agreement.

23 2. If the certificate of title is an electronic certificate of title, the transferor promptly  
24 shall sign and deliver to the transferee a record evidencing the transfer of ownership  
25 to the transferee.

26 3. The transferee has a right enforceable by specific performance to require the  
27 transferor comply with subdivision 1 or 2.

28 B. The creation of a certificate of title identifying the transferee as owner of record satisfies  
29 subsection A.

30 C. A failure to comply with subsection A or to apply for a new certificate of title does not  
31 render a transfer of ownership of a watercraft ineffective between the parties. Except as otherwise  
32 provided in [insert citations], a transfer of ownership without compliance with subsection A is not  
33 effective against another person claiming an interest in the watercraft.

34 D. A transferor that complies with subsection A is not liable as owner of the watercraft for an  
35 event occurring after the transfer, regardless of whether the transferee applies for a new certificate of  
36 title.

37  
38 Section 15. [*Effect of missing or incorrect information.*]

39 Except as otherwise provided in [insert citation], a certificate of title or other record required  
40 or authorized by this article is effective even if it contains incorrect information or does not contain  
41 required information.

42  
43 Section 16. [*Transfer of ownership by secured party's transfer statement.*]

44 A. For the purpose of this section, "secured party's transfer statement" means a record signed  
45 by the secured party of record stating:

46 1. A default on an obligation secured by the watercraft has occurred;

47 2. The secured party of record is exercising or has exercised post-default remedies  
48 with respect to the watercraft;

3. By reason of the exercise, the secured party of record has the right to transfer the ownership interest of an owner, and the name of the owner;
4. The name and last-known mailing address of the owner of record and the secured party of record;
5. The name of the transferee;
6. All other information required by [insert citation]; and
7. One of the following:
  - a. The certificate of title is an electronic certificate;
  - b. The secured party does not have possession of the written certificate of title created in the name of the owner of record; or
  - c. The secured party is delivering the written certificate of title to the Department with the secured party's transfer statement.

B. Unless the Department of Motor Vehicles rejects a secured party's transfer statement for a reason stated in [insert citation], not later than 20 days after delivery to the Department of the statement and payment of fees and taxes payable under the law of the Commonwealth other than this article in connection with the statement or the acquisition or use of the watercraft, the Department shall:

1. Accept the statement;
2. Amend the files of the Department to reflect the transfer; and
3. If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:
  - a. Cancel the certificate even if the certificate has not been delivered to the Department;
  - b. Create a new certificate indicating the transferee as owner; and
  - c. Deliver the new certificate or a record evidencing an electronic certificate.

C. An application under subsection A or the creation of a certificate of title under subsection B is not by itself a disposition of the watercraft and does not by itself relieve the secured party of its duties under [insert citation].

#### Section 17. [*Transfer by operation of law.*]

A. As used in this section, unless the context requires a different meaning: "By operation of law" means pursuant to a law or judicial order affecting ownership of a watercraft:

1. Because of death, such as in the case of a legatee, distributee, or surviving joint owner;
2. Because of divorce or other family law proceeding;
3. Because of any written agreement ratified or incorporated in a decree or order of a court of record;
4. Because of merger, consolidation, dissolution, insolvency, or bankruptcy;
5. Because of an execution sale;
6. Through the exercise of the rights of a lien creditor or a person having a lien created by statute or rule of law, including a lien provided for in [insert citation]; or
7. Through other legal process.

"Transfer-by-law statement" means a record signed by a transferee stating that by operation of law the transferee has acquired or has the right to acquire an ownership interest in a watercraft.

B. A transfer-by-law statement shall contain:

1. The name and last-known mailing address of the owner of record and the transferee and the other information required by [insert citation];

2. Documentation sufficient to establish the transferee's ownership interest or right to acquire the ownership interest;
3. A statement that:
  - a. The certificate of title is an electronic certificate of title;
  - b. The transferee does not have possession of the written certificate of title created in the name of the owner of record; or
  - c. The transferee is delivering the written certificate to the Department of Motor Vehicles with the transfer-by-law statement;
4. Except for a transfer described in subdivision 1 of the definition of "by operation of law," evidence that notification of the transfer and the intent to file the transfer-by-law statement has been sent to all persons indicated in the files of the Department as having an interest, including a security interest, in the watercraft; and
5. If the owner is dead and no fiduciary has qualified for his estate, an estate statement to the effect that no qualification for the estate has been made, that no qualification is expected, and that the decedent's debts have been paid or that the proceeds from the sale of the watercraft will be applied against his debts. The estate statement shall contain the name, residence at the time of death, and date of death of the decedent and the names of any other persons having an interest in the watercraft for which the transfer of title is sought. If these persons are of legal age, they shall signify in writing their consent to the transfer.

C. Unless the Department rejects a transfer-by-law statement for a reason stated in [insert citation] or because the statement does not include documentation or an estate statement satisfactory to the Department as to the transferee's ownership interest or right to acquire the ownership interest, not later than 20 days after delivery to the Department of the transfer-by-law statement and payment of fees and taxes payable under [state law] other than this article in connection with the statement or with the acquisition or use of the watercraft, the Department shall:

1. Accept the statement;
2. Amend the files of the Department to reflect the transfer; and
3. If the name of the owner whose ownership interest is being transferred is indicated on the certificate of title:
  - a. Cancel the certificate even if the certificate has not been delivered to the Department;
  - b. Create a new certificate indicating the transferee as owner;
  - c. Indicate on the new certificate any security interest indicated on the canceled certificate, unless a court order provides otherwise; and
  - d. Deliver the new certificate or a record evidencing an electronic certificate.

D. This section does not apply to a transfer of an interest in a watercraft by a secured party under [insert citation].

Section 18. [*Application for transfer of ownership or termination of security interest without certificate of title.*]

A. Except as otherwise provided in [insert citation], if the Department of Motor Vehicles receives, unaccompanied by a signed certificate of title, an application for a new certificate that includes an indication of a transfer of ownership or a termination statement, the Department shall create a new certificate under this section only if:

1. All other requirements under [insert citation] are met;
2. The applicant provides an affidavit stating facts showing the applicant is entitled to a transfer of ownership or termination statement;

1 3. The applicant provides the Department with satisfactory evidence that notification  
2 of the application has been sent to the owner of record and all persons indicated in the  
3 files of the Department as having an interest, including a security interest, in the  
4 watercraft, at least 45 days have passed since the notification was sent, and the  
5 Department has not received an objection from any of those persons; and  
6 4. The applicant submits any other information required by the Department as  
7 evidence of the applicant's ownership or right to terminate the security interest, and  
8 the Department has no credible information indicating theft, fraud, or an undisclosed  
9 or unsatisfied security interest, lien, or other claim to an interest in the watercraft.

10 B. The Department shall indicate in a certificate of title created under subsection A that the  
11 certificate was created without submission of a signed certificate or termination statement. Unless  
12 credible information indicating theft, fraud, or an undisclosed or unsatisfied security interest, lien, or  
13 other claim to an interest in the watercraft is delivered to the Department not later than one year after  
14 creation of the certificate, on request in a form and manner required by the Department, the  
15 Department shall remove the indication from the certificate.

16 C. Unless the Department determines that the value of a watercraft is less than \$5,000, before  
17 the Department creates a certificate of title under subsection A, the Department shall require the  
18 applicant to post a bond or provide an equivalent source of indemnity or security. The bond,  
19 indemnity, or other security shall not exceed twice the value of the watercraft as determined by the  
20 Department. The bond, indemnity, or other security shall be in a form required by the Department  
21 and provide for indemnification of any owner, purchaser, or other claimant for any expense, loss,  
22 delay, or damage, including reasonable attorney fees and costs, but not including incidental or  
23 consequential damages, resulting from creation or amendment of the certificate.

24 D. Unless the Department receives a claim for indemnity not later than one year after  
25 creation of a certificate of title under subsection A, on request in a form and manner required by the  
26 Department, the Department shall release any bond, indemnity, or other security.

27  
28 Section 19. [*Replacement certificate of title.*]

29 A. If a written certificate of title is lost, stolen, mutilated, destroyed, or otherwise becomes  
30 unavailable or illegible, the secured party of record or, if no secured party is indicated in the files of  
31 the Department of Motor Vehicles, the owner of record may apply for and, by furnishing  
32 information satisfactory to the Department, obtain a replacement certificate in the name of the owner  
33 of record.

34 B. An applicant for a replacement certificate of title shall sign the application and, except as  
35 otherwise permitted by the Department, the application shall comply with [insert citation]. The  
36 application shall include the existing certificate unless the certificate is lost, stolen, mutilated,  
37 destroyed, or otherwise unavailable.

38 C. A replacement certificate of title created by the Department shall comply with [insert  
39 citation] and indicate on the face of the certificate that it is a replacement certificate.

40 D. If a person receiving a replacement certificate of title subsequently obtains possession of  
41 the original written certificate, the person promptly shall destroy the original certificate of title.

42  
43 Section 20. [*Rights of purchaser other than secured party.*]

44 A. A buyer in ordinary course of business has the protections afforded by [insert citation]  
45 even if an existing certificate of title was not signed and delivered to the buyer or a new certificate  
46 listing the buyer as owner of record was not created.

47 B. Except as otherwise provided in [insert citation], the rights of a purchaser of a watercraft  
48 that is not a buyer in ordinary course of business or a lien creditor are governed by the Uniform  
49 Commercial Code.



1  
2 Section 21. [*Rights of secured party.*]

3 A. Subject to subsection B or C, the effect of perfection and non-perfection of a security  
4 interest and the priority of a perfected or unperfected security interest with respect to the rights of a  
5 purchaser or creditor, including a lien creditor, is governed by [insert citation].

6 B. A security interest perfected under this article has priority over any statutory lien on the  
7 watercraft, except for a mechanics lien for repairs to the extent of \$150 given by [insert citation] if  
8 the requirements are met, provided the mechanic furnishes the holder of any such recorded lien who  
9 requests it with an itemized sworn statement of the work done and materials supplied for which the  
10 lien is claimed.

11 C. If, while a security interest in a watercraft is perfected by any method under this article,  
12 the Department of Motor Vehicles creates a certificate of title that does not indicate that the  
13 watercraft is subject to the security interest or contain a statement that it may be subject to security  
14 interests not indicated on the certificate:

15 1. A buyer of the watercraft, other than a person in the business of selling or leasing  
16 watercraft of that kind, takes free of the security interest if the buyer, acting in good  
17 faith and without knowledge of the security interest, gives value and receives  
18 possession of the watercraft; and

19 2. The security interest is subordinate to a conflicting security interest in the  
20 watercraft that is perfected under [insert citation] after creation of the certificate and  
21 without the conflicting secured party's knowledge of the security interest.  
22

23 Section 22. [*Acquiring title to an abandoned watercraft.*]

24 A. Any watercraft abandoned for a period exceeding 60 days is subject to the provisions of  
25 this section.

26 B. A landowner, his lessee, or his agent may acquire title to any watercraft abandoned on his  
27 land or the water immediately adjacent to his land. Acquisition of title, under the provisions of this  
28 section, divests any other person of any interest in the watercraft.

29 C. If a watercraft has a registration number assigned by [the state] or any other state, or if  
30 there are other means of identifying the owner, the person desiring to acquire title shall make a good  
31 faith effort to secure the last-known address of all owners and lien holders. He shall notify each  
32 owner and lien holder by registered letter that if ownership is not claimed and the watercraft not  
33 removed within 30 days, he will apply for title to the watercraft in his name.

34 D. The person desiring to acquire title also shall place a notice, to appear for three  
35 consecutive issues, in a newspaper of general circulation in the county or city where the watercraft is  
36 located. The notice shall describe the watercraft, its location, and any identifying number or  
37 numbers. The notice shall state that if the watercraft is not claimed and removed within 30 days after  
38 the first day the notice was published, the person who has placed the notice shall apply to the  
39 Department of Motor Vehicles for title to the watercraft.

40 E. At the end of the 30-day period, the person seeking to acquire the watercraft shall apply to  
41 the Department for title. The application shall be accompanied by the following: (i) an affidavit  
42 stating that to the best of the applicant's knowledge the watercraft has been abandoned for a period  
43 of at least 60 days; (ii) proof that the registered letter required by the Department was mailed at least  
44 30 days prior to application or a detailed explanation of the steps taken to identify the owner and lien  
45 holder; and (iii) proof that a notice was printed in a newspaper as required in subsection D.

46 F. Upon receipt by the Department of all items required by subsection E, and after all fees  
47 and taxes due have been paid, the Department shall then issue title to the watercraft to the applicant.



1 G. All costs incurred in obtaining title to a watercraft under this section shall be borne by the  
2 applicant.

3  
4 Section 23. [*Duties and operation of the Department.*]

5 A. The Department of Motor Vehicles shall retain the evidence used to establish the accuracy  
6 of the information in its files relating to the current ownership of a watercraft and the information on  
7 the certificate of title.

8 B. The Department shall retain in its files all information regarding a security interest in a  
9 watercraft for at least 10 years after the Department receives a termination statement regarding the  
10 security interest. The information shall be accessible by the hull identification number for the  
11 watercraft and any other methods provided by the Department.

12 C. If a person submits a record to the Department, or submits information that is accepted by  
13 the Department, and requests an acknowledgment of the filing or submission, the Department shall  
14 send to the person an acknowledgment showing the hull identification number of the watercraft to  
15 which the record or submission relates, the information in the filed record or submission, and the  
16 date and time the record was received or the submission accepted. A request under this section shall  
17 contain the hull identification number and be delivered by means authorized by the Department.

18 D. The Department shall send or otherwise make available in a record the following  
19 information to any person that requests it and pays the applicable fee:

20 1. Whether the files of the Department indicate, as of a date and time specified by the  
21 Department, but not a date earlier than three days before the Department received the request,  
22 any certificate of title, security interest, termination statement, or title brand that relates to a  
23 watercraft:

- 24 a. Identified by a hull identification number designated in the request;  
25 b. Identified by a registration number designated in the request; or  
26 c. Owned by a person designated in the request;

27 2. With respect to the watercraft:

- 28 a. The name and address of any owner as indicated in the files of the  
29 Department or on the certificate of title;  
30 b. The name and address of any secured party as indicated in the files of the  
31 Department or on the certificate, and the effective date of the information; and  
32 c. A copy of any termination statement indicated in the files of the Department  
33 and the effective date of the termination statement; and

34 3. With respect to the watercraft, a copy of any certificate of origin, secured party  
35 transfer statement, transfer by law statement under [insert citation], and other  
36 evidence of previous or current transfers of ownership.

37 E. In responding to a request under this section, the Department shall provide the requested  
38 information in any medium. On request, the Department shall send the requested information in a  
39 record that is self-authenticating.

40 F. Employees of the Department are authorized to administer oaths and take  
41 acknowledgments and affidavits incidental to the administration and enforcement of this article.  
42 They shall receive no compensation for these services.

43  
44 Section 24. [*Relationship to Electronic Signatures in Global and National Commerce Act*]

45 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and  
46 National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede § 101(c)  
47 of that Act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in  
48 § 103(b) of that Act (15 U.S.C. § 7003(b)).  
49

1           Section 25. [*Savings clause*] Insert savings clause.

# Uniform Deployed Parents Custody and Visitation Act

The Act seeks to create uniformity and in efficiency in the just resolution of custody issues when an a member of the armed service is deployed by trying to balance of interests and protecting the rights of the service member, the other parent, and above all the best interest of the children involved. The bill is organized into five articles with the first containing definitions and provisions that apply generally to custody matters of service members. It also includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment. Article 2 sets out a simplified procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement. In the absence of an agreement, Article 3 provides for an expedited resolution of a custody arrangement in court. Article 3 also declares that no permanent custody order can be entered before or during deployment without the service member's consent. The fourth article governs termination of the temporary custody arrangement following the service member's return from deployment, and the last article contains provisions on effective date, transition, and other language common to all uniform acts.

Submitted as:

North Dakota

[SB 2122](#)

Status: Became law in 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. This Act may be cited as the "Uniform Deployed Parents Act"

Section 2. [*Definitions.*]

As used in this Act:

1. "Adult" means an individual who has attained eighteen years of age or an emancipated minor.

2. "Caretaking authority" means the right to live with and care for a child on a day - to - day basis.

The term includes physical custody, parenting time, right to access, and visitation.

3. "Child" means:

a. An un-emancipated individual who has not attained eighteen years of age; or

b. An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

4. "Court" means a tribunal authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

5. "Custodial responsibility" includes all powers and duties relating to caretaking authority and Decision making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

6. "Decision making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

7. "Deploying parent" means a service member, who is deployed or has been notified of impending deployment and is:

a. A parent of a child under law of this state other than this chapter; or

- b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
8. "Deployment" means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:
- a. Are designated as unaccompanied;
  - b. Do not authorize dependent travel; or
  - c. Otherwise do not permit the movement of family members to the location to which the service member is deployed.
9. "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter.
10. "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.
11. "Nonparent" means an individual other than a deploying parent or other parent.
12. "Other parent" means an individual who, in common with a deploying parent, is:
- a. A parent of a child under law of this state other than this chapter;
  - b. An individual who has custodial responsibility for a child under law of this state other than this chapter.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
14. "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.
15. "Service member" means a member of a uniformed service.
16. "Sign" means, with present intent to authenticate or adopt a record:
- a. To execute or adopt a tangible symbol; or
  - b. To attach to or logically associate with the record an electronic symbol, sound, or process.
17. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
18. "Uniformed service" means:
- a. Active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;
  - b. The United States merchant marine;
  - c. The commissioned corps of the United States public health service;
  - d. The commissioned corps of the national oceanic and atmospheric administration of the United States; or
  - e. The national guard of a state.

Section 3. [*Best interests and welfare of child - Court consideration - Factors.*]

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
- a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
  - b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
  - c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.

d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.

e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

f. The moral fitness of the parents, as that fitness impacts the child.

g. The mental and physical health of the parents, as that health impacts the child.

h. The home, school, and community records of the child and the potential effect of any change.

i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.

j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined.

m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.

2. In a proceeding for parental rights and responsibilities of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.

3. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

Section 4. [*Limitations on post judgment modifications of primary residential responsibility.*]

1           1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion  
2 for an order to modify primary residential responsibility may be made earlier than two years after the  
3 date of entry of an order establishing primary residential responsibility, except in accordance with  
4 subsection 3.

5           2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion  
6 for modification has been disposed of upon its merits, no subsequent motion may be filed within two  
7 years of disposition of the prior motion, except in accordance with subsection 5.

8           3. The time limitation in subsections 1 and 2 does not apply if the court finds:

9               a. The persistent and willful denial or interference with parenting time;

10              b. The child's present environment may endanger the child's physical or emotional  
11 health or impair the child's emotional development; or

12              c. The primary residential responsibility for the child has changed to the other parent  
13 for longer than six months.

14           4. A party seeking modification of an order concerning primary residential responsibility  
15 shall serve and file moving papers and supporting affidavits and shall give notice to the other party  
16 to the proceeding who may serve and file a response and opposing affidavits. The court shall  
17 consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the  
18 motion unless the court finds the moving party has established a prima facie case justifying a  
19 modification. The court shall set a date for an evidentiary hearing only if a prima facie case is  
20 established.

21           5. The court may not modify the primary residential responsibility within the two-year period  
22 following the date of entry of an order establishing primary residential responsibility unless the court  
23 finds the modification is necessary to serve the best interests of the child and:

24               a. The persistent and willful denial or interference with parenting time;

25              b. The child's present environment may endanger the child's physical or emotional  
26 health or impair the child's emotional development; or

27              c. The residential responsibility for the child has changed to the other parent for  
28 longer than six months.

29           6. The court may modify the primary residential responsibility after the two-year period  
30 following the date of entry of an order establishing primary residential responsibility if the court  
31 finds:

32               a. On the basis of facts that have arisen since the prior order or which were unknown  
33 to the court at the time of the prior order, a material change has occurred in the circumstances  
34 of the child or the parties; and

35               b. The modification is necessary to serve the best interest of the child.

36           7. The court may modify a prior order concerning primary residential responsibility at any  
37 time if the court finds a stipulated agreement by the parties to modify the order is in the best interest  
38 of the child.

39           8. Upon a motion to modify primary residential responsibility under this section, the burden  
40 of proof is on the moving party.

41  
42           Section 5. [*Remedies for noncompliance.*]

43           In addition to other remedies under law of this state other than this chapter, if a court finds  
44 that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply  
45 with this chapter or a court order issued under this chapter, the court may assess reasonable  
46 attorney's fees and costs against the party and order other appropriate relief.

47  
48           Section 6. [*Notification required of deploying or redeploying parent.*]



1           1. Except as otherwise provided in subsection 4 and subject to subsection 3, a deploying  
2 parent shall notify in a record the other parent of a pending deployment or redeployment not later  
3 than seven days after receiving notice of deployment or redeployment unless reasonably prevented  
4 from doing so by the circumstances of service. If the circumstances of service prevent giving  
5 notification within the seven days, the deploying or redeploying parent shall give the notification as  
6 soon as reasonably possible.

7           2. Except as otherwise provided in subsection 4 and subject to subsection 3, each parent shall  
8 provide in a record the other parent with a plan for fulfilling that parent's share of custodial  
9 responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible  
10 after notification of deployment is given under subsection 1.

11           3. If a court order currently in effect prohibits disclosure of the address or contact  
12 information of the other parent, notification of deployment under subsection 1, or notification of a  
13 plan for custodial responsibility during deployment under subsection 2, may be made only to the  
14 issuing court. If the address of the other parent is available to the issuing court, the court shall  
15 forward the notification to the other parent. The court shall keep confidential the address or contact  
16 information of the other parent.

17           4. Notification in a record under subsection 1 or 2 is not required if the parents are living in  
18 the same residence and both parents have actual notice of the deployment or plan.

19           5. In a proceeding regarding custodial responsibility, a court may consider the reasonableness  
20 of a parent's efforts to comply with this section.

21  
22           Section 7. [*Duty to notify of change of address.*]

23           1. Except as otherwise provided, an individual to whom custodial responsibility has been  
24 granted during deployment shall notify the deploying parent and any other individual with custodial  
25 responsibility of a child of any change of the individual's mailing address or residence until the grant  
26 is terminated. The individual shall provide the notice to any court that has issued a custody or child  
27 support order concerning the child which is in effect.

28           2. If a court order currently in effect prohibits disclosure of the address or contact  
29 information of an individual to whom custodial responsibility has been granted, a notification under  
30 subsection 1 may be made only to the court that issued the order. The court shall keep confidential  
31 the mailing address or residence of the individual to whom custodial responsibility has been granted.

32  
33           Section 8. [*Nature of authority created by agreement.*]

34           1. An agreement is temporary and terminates after the deploying parent returns from  
35 deployment, unless the agreement has been terminated before that time by court order or  
36 modification. The agreement does not create an independent, continuing right to caretaking  
37 authority, decision making authority, or limited contact in an individual to whom custodial  
38 responsibility is given.

39           2. A nonparent who has caretaking authority, decision making authority, or limited contact  
40 by an agreement has standing to enforce the agreement until it has been terminated by court order,  
41 by modification under section

42  
43           Section 9. [*Modification of agreement.*]

44           1. By mutual consent, the parents of a child may modify an agreement regarding custodial  
45 responsibility.

46           2. If an agreement is modified before deployment of a deploying parent, the modification  
47 must be in writing and signed by both parents and any nonparent who will exercise custodial  
48 responsibility under the modified agreement.

1           3. If an agreement is modified during deployment of a deploying parent, the modification  
2 must be agreed to in a record by both parents and any nonparent who will exercise custodial  
3 responsibility under the modified agreement.  
4

5           Section 10. [*Power of attorney.*]

6           A deploying parent, by power of attorney, may delegate all or part of custodial responsibility  
7 to an adult nonparent for the period of deployment if no other parent possesses custodial  
8 responsibility under law of this state other than this chapter, or if a court order currently in effect  
9 prohibits contact between the child and the other parent. The deploying parent may revoke the power  
10 of attorney by signing a revocation of the power.  
11

12           Section 11. [*Filing agreement or power of attorney with court.*]

13           An agreement or power of attorney must be filed within a reasonable time with any court that  
14 has entered an order on custodial responsibility or child support that is in effect concerning the child  
15 who is the subject of the agreement or power. The case number and heading of the pending case  
16 concerning custodial responsibility or child support must be provided to the court with the agreement  
17 or power.  
18

19           Section 11. [*Proceeding for temporary custody order.*]

20           1. After a deploying parent receives notice of deployment and until the deployment  
21 terminates, a court may issue a temporary order granting custodial responsibility unless prohibited  
22 by the federal Service members Civil Relief Act [50 U.S.C. appendix sections 521 and 522]. A  
23 court may not issue a permanent order granting custodial responsibility without the consent of the  
24 deploying parent.

25           2. At any time after a deploying parent receives notice of deployment, either parent may file  
26 a motion regarding custodial responsibility of a child during deployment. The motion must be filed  
27 in a pending proceeding for custodial responsibility in a court with jurisdiction.  
28

29           Section 12. [*Expedited hearing.*]

30           If a motion to grant custodial responsibility is filed before a deploying parent deploys, the  
31 court shall conduct an expedited hearing.  
32

33           Section 13. [*Grant of caretaking or decision making authority to nonparent.*]

34           1. On motion of a deploying parent and in accordance with the laws of this state other than  
35 this chapter, if it is in the best interests of the child, a court may grant caretaking authority to a  
36 nonparent who is an adult family member of the child or an adult with whom the child has a close  
37 and substantial relationship.

38           2. Unless a grant of caretaking authority to a nonparent is agreed to by the other parent, the  
39 grant is limited to an amount of time not greater than:

40           a. The amount of time granted to the deploying parent under a permanent custodial  
41 order, but the court may add unusual travel time necessary to transport the child; or

42           b. In the absence of a permanent custody order that is currently in effect, the amount  
43 of time that the deploying parent habitually cared for the child before being notified of  
44 deployment, but the court may add unusual travel time necessary to transport the child.

45           3. A court may grant part of a deploying parent's decision making authority, if the deploying  
46 parent is unable to exercise that authority, to a nonparent who is an adult family member of the child  
47 or an adult with whom the child has a close and substantial relationship. If a court grants the  
48 authority to a nonparent, the court shall specify the decision making powers granted, including

1 decisions regarding the child's education, religious training, health care, extracurricular activities,  
2 and travel.

3  
4 Section 14. [*Grant of limited contact.*]

5 On motion of a deploying parent, and in accordance with the laws of this state other than this  
6 chapter, unless the court finds that the contact would be contrary to the best interests of the child, a  
7 court shall grant limited contact to a nonparent who is a family member of the child or an individual  
8 with whom the child has a close and substantial relationship.

9  
10 Section 15. [*Nature of authority created by temporary custody order.*]

11 1. A grant of authority under is temporary and terminates after the return from deployment of  
12 the deploying parent, unless the grant has been terminated before that time by court order. The grant  
13 does not create an independent, continuing right to caretaking authority, decision making authority,  
14 or limited contact in an individual to whom it is granted.

15 2. A nonparent granted caretaking authority, decision making authority, or limited contact  
16 under has standing to enforce the grant until it is terminated by court.

17  
18 Section 16. [*Content of temporary custody order.*]

19 1. An order granting custodial responsibility must:

- 20 a. Designate the order as temporary; and  
21 b. Identify to the extent feasible, the destination, duration, and conditions of the  
22 deployment.

23 2. If applicable, an order for custodial responsibility must:

- 24 a. Specify the allocation of caretaking authority, decision making authority, or limited  
25 contact among the deploying parent, the other parent, and any nonparent;  
26 b. If the order divides caretaking or decision making authority between individuals, or  
27 grants caretaking authority to one individual and limited contact to another, provide a process  
28 to resolve any dispute that may arise;  
29 c. Provide for liberal communication between the deploying parent and the child  
30 during deployment, including through electronic means, unless contrary to the best interests  
31 of the child, and allocate any costs of communications;  
32 d. Provide for liberal contact between the deploying parent and the child during the  
33 time the deploying parent is on leave or otherwise available, unless contrary to the best  
34 interests of the child;  
35 e. Provide for reasonable contact between the deploying parent and the child after  
36 return from deployment until the temporary order is terminated, even if the time of contact  
37 exceeds the time the deploying parent spent with the child before entry of the temporary  
38 order; and  
39 f. Provide that the order will terminate after the deploying parent returns from  
40 deployment.

41  
42 Section 17. [*Order for child support.*]

43 If a court has issued an order granting caretaking authority or an agreement granting  
44 caretaking authority has been executed the court may enter a temporary order for child support  
45 consistent with the laws of this state.

46  
47 Section 18. [*Modifying or terminating grant of custodial responsibility to nonparent.*]

48 1. Except for an order consistent with the federal Service members Civil Relief Act, [50  
49 U.S.C. appendix [sections 521 and 522], on motion of a deploying or other parent or any nonparent

1 to whom caretaking authority, decision making authority, or limited contact has been granted, the  
2 court may modify or terminate the grant if the modification or termination is consistent with and it is  
3 in the best interests of the child. A modification is temporary and terminates after the deploying  
4 parent returns from deployment, unless the grant has been terminated before that time by court order.

5 2. On motion of a deploying parent, the court shall terminate a grant of limited contact.  
6

7 Section 19. [*Procedure for terminating temporary grant of custodial responsibility*  
8 *established by agreement.*]

9 1. At any time after return from deployment, a temporary agreement granting custodial  
10 responsibility may be terminated by an agreement to terminate signed by the deploying parent and  
11 the other parent.

12 2. A temporary agreement terminates:

13 a. If an agreement to terminate under subsection 1 specifies a date for termination, on  
14 that date; or

15 b. If the agreement to terminate does not specify a date, on the date the agreement to  
16 terminate is signed by the deploying parent and the other parent.

17 3. In the absence of an agreement under subsection 1 to terminate, a temporary agreement  
18 granting custodial responsibility terminates sixty days after the deploying parent gives notice to the  
19 other parent that the deploying parent returned from deployment.

20 4. If a temporary agreement granting custodial responsibility was filed with a court an  
21 agreement to terminate the temporary agreement also must be filed with that court within a  
22 reasonable time after the signing of the agreement. The case number and heading of the case  
23 concerning custodial responsibility or child support must be provided to the court with the agreement  
24 to terminate.  
25

26 Section 20. [*Consent procedure for terminating temporary grant of custodial responsibility*  
27 *established by court order.*]

28 At any time after a deploying parent returns from deployment, the deploying parent and the other  
29 parent may file with the court an agreement to terminate a temporary order for custodial  
30 responsibility. After an agreement has been filed, the court shall issue an order terminating the  
31 temporary order effective on the date specified in the agreement. If a date is not specified, the order  
32 is effective immediately.  
33

34 Section 21. [*Visitation before termination of temporary grant of custodial responsibility.*]

35 After a deploying parent returns from deployment until a temporary agreement or order for  
36 custodial responsibility is established or is terminated, the court shall issue a temporary order  
37 granting the deploying parent reasonable contact with the child unless it is contrary to the best  
38 interests of the child, even if the time of contact exceeds the time the deploying parent spent with the  
39 child before deployment.  
40

41 Section 22. [*Termination by operation of law of temporary grant of custodial responsibility*  
42 *established by court order.*]

43 1. If an agreement between the parties to terminate a temporary order for custodial  
44 responsibility has not been filed, the order terminates sixty days after the deploying parent gives  
45 notice to the other parent and any nonparent granted custodial responsibility that the deploying  
46 parent has returned from deployment.

47 2. A proceeding seeking to prevent termination of a temporary order for custodial  
48 responsibility is governed by law of this state other than this chapter.

- 1       Section 22. [*Severability clause.*] Insert severability clause.
- 2
- 3       Section 23. [*Repealer clause.*] Insert repealer clause.
- 4
- 5       Section 24. [*Effective date.*] Insert effective date.

# Uniform Faithful Presidential Electors Act

The purpose of the Act is to provide an effective remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state.

Submitted as:

Montana

[SB 194](#)

Status: Became law in April 2011.

1       Section 1. [*Short title.*] This Act may be cited as the “Uniform Faithful Presidential Electors  
2 Act.”

3  
4       Section 2. [*Definitions.*]

5       As used in this Act the following definitions apply:

6       (1) "Cast" means accepted by the secretary of state in accordance with [*Insert citation.*]

7       (2) "Elector" means an individual selected as presidential elector under this part.

8       (3) "President" means the president of the United States.

9       (4) "Unaffiliated presidential candidate" means a candidate for president of the United States  
10 who qualifies for the general election ballot in this state under [*Insert citation.*]

11       (5) "Vice president" means vice president of the United States.

12  
13       Section 3. [*Designation of electors.*]

14       Pursuant to [*Insert citation*], each political party qualified under [*Insert citation*] or  
15 unaffiliated presidential candidate shall submit to the secretary of state the names of two qualified  
16 individuals for each elector position in this state. One of the individuals must be designated as the  
17 elector nominee and the other must be designated as the alternate elector nominee. Unless otherwise  
18 provided by [sections 5 through 8], Montana's electors are the winning electors under the laws of this  
19 state.

20  
21       Section 4. [*Pledge.*]

22       Each elector nominated by a political party under [*Insert citation*] or by an unaffiliated  
23 presidential candidate shall execute the following pledge: "If selected for the position of elector, I  
24 agree to serve and to mark my ballots for president and vice president for the nominees of the  
25 political party that nominated me." The executed pledges must accompany the submission of the  
26 corresponding names to the secretary of state under [*Insert citation.*]

27  
28       Section 5. [*Certification of electors.*]

29       When submitting the certificate of ascertainment as required by 3 U.S.C. 6, the governor  
30 shall certify the state's electors to the archivist of the United States. The certificate must state that:

31       (1) the electors will serve as electors unless a vacancy occurs in the office of elector before  
32 the end of the meeting required under [section 7(1)], in which case a substitute elector will fill the  
33 vacancy as provided for in [section 6]; and

34       (2) if a substitute elector is appointed to fill a vacancy, the governor will submit an amended  
35 certificate of ascertainment stating the names on the final list of the state's electors.

36  
37       Section 6. [*Presiding officer -- elector vacancy.*]



1 (1) The secretary of state shall preside at the meeting of the electors described in [section  
2 7(1)].

3 (2) The position of an elector not present to vote is considered vacant, and the secretary of  
4 state shall appoint an individual as a substitute elector as follows:

5 (a) if the alternate elector is present to vote, by appointing the alternate elector for the  
6 vacant position;

7 (b) if the alternate elector is not present to vote, by appointing an elector chosen by  
8 lot from among the alternate electors present to vote who are nominated by the same political party  
9 or unaffiliated presidential candidate;

10 (c) if the number of alternate electors present to vote is insufficient to fill a vacant  
11 position pursuant to subsection (2)(a) or (2)(b), by appointing any immediately available individual  
12 who is qualified to serve as an elector and chosen through nomination by and plurality vote of the  
13 remaining electors, including nomination and vote by a single elector if only one remains;

14 (d) if there is a tie between two nominees for substitute elector in a vote conducted  
15 under subsection (2)(c), by appointing an elector chosen by lot from among those nominees; or

16 (e) if all elector positions are vacant and cannot be filled pursuant to subsections  
17 (2)(a) through (2)(d), by appointing a single presidential elector, with remaining vacant positions to  
18 be filled pursuant to subsection (2)(c) and, if necessary, subsection (2)(d).

19 (3) To qualify as a substitute elector under subsection (2), an individual who has not executed  
20 the pledge required by [section 4] shall execute the following pledge: "I agree to serve and to mark  
21 my ballots for president and vice president consistent with the pledge of the individual to whose  
22 elector position I have succeeded."  
23

#### 24 Section 7. [*Elector voting.*]

25 (1) The electors shall meet in [*Insert location*] at 2 p.m. on the first Monday after the second  
26 Wednesday in December following their election.

27 (2) After all vacant positions have been filled pursuant to [section 6], the secretary of state  
28 shall provide each elector with a presidential and a vice presidential ballot. The elector shall mark  
29 the elector's presidential and vice presidential ballots with the elector's vote for the office of  
30 president and vice president, respectively, along with the elector's signature and the elector's legibly  
31 printed name.

32 (3) Unless otherwise provided by law, each elector shall present both completed ballots to the  
33 secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes  
34 are consistent with their pledges executed under [section 4 or 6(3)]. Except as otherwise provided by  
35 law, the secretary of state may not accept and may not count either an elector's presidential or vice  
36 presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the  
37 elector's pledge.

38 (4) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a  
39 ballot in violation of the elector's pledge executed under [section 4 or 6(3)] vacates the office of  
40 elector, creating a vacant position to be filled under [section 6].

41 (5) The secretary of state shall distribute ballots to and collect ballots from a substitute  
42 elector and repeat the process specified in this section until all of the electoral votes have been cast  
43 and recorded.  
44

#### 45 Section 8. [*Amended certificate of ascertainment -- certificate of final vote.*]

46 (1) After the vote of the electors is completed, if the final list of electors differs from the list  
47 the governor previously included on a certificate of ascertainment prepared and transmitted pursuant  
48 to [section 5], the secretary of state shall immediately prepare an amended certificate of  
49 ascertainment and transmit it to the governor for the governor's signature.

1 (2) The governor shall immediately sign and transmit to the secretary of state the signed  
2 amended certificate of ascertainment and a signed duplicate original of the amended certificate of  
3 ascertainment that indicates that the amended certificate of ascertainment must be substituted for the  
4 certificate of ascertainment previously submitted.

5 (3) The secretary of state shall prepare a certificate of vote. The electors on the final list shall  
6 sign the certificate. The secretary of state shall process and transmit the signed certificate with the  
7 amended certificate of ascertainment as provided under 3 U.S.C. 9 through 11.

8  
9 Section 9. [*Uniformity of application and construction.*]

10 In applying and construing [sections 1 through 9], consideration must be given to the need to  
11 promote uniformity of the law with respect to its subject matter among the states that enact it.

12  
13 Section 10. [*Repealer.*] Insert repealer clause.

14  
15 Section 11. [*Codification instruction*]. Insert codification clause.

# Violence Against Healthcare Employees

The Act requires hospitals, ambulatory surgical centers, and home health care services to implement strategies to protect health care employees from acts of violence in the workplace. Among many provisions, the Act requires health care employers to:

- Conduct periodic security and safety assessments to identify existing or potential hazards for assaults committed against employees;
- Develop and implement an assault prevention and protection program for employees based on the assessments; and
- Provide assault prevention and protection training on a regular and ongoing basis for employees.

In addition, health care employers are required to maintain a record of assaults committed against employees on the premises of the health care employer or in the home of a patient receiving home health care services.

Submitted as:

Oregon

[HB 2022](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as the “Violence Against Healthcare  
2 Employees Act.”

3  
4           Section 2. [*Definitions.*] As used in this Act:

5           (1) “Assault” means intentionally, knowingly or recklessly causing physical injury.

6           (2) “Health care employer” means

7               (a) An ambulatory surgical center as defined in [insert citation].

8               (b) A hospital as defined in [insert citation].

9           (3) “Home health care services” means items or services furnished to a patient by an  
10 employee of a health care employer in a place of temporary or permanent residence used as the  
11 patient’s home.

12  
13           Section 3. [*Security and Safety Assessments, Safety Program and Training*]

14           (A) A health care employer shall:

15               (1) Conduct periodic security and safety assessments to identify existing or  
16 potential hazards for assaults committed against employees;

17               (2) Develop and implement an assault prevention and protection program for  
18 employees based on assessments conducted under paragraph (1) of this subsection; and

19               (3) Provide assault prevention and protection training on a regular and ongoing  
20 basis for employees.

21           (B) An assessment conducted under subsection (A)(1) of this section shall include, but  
22 need not be limited to:

23               (1) A measure of the frequency of assaults committed against employees that

1 occur on the premises of a health care employer or in the home of a patient receiving home health  
2 care services during the preceding five years or for the years that records are available if  
3 fewer than five years of records are available; and

4 (2) An identification of the causes and consequences of assaults against  
5 employees.

6 (C) An assault prevention and protection program developed and implemented by a health  
7 care employer under subsection (A)(2) of this section shall be based on an assessment conducted  
8 under subsection (A)(1) of this section and shall address security considerations related  
9 to the following:

10 (1) Physical attributes of the health care setting;

11 (2) Staffing plans, including security staffing;

12 (3) Personnel policies;

13 (4) First aid and emergency procedures;

14 (5) Procedures for reporting assaults; and

15 (6) Education and training for employees.

16 (D)(1) Assault prevention and protection training required under subsection (A)(3) of this  
17 section shall address the following topics:

18 (a) General safety and personal safety procedures;

19 (b) Escalation cycles for assaultive behaviors;

20 (c) Factors that predict assaultive behaviors;

21 (d) Techniques for obtaining medical history from a patient with assaultive  
22 behavior;

23 (e) Verbal and physical techniques to de-escalate and minimize assaultive  
24 behaviors;

25 (f) Strategies for avoiding physical harm and minimizing use of restraints;

26 (g) Restraint techniques consistent with regulatory requirements;

27 (h) Self-defense, including:

28 (i) The amount of physical force that is reasonably necessary to  
29 protect the employee or a third person from assault; and

30 (ii) The use of least restrictive procedures necessary under the  
31 circumstances, in accordance with an approved behavior management plan, and any other methods  
32 of response approved by the health care employer;

33 (i) Procedures for documenting and reporting incidents involving  
34 assaultive behaviors;

35 (j) Programs for post-incident counseling and follow-up;

36 (k) Resources available to employees for coping with assaults; and

37 l) The health care employer's workplace assault prevention and protection  
38 program.

39 (2) A health care employer shall provide assault prevention and protection  
40 training to a new employee within 90 days of the employee's initial hiring date.

41 (3) A health care employer may use classes, video recordings, brochures, verbal  
42 or written training or other training that the employer determines to be appropriate, based on an  
43 employee's job duties, under the assault prevention and protection program developed by the  
44 employer.

45  
46 Section 4. *[Maintaining Records of Assaults]*

47 (A) A health care employer shall maintain a record of assaults committed  
48 against employees that occur on the premises of the health care employer or in the home

of a patient receiving home health care services. The record shall include, but need not be limited to, the following:

- (1) The name and address of the premises on which each assault occurred;
- (2) The date, time and specific location where the assault occurred;
- (3) The name, job title and department or ward assignment of the employee who was assaulted;
- (4) A description of the person who committed the assault as a patient, visitor, employee or other category;
- (5) A description of the assaultive behavior as:
  - (a) An assault with mild soreness, surface abrasions, scratches or small bruises;
  - (b) An assault with major soreness, cuts or large bruises;
  - (c) An assault with severe lacerations, a bone fracture or a head injury; or
  - (d) An assault with loss of limb or death;
- (6) An identification of the physical injury;
- (7) A description of any weapon used;
- (8) The number of employees in the immediate area of the assault when it occurred; and
- (9) A description of actions taken by the employees and the health care employer in response to the assault.

(B) A health care employer shall maintain the record of assaults described in subsection (A) of this section for no fewer than five years following a reported assault.

(C) The [insert administering agency] shall adopt by rule a common recording form for the purposes of this section.

#### Section 5. *[Employee Protection]*

If a health care employer directs an employee who has been assaulted by a patient on the premises of the health care employer to provide further treatment to the patient, the employee may request that a second employee accompany the employee when treating the patient. If the health care employer declines the employee's request, the health care employer may not require the employee to treat the patient.

#### Section 6. *[Home Health Employee Protection]*

(A) An employee who provides home health care services may refuse to treat a patient unless accompanied by a second employee if, based on the patient's past behavior or physical or mental condition, the employee believes that the patient may assault the employee.

(B) An employee who provides home health care services may refuse to treat a patient unless the employee is equipped with a communication device that allows the employee to transmit one-way or two-way messages indicating that the employee is being assaulted.

#### Section 7. *[Employee Use of Self-defense]*

(A) A health care employer may not impose sanctions against an employee who used physical force in self-defense against an assault if the health care employer finds that the employee:

- (1) Was acting in self-defense in response to the use or imminent use of physical force;
- (2) Used an amount of physical force that was reasonably necessary to protect the employee or a third person from assault; and
- (3) Used the least restrictive procedures necessary under the circumstances, in

1 accordance with an approved behavior management plan, or other methods of response approved  
2 by the health care employer.

3 (B) As used in this section, “self-defense” means the use of physical force upon another  
4 person in self-defense or to defend a third person.

5  
6 Section 8. [*Security and Safety Assessment Requirements*]

7 A health care employer that is required to conduct a periodic security and safety assessment  
8 under section 3 of this Act shall conduct its first assessment no later than [insert date].  
9

10 Section 9. [*Operative Date*]

11 Section 4 of this Act applies only to assaults occurring on or after the operative date specified  
12 in section [insert number] of this [insert date] Act.  
13

14 Section 10. [*Data Reporting*]

15 (A) No later than [insert date], each health care employer shall provide to the Director of the  
16 [insert administering agency] data from the record of assaults compiled under section 4 of this Act  
17 for assaults occurring in [insert date].

18 (B) The director shall adopt rules for the reporting of data under subsection (A) of this  
19 section. The rules:

20 (1) May not require health care employers to report the names of employees who  
21 have been assaulted or the names of patients who have committed assaults; and

22 (2) Shall conform with state and federal laws relating to confidentiality and the  
23 protection of health information.

24 (C) No later than [insert date], the director shall analyze the data received under subsection  
25 (1) of this section and report the findings to the [insert date] legislature.

26 (D) Nothing in this section restricts the director’s access to or use of information or records  
27 otherwise required or permitted under the [state] Safe Employment Act.  
28

29 Section 11. [*Severability*.] Insert severability clause.

30 Section 12 [*Repealer*.] Insert repealer clause.

31 Section 13 [*Effective Date*.] Insert effective date.  
32  
33



# Voluntary Surveillance Access Database

The Act establishes a voluntary surveillance access database where residential homeowners and business owners may elect to have information and/or images obtained from their closed-circuit television or other electronic surveillance systems made available to law enforcement agencies.

Submitted as:

New York

[Assembly Bill 9380](#)

Status: Became law in 2012.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1: [*Voluntary Surveillance Access Database.*]

2  
3           1. Establishes a voluntary surveillance access database to be made accessible, upon written  
4 request, to any law enforcement agency solely for purposes of a criminal.

5           2. Residential home owners and business owners who maintain a closed circuit television or  
6 other electronic video surveillance system may elect to register such information, limited to the  
7 location of such system and the contact information for the owner, with the voluntary surveillance  
8 access database. Such owners may withdraw such registration from the database at any time.

9           3. Registration information from such database shall be kept confidential and shall not be  
10 made available for disclosure or inspection under the state freedom of information law unless a  
11 subpoena or other court order directs the division to release such information or image.

12  
13          Section 2. [*Severability clause.*] Insert severability clause.

14  
15          Section 3. [*Repealer clause.*] Insert repealer clause.

16  
17          Section 4. [*Effective date.*] Insert effective date.

# Welfare Recipient Drug Testing

This Act requires drug tests whenever state officials have a reasonable suspicion that someone receiving or applying for welfare or unemployment benefits is using drugs. Suspicion could be raised during addiction screening by welfare administering agency caseworkers or by missed meetings or criminal records. Recipients of state benefits would not receive assistance until they complete a drug treatment program and a job skills training. This Act allows drug tests for governor, lieutenant governor, attorney general and members of the legislature.

Submitted as:

Kansas

[Senate Bill 149](#)

Status: Enacted into law in 2013.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as the “Welfare Recipient Drug Testing Act.”

2  
3           Section 2. [*Definitions.*]

4           As used in this Act:

5           (1) “Cash assistance” means cash assistance provided to individuals under the provisions of  
6 [relevant state statutes].

7           (2) “Controlled substance” means the same as in [relevant state statutes].

8           (3) “Controlled substance analogue” means the same as in 21 U.S. Code § 813.

9  
10          Section 3. [*Drug Screening for Cash Assistance Recipients.*]

11          (A) A program of drug screening for applicants for cash assistance as a condition of  
12 eligibility for cash assistance and persons receiving cash assistance as a condition of continued  
13 receipt of cash assistance shall be established, subject to applicable federal law, by the secretary for  
14 [insert administering agency] on or before [insert date]. Under such program of drug screening, the  
15 secretary for [insert administering agency] shall order a drug screening of an applicant for or a  
16 recipient of cash assistance at any time when reasonable suspicion exists that such applicant for or  
17 recipient of cash assistance is unlawfully using a controlled substance or controlled substance  
18 analogue. The secretary for [insert administering agency] may use any information obtained by the  
19 secretary for [insert administering agency] to determine whether such reasonable suspicion exists,  
20 including, but not limited to, an applicant’s or recipient’s demeanor, missed appointments and arrest  
21 or other police records, previous employment or application for employment in an occupation or  
22 industry that regularly conducts drug screening, termination from previous employment due to  
23 unlawful use of a controlled substance or controlled substance analogue or prior drug screening  
24 records of the applicant or recipient indicating unlawful use of a controlled substance or controlled  
25 substance analogue.

26          (B) Any applicant for or recipient of cash assistance whose drug screening results in a  
27 positive test may request that the drug screening specimen be sent to a different drug testing facility  
28 for an additional drug screening. Any applicant for or recipient of cash assistance who requests an  
29 additional drug screening at a different drug testing facility shall be required to pay the cost of drug  
30 screening. Such applicant or recipient who took the additional drug screening and who tested

1 negative for unlawful use of a controlled substance and controlled substance analogue shall be  
2 reimbursed for the cost of such additional drug screening.

3 (C) Any applicant for or recipient of cash assistance who tests positive for unlawful use of a  
4 controlled substance or controlled substance analogue shall be required to complete a substance  
5 abuse treatment program approved by the secretary for [insert appropriate agencies]. Subject to  
6 applicable federal laws, any applicant for or recipient of cash assistance who fails to complete or  
7 refuses to participate in the substance abuse treatment program or job skills program as required  
8 under this subsection shall be ineligible to receive cash assistance until completion of such substance  
9 abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job  
10 skills programs, such applicant for or recipient of cash assistance may be subject to periodic drug  
11 screening, as determined by the secretary for [insert administering agency]. Upon a second positive  
12 test for unlawful use of a controlled substance or controlled substance analogue, a recipient of cash  
13 assistance shall be ordered to complete again a substance abuse treatment program and job skills  
14 program, and shall be terminated from cash assistance for a period of 12 months, or until such  
15 recipient of cash assistance completes both substance abuse treatment and job skills programs,  
16 whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled  
17 substance analogue, a recipient of cash assistance shall be terminated from cash assistance, subject to  
18 applicable federal law.

19 (D) If an applicant for or recipient of cash assistance is ineligible for or terminated from cash  
20 assistance as a result of a positive test for unlawful use of a controlled substance or controlled  
21 substance analogue, and such applicant for or recipient of cash assistance is the parent or legal  
22 guardian of a minor child, an appropriate protective payee shall be designated to receive cash  
23 assistance on behalf of such child. Such parent or legal guardian of the minor child may choose to  
24 designate an individual to receive cash assistance for such parent's or legal guardian's minor child,  
25 as approved by the secretary for children and families. Prior to the designated individual receiving  
26 any cash assistance, the secretary for [insert administering agency] shall review whether reasonable  
27 suspicion exists that such designated individual is unlawfully using a controlled substance or  
28 controlled substance analogue.

29 (1) In addition, any individual designated to receive cash assistance on behalf of an  
30 eligible minor child shall be subject to drug screening at any time when reasonable suspicion exists  
31 that such designated individual is unlawfully using a controlled substance or controlled substance  
32 analogue. The secretary for [insert administering agency] may use any information obtained by the  
33 secretary for [insert administering agency] to determine whether such reasonable suspicion exists,  
34 including, but not limited to, the designated individual's demeanor, missed appointments and arrest  
35 or other police records, previous employment or application for employment in an occupation or  
36 industry that regularly conducts drug screening, termination from previous employment due to  
37 unlawful use of a controlled substance or controlled substance analogue or prior drug screening  
38 records of the designated individual indicating unlawful use of a controlled substance or controlled  
39 substance analogue.

40 (2) Any designated individual whose drug screening results in a positive test may  
41 request that the drug screening specimen be sent to a different drug testing facility for an additional  
42 drug screening. Any designated individual who requests an additional drug screening at a different  
43 drug testing facility shall be required to pay the cost of drug screening. Such designated individual  
44 who took the additional drug screening and who tested negative for unlawful use of a controlled  
45 substance and controlled substance analogue shall be reimbursed for the cost of such additional drug  
46 screening.

47 (3) Upon any positive test for unlawful use of a controlled substance or controlled  
48 substance analogue, the designated individual shall not receive cash assistance on behalf of the  
49 parent's or legal guardian's minor child, and another designated individual shall be selected by the

1 secretary for [insert administering agency] to receive cash assistance on behalf of such parent's or  
2 legal guardian's minor child.

3 (E) If a person has been convicted under federal or state law of any offense which is  
4 classified as a felony by the law of the jurisdiction and which has as an element of such offense the  
5 manufacture, cultivation, distribution, possession or use of a controlled substance or controlled  
6 substance analogue, and the date of conviction is on or after [insert date], such person shall thereby  
7 become forever ineligible to receive any cash assistance under this subsection unless such conviction  
8 is the person's first conviction. First-time offenders convicted under federal or state law of any  
9 offense which is classified as a felony by the law of the jurisdiction and which has as an element of  
10 such offense the manufacture, cultivation, distribution, possession or use of a controlled substance or  
11 controlled substance analogue, and the date of conviction is on or after [insert date], such person  
12 shall become ineligible to receive cash assistance for five years from the date of conviction.

13 (F) Except for hearings before the [insert administering agency] or, the results of any drug  
14 screening administered as part of the drug screening program authorized by this subsection shall be  
15 confidential and shall not be disclosed publicly.

16 (G) The secretary for [insert administering agency] may adopt such rules and regulations as  
17 are necessary to carry out the provisions of this subsection.

18 (H) Any authority granted to the secretary for [insert administering agency] under this  
19 subsection shall be in addition to any other penalties prescribed by law.

20  
21 Section 4. *[Drug Screening for Recipients of Unemployment Benefits.]*

22 (A) Any applicant for or recipient of unemployment benefits who tests positive for  
23 unlawful use of a controlled substance or controlled substance analogue shall be required to  
24 complete a substance abuse treatment program approved by the secretary for [insert administering  
25 agency], and a job skills program approved by the secretary for [insert administering agency].  
26 Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails  
27 to complete or refuses to participate in the substance abuse treatment program or job skills program  
28 as required under this subsection shall be ineligible to receive unemployment benefits until  
29 completion of such substance abuse treatment and job skills programs. Upon completion of both  
30 substance abuse treatment and job skills programs, such applicant for or recipient of unemployment  
31 benefits may be subject to periodic drug screening, as determined by the secretary for [insert  
32 administering agency]. Upon a second positive test for unlawful use of a controlled substance or  
33 controlled substance analogue, an applicant for or recipient of unemployment benefits shall be  
34 ordered to complete again a substance abuse treatment program and job skills program, and shall be  
35 terminated from unemployment benefits for a period of 12 months, or until such applicant for or  
36 recipient of unemployment benefits completes both substance abuse treatment and job skills  
37 programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or  
38 controlled substance analogue, an applicant for or a recipient of unemployment benefits shall be  
39 terminated from receiving unemployment benefits, subject to applicable federal law.

40 (B) Any individual who has been discharged or refused employment for failing a pre-  
41 employment drug screen required by an employer may request that the drug screening specimen be  
42 sent to a different drug testing facility for an additional drug screening. Any such individual who  
43 requests an additional drug screening at a different drug testing facility shall be required to pay the  
44 cost of drug screening.

45  
46 Section 5. *[Drug Screening for State Officials.]*

47 (A) The director of the [insert appropriate agency] shall have the authority to establish

1 and implement a drug screening program for persons taking office as governor, lieutenant governor  
2 or, attorney general or members of the [insert state] senate or house of representatives and for  
3 applicants for safety sensitive positions in state government, but no applicant for a safety sensitive  
4 position shall be required to submit to a test as a part of this program unless the applicant is first  
5 given a conditional offer of employment.

6 (B) The director also shall have the authority to establish and implement a drug screening  
7 program based upon a reasonable suspicion of illegal drug use by any person currently holding one  
8 of the following positions or offices:

9 (1) The office of governor, lieutenant governor or attorney general;

10 (2) Members of the [insert state] senate or house of representatives;

11 (C) No person shall be terminated solely due to positive results of a test administered as a  
12 part of a program authorized by this section if:

13 (1) The employee has not previously had a valid positive test result; and

14 (2) The employee undergoes a drug evaluation and successfully completes any  
15 education or treatment program recommended as a result of the evaluation.

16  
17 Section 6. [*Severability.*] Insert severability clause.

18  
19 Section 7. [*Repealer.*] Insert repealer clause.

20  
21 Section 8. [*Effective Date.*] Insert effective date.

# Wind Energy Property Rights

This Act creates a property right in the development of wind energy. The Act provides that the property right is an interest in real property. It is attached to the surface estate and cannot be severed from the surface estate. This Act allows wind energy property rights to be developed through wind energy agreements. A wind energy agreement (or a notice of an agreement) must be recorded with the county clerk. The Act clarifies that wind energy becomes personal property when it is converted into electricity.

Submitted as:

Wyoming

[SEA 003 \(Enrolled version\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Wind Energy Rights Act.”

2  
3           Section 2. [*Definitions.*]

4           As used in this Act:

5           (1) “Wind energy agreement” means a lease, license, easement or other agreement, whether  
6 by grant or reservation, to develop or participate in the income from or the development of wind  
7 powered energy generation;

8           (2) “Wind energy developer” means the owner of the surface estate or the lessee, easement  
9 holder, licensee or contracting party under a wind energy agreement, and

10          (3) “Wind energy right” means a property right in the development of wind powered energy  
11 generation.

12  
13          Section 3. [*Declaration of Wind Energy Rights.*]

14          (a) Wind energy rights shall be regarded as an interest in real property and appurtenant to the  
15 surface estate.

16          (b) Wind energy rights shall not be severed from the surface estate, except that wind energy  
17 may be developed pursuant to a wind energy agreement.

18          (c) A wind energy agreement is an interest in real property. A wind energy agreement or a  
19 notice or memorandum evidencing a wind energy agreement shall be recorded in the office of the  
20 county clerk where the land subject to the agreement is located and shall include a description of the  
21 land subject to the agreement.

22          (d) After a wind energy agreement has terminated, the surface owner may request the wind  
23 energy developer to record a release of the wind energy agreement in the office of the county clerk  
24 where the land subject to the wind energy agreement is located. The request shall be in writing and  
25 delivered to the wind energy developer by personal service or registered mail at the wind energy  
26 developer's last known address. The wind energy developer shall record the release within [twenty  
27 (20) days] after receipt of the request. If the wind energy developer fails to record the release within  
28 [twenty (20) days] after the receipt of the request, the wind energy developer shall be liable to the  
29 surface owner for all damages caused by the wind energy developer's failure. A copy of the written  
30 request shall have the same force and effect as the original in an action for damages.



1 (e) Wind energy becomes personalty at the point of conversion into electricity.

2 (f) Nothing in this Act shall alter, amend, diminish or invalidate wind energy agreements or  
3 conveyances made or entered into prior to [insert date] provided that a contract, lease, memorandum  
4 or other notice evidencing the acquisition, conveyance or reservation of the wind energy rights is  
5 recorded in accordance with subsection (c) of this section no later than [insert date].  
6

7 Section 4. [*Dominance of Mineral Estate.*]

8 Nothing in this Act shall be construed to change the common law as of [insert date] as it  
9 relates to the rights belonging to, or the dominance of, the mineral estate.  
10

11 Section 5. [*Compensation for Taking of Wind Energy Rights.*]

12 Nothing in this Act diminishes the right of the owner of the surface estate to receive  
13 compensation under [insert citation] for the taking of wind energy rights incidental to the exercise of  
14 eminent domain.  
15

16 Section 6. [*No Restriction on Transfer of Wind Energy Agreement.*]

17 Nothing in this Act shall be construed to restrict the transfer of a wind energy agreement,  
18 including the transfer of the surface owner's right to receive payments under the wind energy  
19 agreement.  
20

21 Section 7. [*Reversion of Easements.*]

22 Unless otherwise agreed between the surface owner and wind energy developer, all easement  
23 interests acquired after [insert date] for the purpose of producing wind energy shall revert to the  
24 owner of the surface estate if wind energy production has ceased for a continuous period of 10 years  
25 or if the generation of electricity by a turbine has not commenced within 20 after the execution of a  
26 wind energy agreement. Reversion of an interest under this section does not transfer any obligation  
27 to restore or reclaim the surface estate.  
28

29 Section 8. [*Severability.*] Insert severability clause.  
30

31 Section 9. [*Repealer.*] Insert repealer clause.  
32

33 Section 10. [*Effective Date.*] Insert effective date.

Please note that a cumulative index covering topics from the 1994 *Suggested State Legislation* volume through the 2014 edition will be available at a forthcoming date. Continue to check back at [www.csg.org](http://www.csg.org) for updates later in the year.