Submissions for any SSL docket should be sent to CSG at least eight weeks in advance of any scheduled SSL meeting in order to be considered for the docket of that meeting. Submissions received after this will typically be held for a later meeting. Anyone desiring an exception to this policy must contact the SSL committee leadership and will be responsible for preparing and distributing to the SSL committee any materials that are related to the docket submission in question. The status of any item on this docket is listed as reported by the submitting state’s legislative Internet Web site or by telephone from state legislative service agencies and legislative libraries. Abstracts of the legislation on SSL dockets and in SSL volumes are usually compiled from bill digests and state legislative staff analysis.

CSG COMMITTEE ON
SUGGESTED STATE LEGISLATION

2015 CYCLE
DOCKET BOOK B
June 20, 2014

This docket and referenced legislation can be downloaded from 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 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 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.

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.

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, P.O. Box 11910, Lexington, Kentucky 40578-1910, (859) 244-8000, fax (859) 244-8001, or ssl@csg.org.
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?
- Is 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.
PRESENTATION OF DOCKET ENTRIES

Docket ID#
Title
State/source
Bill/Act

Summary: [These are typically excerpted from bill digests, committee summaries, and related materials which are contained in or accompany the legislation.]

Status: [Action taken on item in source state.]

Comment: [Contains references to other bills or information about the entry and issues the members should consider in referring the entry for publication in SSL. Space may also be used to note reaction to an item, instructions to staff, etc.]

Disposition of Entry: [Action taken on item by the SSL Committee.]

SSL Committee Meeting: (A)(B)(C)
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:

*Item was deferred from the previous SSL cycle
SSL DOCKET CATEGORIES - 2004A and later

(*) Indicates item is carried over from previous SSL cycle.

(01) Conservation and the Environment
(02) Hazardous Materials/Waste
(03) Energy
(04) Science and Technology
(05) Public, Occupational and Consumer Health and Safety
(06) Property, Land and Housing/Infrastructure, Development/Protection
(07) Growth Management
(08) Economic Development/Global Dynamics/Development
(09) Business Regulation and Commercial Law
(10) Public Finance and Taxation
(11) Labor/Workforce Recruitment, Relations and Development
(12) Public Utilities and Public Works
(13) State and Local Government/Interstate Cooperation and Legal Development
(14) Transportation
(15) Communications/Telecommunications
(16) Elections/Political Conditions
(17) Criminal Justice, the Courts and Corrections/Public Safety and Justice
(18) Public Assistance/Human Services
(19) Domestic Relations/Demographic Shifts/Social and Cultural Shifts
(20) Education
(21) Health Care
(22) Culture, the Arts and Recreation
(23) Privacy
(24) Agriculture
(25) Consumer Protection
(26) Miscellaneous
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Summary: SB 373 establishes new regulatory programs that require registration and permitting for aboveground storage tanks. Fees will also be collected for registration and permitting and civil and criminal penalties are possible for violations. Storage tanks will be subject to annual inspections by state agencies and independent engineers.

Status: Signed into law April 1, 2014.

Comment: From Reuters (April 1, 2014)

West Virginia Governor Earl Ray Tomblin on Tuesday signed a bill regulating above-ground chemical storage tanks, a measure prompted by a spill in January that tainted water supplies for some 300,000 people.

The new law requires above-ground tanks in critical areas near public water supplies to be registered with the state Department of Environmental Protection, which will perform annual inspections.

Read more: http://www.reuters.com/article/2014/04/01/us-usa-west-virginia-spill-idUSBREA3020O20140401

From the Charleston Gazette (April 1, 2014)

The new law directs the Bureau for Public Health to conduct a long-term study of health effects from the January chemical spill. The law directs the health agency to search for funds, including federal grants, to pay for the study. The bureau must report back to the Legislature by Jan. 1, 2015.

Under the law, West Virginia American Water also must install an early-warning monitor system, which would identify foreign substances in the Elk River before they reach the treatment plant in Charleston. The water company has a detection device at its Huntington treatment plant. Lawmakers left many significant decisions — such as the details of tank safety standards — for the state Department of Environmental Protection to hash out by writing rules. Those rules are required to be written for legislative review during the 2015 regular session.

DEP Secretary Randy Huffman said last week that he plans to set up a process that would allow for more public involvement in those rule than as typical for most agency rules.

Read more: http://www.wvgazette.com/article/20140401/GZ01/140409893/1101
Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
the development of the plan shall be submitted every three years. The State Water Resources Management Plan is hereby adopted. Persons identified as large-quantity users prior to the effective date of this subsection shall report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the previous calendar year by March 31 of each succeeding year. Persons identified as large-quantity users on or after the effective date of this subsection shall submit their initial annual report no later than March 31, 2016, and subsequent annual reports by March 31 of each year thereafter.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK WATER RESOURCES PROTECTION ACT.

§22-30-1. Short title.

This article may be known and cited as the Aboveground Storage Tank Water Resources Protection Act.

§22-30-2. Legislative findings.

(a) The West Virginia Legislature finds that it is in the public policy of the State of West Virginia to protect and conserve the water resources for the state and its citizens. The state’s water resources are vital natural resources that are
essential to maintain, preserve and promote human health,
quality of life and economic vitality of the state.
(b) The West Virginia Legislature further finds that it is
the public policy of the state that clean, uncontaminated
water be available for its citizens who are dependent on clean
water as a basic need for survival, and who rely on the
assurances from public water systems and the government
that the water is safe to consume.
(c) The West Virginia Legislature further finds that it is
the public policy of the state that clean, uncontaminated
water be available to its businesses and industries that rely on
water for their economic survival, and the wellbeing of their
employees. These include hospitals and the medical industry,
schools and educational institutions, the food and hospitality
industries, the tourism industry, manufacturing, coal, natural
gas and other industries. Businesses and industries searching
for places to locate or relocate consider the quality of life for
their employees as well as the quality of the raw materials
such as clean water.
(d) The Legislature further finds that large quantities of
fluids are stored in aboveground storage tanks within the
state and that emergency situations involving these fluids can
and will arise that may present a hazard to human health, safety, the water resources, the environment and the economy of the state. The Legislature further recognizes that some of these fluids have been stored in aboveground storage tanks in a regulated manner insufficient to protect human health, safety, water resources, the environment and the economy of the state.

§22-30-3. Applicability; exclusions.

(a) This article applies to all new and existing aboveground storage tanks located within the state that are used to store any fluid except water that does not contain additives.

(b) Exclusions. – The following aboveground storage tanks are excluded from the requirements of this article:

(1) An aboveground storage tank containing drinking water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes;

(2) An aboveground storage tank located on a farm, in which the contents of the tank are used by the tank owner or operator for farming purposes, and the contents are not being commercially distributed;
(3) An aboveground storage tank located on residential property of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;

(4) An aboveground storage tank of one thousand one hundred gallons or less capacity used for storing heating oil for consumption on the premises where stored;

(5) Any heating oil, natural gas or propane tanks regulated under NFPA 58-30A or NFPA 58-30B;

(6) Stormwater or wastewater collection and treatment systems;

(7) Septic tanks;

(8) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(9) Equipment or machinery containing substances for operational purposes, including integral hydraulic lift tanks,
lubricating oil reservoirs for pumps and motors, electrical equipment and heating and cooling equipment;

(10) An indoor tank located inside a building resting on or elevated above an impermeable floor surface from which a release would be entirely contained in a secondary containment structure or not escape through other means;

(11) A mobile tank or truck that is one thousand one hundred or less in capacity and is located on site for less than sixty consecutive calendar days;

(12) Aboveground storage tanks, containing hazardous wastes, which are subject to a treatment or storage permits regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U. S. C. §6921, *et seq.*, or substances regulated under article eighteen of this chapter;

(13) An aboveground storage tank containing agricultural pesticides regulated under article sixteen-a, chapter nineteen of this code;

(14) Liquid traps or associated gathering lines related to oil or gas production and gathering operations;

(15) A surface impoundment, pit, pond or lagoon;
(16) Tanks otherwise regulated under those provisions of this chapter that necessitate individual site-specific permits that require appropriate containment and diversionary structures or equipment to prevent discharged materials from reaching the waters of the state, including:

(A) Tanks on sites regulated under the Surface Coal Mining and Reclamation Act, article three of this chapter;

(B) Tanks that are used to store brines, crude oil or any other liquid or similar substances or materials that are directly related to the exploration, development, stimulation, completion or production of crude oil or natural gas regulated under article six or six-a of this chapter;

(C) Tanks that are located at establishments that have individual permits issued under the National Pollutant Discharge Elimination System, article eleven of this chapter; and

(D) Tanks regulated under the Solid Waste Management Act, article fifteen of this chapter, including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management;
(17) Any aboveground storage tank of one thousand one hundred gallons or less capacity, not otherwise exempt, unless that tank is greater than 500 gallons capacity and is located within five hundred feet of surface or source waters;

(18) Aboveground storage tanks used in connection with oil and gas exploration, production, processing, gathering, treatment or storage operations or transmission facilities that are addressed in spill prevention, control, and countermeasure plans meeting the federal regulations set out in 40 C. F. R. Part 112;

(19) Tanks regulated under Section 1321 of the federal Water Pollution Control Act (Section 311 of the federal Clean Water Act) and the regulations promulgated thereunder, 40 C. F. R. §112, et seq.; and

(20) Tanks used for the storage of fluids that are gases at standard temperature and pressure.

§22-30-4. Definitions.

For purposes of this article, the following words mean:

(a) “Aboveground storage tank”, “tank”, or the plural, means any container, or set of connected containers, designed to contain fluids and is constructed of materials including
concrete, steel, plastic or fiberglass reinforced plastic. The term includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems connected to the aboveground containers.

(b) “Department” means the West Virginia Department of Environmental Protection.

(c) “Nonoperational storage tank” means an aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(d) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(e) “Owner” means a person who holds title to, controls or owns an interest in an aboveground storage tank, including owners of tanks immediately preceding the discontinuation of a tank’s use. “Owner” does not mean a person who holds an interest in a tank for financial security, unless the holder has taken possession of and operated the tank.

(f) “Person”, “persons” or “people” means any individual, trust, firm, owner, operator, corporation or other legal entity,
including the United States government, an interstate
commission or other body, the state or any agency, board,
bureau, office, department or political subdivision of the
state, but does not include the Department of Environmental
Protection.

(g) “Public water system” means the same in this article
as set forth in subsection (p), section two, article one, chapter
sixteen of this code.

(h) “Release” means any spilling, leaking, emitting,
discharging, escaping, leaching or disposing of fluids from an
aboveground storage tank into groundwater, surface water or
subsurface soils. The term shall also include spilling,
leaking, emitting, discharging, escaping, leaching or
disposing of fluids from an aboveground storage tank into a
containment structure or facility that poses an immediate
threat of contamination of the soils, subsurface soils, surface
water or groundwater.

(i) Secondary containment means a safeguard specifically
designed to be impermeable to stored substances and which
will contain a release from an aboveground storage tank, and
prevent the release from spreading vertically or horizontally,
contaminating the land or water outside of the containment area.

(j) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

§22-30-5. Registration of existing aboveground storage tanks.

(a) To assure protection of the water resources of the state, the secretary shall compile an inventory of aboveground storage tanks in existence, regardless of whether they are operational or nonoperational storage tanks, on the effective date of this article. The secretary shall prescribe a registration form for this purpose within thirty days of the effective date of the enactment of this article. All aboveground storage tanks subject to this article shall be registered no later than sixty days from the effective date of the enactment of this article.

(b) At a minimum the registration shall include the date of tank installation, tank location, type of construction, size and age of the tank, the type and volume of fluid stored therein and the proximity to any water intake.

(c) If, at the time this registration is required to be submitted, the secretary has not prepared the form required
by this section, the owner or operator shall nevertheless submit the information in writing to the secretary. The duty to provide correct, up-to-date information about the location and contents of aboveground storage tanks is an ongoing requirement.

(d) Any aboveground storage tank placed into service on and after the effective date of this section, but prior to the establishment of a permit program, shall register with the secretary and request permission to place the tank into service pending a permit application.

(e) The secretary may charge a reasonable fee to cover the cost of the registration program. The fee may be set by emergency and legislative rules proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(f) It is unlawful for any owner or operator to operate or use an aboveground storage tank subject to this article which has not been properly registered or for which any applicable registration fee has not been paid.

(g) It is unlawful for any person to approve a delivery order, or to deliver or deposit any fluid subject to this article into an aboveground storage tank unless the owner or
operator provides proof of valid registration of the tank into which the fluid is to be delivered or deposited.

§22-30-6. Permit required; Aboveground Storage Tank Regulatory Program.

1 (a) Without authorization from the secretary, it is unlawful for any person to construct, maintain or use any aboveground storage tank for the storage of any fluid other than water, which has no additives, without first obtaining a permit from the secretary.

2 (b) To assure further protection of the water resources of the state, the secretary shall develop a regulatory program for new and existing aboveground storage tanks. At a minimum, the program shall include the following:

3 (1) A requirement to submit a verified application for a permit containing information as may be prescribed by the secretary;

4 (2) Performance standards for design, construction, installation, maintenance, corrosion detection and maintenance, release detection and prevention and secondary containment;
(3) Requirements for maintaining a leak detection system, inventory control systems together with tank testing or a comparable system or method designed to identify releases from aboveground storage tanks in a manner consistent with the protection of human health, safety, water resources and the environment;

(4) Requirements for maintaining records of any monitoring or leak detection system, corrosion prevention, inventory control system or tank testing system;

(5) Requirements for early detection of releases and immediate reporting of releases;

(6) Requirements for developing a corrective action plan to expeditiously respond to any releases;

(7) Requirements for the closure of aboveground storage tanks and remediation to prevent future releases of fluids or materials to the state’s water resources;

(8) Requirements for certification of installation, removal, retrofit, corrosion and other testing and inspection of aboveground storage tanks, leak detection systems and secondary containment by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated
and licensed by the West Virginia Professional Engineers Board;

(9) The assessment of permit application and registration fees as determined by the secretary;

(10) Permit issuance only after the application and any other supporting documents have been submitted, reviewed and approved by the secretary, and that permits may be issued with certain conditions or contingencies;

(11) A requirement that any aboveground storage tank maintenance work shall commence within six months from the date the permit was issued and must be completed within one year of commencement. If the work has not started or is not completed during the stated time periods, the permit expires and a new permit is required unless a written extension is granted by the secretary. An extension may be granted only if the applicant can demonstrate that the delay was not deliberate and that the delay will not present harm to human health, safety, water resources or the environment;

(12) A procedure for the administrative resolution of violations including the assessment of administrative civil penalties;
(13) A procedure for any person adversely affected by a decision or order of the secretary relating to the aboveground storage tank program to appeal to the Environmental Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code; and

(14) In consultation with the Bureau for Public Health, establish specific standards and guidelines that provide increased protection and scrutiny of public water system intakes located in critical zones as determined by the secretary and develop a registry of public water system intakes and provide the registry to the State Division of Homeland Security and Emergency Management.

§22-30-7. Annual inspection and certification.

(a) Every owner or operator of an aboveground storage tank regulated herein shall have an annual inspection of each tank performed by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the West Virginia Professional Engineers Board. Every owner or operator shall submit, on a form prescribed by the secretary, a certification from the engineer that each tank, associated equipment, leak detection systems
and secondary containment structures meet the minimum standards established by the secretary by rule.

(b) The certification form shall be submitted to the secretary on or before January 1, 2015, and each year thereafter.


The secretary shall promulgate rules requiring owners and operators to provide evidence of adequate financial resources to undertake reasonable corrective action for releases of fluid from aboveground storage tanks. The means of demonstrating adequate financial responsibility may include, but not be limited to, providing evidence of current insurance, guarantee, surety bond, letter of credit, proof of assets, trust fund or qualification as a self insurer.


(a) Prior to the effective date of the emergency and legislative rules promulgated pursuant to the authority granted under this article, the secretary is authorized to:

(1) Require the owner or operator to develop a preliminary corrective action plan taking into consideration the types of fluids and types of tanks on the premises;
(2) Require the owner or operator of an aboveground storage tank to undertake prompt corrective action to protect human health, safety, water resources or the environment from contamination caused by a release; or

(3) Undertake immediate corrective action with respect to any release or threatened release of fluid from an aboveground storage tank when, in the judgment of the secretary, the action is necessary to protect human health, safety, water resources or the environment from contamination caused by a release.

(b) The corrective action undertaken or required by this section shall be what may be necessary to protect human health, water resources and the environment from contamination caused by a release. The secretary shall use funds in the Leaking Aboveground Storage Tank Response Fund established pursuant to this article for payment of costs incurred for corrective action taken by the secretary in accordance with this article. In undertaking corrective actions under this section and in issuing orders requiring owners or operators to undertake the actions, the secretary shall give priority to releases or threatened releases of fluid from aboveground storage tanks that pose the greatest threat to human health, water resources or the environment.
(c) Following the effective date of rules promulgated pursuant to this article, all actions or orders of the secretary shall be in conformity with those rules. Further, following the effective date of the rules, the secretary may undertake corrective action with respect to any release or threatened release of fluid from an aboveground storage tank only if, in the judgment of the secretary, the action is necessary to protect human health, safety, water resources or the environment from contamination, and one or more of the following situations exists:

(1) If no person can be found within thirty days, or a shorter period as may be necessary to protect human health, water resources and the environment, who is an owner or operator of the aboveground storage tank at issue and who is capable of carrying out the corrective action properly;

(2) A situation exists that requires immediate action by the secretary under this section to protect human health, safety, water resources or the environment;

(3) The cost of corrective action to be expended on an aboveground storage tank exceeds the amount of resources that the owner or operator can reasonably be expected to possess based on the information required to be submitted
pursuant to this article and, considering the fluid being stored in the aboveground storage tank in question, expenditures from the Leaking Aboveground Storage Tank Response Fund are necessary to assure an effective corrective action; or

(4) The owner or operator of the tank has failed or refused to comply with an order of the secretary under this article or of the Environmental Quality Board under article one, chapter twenty-two-b of this code to comply with appropriate corrective action measures ordered by the secretary or the Environmental Quality Board.

(d) The secretary may draw upon the Leaking Aboveground Storage Tank Response Fund in order to take action under subdivision (1) or (2), subsection (c) of this section if the secretary has made diligent good-faith efforts to determine the identity of the owner or operator responsible for the release or threatened release and:

(1) The secretary is unable to determine the identity of the owner or operator in a manner consistent with the need to take timely corrective action; or

(2) The owner or operator determined by the secretary to be responsible for the release or threatened release has been informed in writing of the secretary’s determination and has
been requested by the secretary to take appropriate corrective action but is unable or unwilling to take proper action in a timely manner.

(e) The written notice to the owner or operator must inform the owner or operator that if it is subsequently found liable for releases pursuant to this section, the owner or operator will be required to reimburse the Leaking Aboveground Storage Tank Response Fund for the costs of the investigation, information gathering and corrective action taken by the secretary.

(f) If the secretary determines that immediate response to an imminent threat to human health, safety, water resources or the environment is necessary to avoid substantial injury or damage thereto, corrective action may be taken pursuant to this section without the prior written notice required by subdivision (2), subsection (d) of this section. In that case, the secretary must give subsequent written notice to the owner or operator within fifteen days after the action is taken describing the circumstances that required the action to be taken and setting forth the matters identified in subsection (e) of this section.
§22-30-10. Spill prevention response plan.

(a) Within ninety days of the effective date of this article, each owner or operator of an aboveground storage tank shall submit a spill prevention response plan for each aboveground storage tank. Owners and operators of aboveground storage tanks shall file updated plans required to be submitted by this section no less frequently than every three years. Each plan shall be site-specific, consistent with the requirements of this article, and developed in consultation with county and municipal emergency management agencies. The spill prevention response plan shall at a minimum:

(1) Identify and describe the activity that occurs at the site and identify applicable hazard and process information, including a specific listing and inventory of all types of fluids stored, amount of fluids stored and wastes generated that are stored in aboveground storage tanks at the facility. The plan shall include the material safety data sheets (MSDS) for all fluids in use or stored in aboveground storage tanks at the facility. The material safety data sheets must include the health hazard number identified by the National Fire Protection Association. The plan shall also include drawings of the aboveground storage tank facility, including the locations of all drainage pipes and water outlets;
(2) Identify all facility-related individuals and their duties and responsibilities for developing, implementing and maintaining the facility’s plan. The plan shall describe in detail the chain of command at the aboveground storage tank facility and list all facility emergency coordinators and emergency response contractors;

(3) Provide a preventive maintenance program that includes monitoring and inspection procedures, including identification of stress points, employee training programs and security systems. The plan shall include a description of potential sources and areas where spills and leaks may occur by drawings and plot plans and shall identify specific spill prevention measures for those identified areas;

(4) Detail the specific response that the aboveground storage tank facility and contract emergency personnel shall take upon the occurrence of any release of fluids from an aboveground storage tank at the facility;

(5) Provide information obtained by the owner or operator of the aboveground storage tanks from the county and municipal emergency management agencies and designate the person or persons to be notified in the event of a release from an aboveground storage tank; and
(6) Provide the secretary with all other requested information.

(b) Each owner of an aboveground storage tank with an approved spill prevention response plan shall submit to the secretary a revised plan or addendum to the plan in accordance with the requirements of this article if any of the following occur:

(1) There is a substantial modification in design, construction, operation or maintenance of any aboveground storage tank or associated equipment, or there are other circumstances that increase the potential for fires, explosions or releases of fluids;

(2) There is a substantial modification in emergency equipment at the facility;

(3) There are substantial changes in emergency response protocols at the aboveground storage tank facility;

(4) The plan fails in an emergency;

(5) The removal or the addition of any aboveground storage tank; or

(6) Other circumstances occur about which the secretary requests an update.
(c) The secretary shall approve the spill prevention response plan or reject the plan and require modifications as may be necessary and reasonable to assure the protection of the source water of a public water system from a release of fluids from an aboveground storage tank. If rejected, the owner of the aboveground storage tank shall submit a revised plan to the secretary for approval within thirty days of receipt of notification of the secretary’s decision. Failure to comply with a plan approved by the secretary pursuant to this section is a violation of this article.

(d) Nothing contained in this section relieves the owner or operator of an aboveground storage tank from his or her obligation to report any release immediately to the Department of Environmental Protection’s emergency notification telephone number.

§22-30-11. Notice to local governments, water companies and other industrial users.

The owner or operator of an aboveground storage tank facility shall annually provide public notice to public water systems located within a 25-mile radius of the aboveground storage tank facility site and the local municipality, if any, and county in which the facility is located. The notice shall
provide a detailed inventory of the type and quantity of fluid stored in aboveground storage tanks at the facility and the material safety data sheets associated with the fluid in storage. The owner or operator shall also annually provide a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this act, to the applicable public water systems and county and municipal emergency management agencies.

§22-30-12. Required signage.

Every aboveground storage tank shall have prominently posted signage disclosing the contents of the tank and the hazards, if any, associated with the fluid stored therein. If the aboveground storage tank is empty, the signage shall so state. For the purposes of this section, the requirements for prominently posted signage shall be specified in the rules proposed for promulgation by the secretary pursuant to this article and article three, chapter twenty-nine-a of this code.


(a) The secretary shall collect annual registration fees from owners or operators of each aboveground storage tank in an amount sufficient to cover the regulatory oversight and services to be provided by designated agencies, including
necessary technical and administrative personnel, as set forth by rule. All registration and permit fees and the net proceeds of all fines, penalties and forfeitures collected under this article, including accrued interest, shall be paid into a special revenue account, hereby created within the State Treasury, designated the Aboveground Storage Tank Administrative Fund, and shall be used solely to defray the cost of administering this act.

(b) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Aboveground Storage Tank Administrative Fund shall not be transferred to the General Revenue fund, but shall remain in the Aboveground Storage Tank Administrative Fund.


(a) Each owner or operator of an aboveground storage tank located in this state shall pay an annual fee to establish a fund to assure adequate response to leaking aboveground storage tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. The fees must be sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel. The proceeds of the assessment
shall be paid into a special revenue account, hereby created
within the State Treasury, designated the Leaking
Aboveground Storage Tank Response Fund, and shall be
used solely to respond to leaking aboveground storage tanks.

(b) Each owner or operator of an aboveground storage
tank subject to a fee assessment under subsection (a) of this
section shall pay a fee based on the number of aboveground
storage tanks he or she owns or operates, as applicable. The
secretary shall vary the fees annually to a level necessary to
produce a sufficient fund at the beginning of each calendar
year.

(c) At the end of each fiscal year, any unexpended
balance, including accrued interest, on deposit in the Leaking
Aboveground Storage Tank Response Fund shall not be
transferred to the General Revenue fund, but shall remain in
the Leaking Aboveground Storage Tank Response Fund.

(d) The secretary may enter into agreements and contracts
and to expend the moneys in the fund for the following
purposes:

(1) Responding to aboveground storage tank releases
when, based on readily available information, the secretary
determines that immediate action is necessary to prevent or
mitigate significant risk of harm to human health, safety, water resources or the environment from contamination caused by a release of fluid from aboveground storage tanks in situations for which no federal funds are immediately available for the response, cleanup or containment:

Provided, That the secretary shall apply for and diligently pursue all available federal funds at the earliest possible time;

(2) Reimbursing any nonresponsible parties for reasonable cleanup costs incurred with the authorization of the secretary in responding to an aboveground storage tank release; or

(3) Reimbursing any nonresponsible parties for reasonable costs incurred with the authorization of the secretary responding to perceived, potential or threatened releases from aboveground storage tanks;

(e) The secretary, through a cooperative agreement with another state regulatory agency, in this or another state, may use the fund to compensate the cooperating agency for expenses the cooperating agency incurs in carrying out regulatory responsibilities that agency may have pursuant to this article.
§22-30-15. Public access to information.

(a) Subject to the exemptions listed in section four, article one, chapter twenty-nine-b of this code, the public shall have access to all documents and information submitted to the agency in accordance with this section pursuant to the state Freedom of Information Act. Records, reports or information obtained from any persons under this article may be disclosed to other officers, employees or authorized representatives of this state or the United States Environmental Protection Agency or of this state if the officers, employees or authorized representatives are implementing the provisions of this article or any other applicable law related to releases of fluid from aboveground storage tanks that impact the states water resources.

(b) In submitting data under this act, a person required to provide the data may designate the data that he or she believes is entitled to protection under this section and may submit the designated data separately from other data submitted under this article. A designation under this subsection shall be made in writing and in a manner as the secretary may prescribe.
§22-30-16. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the development of any rule, conducting any study, taking any corrective action or enforcing any provision of this article, any owner or operator of an aboveground storage tank shall, upon request of the secretary:

1. Furnish information relating to the aboveground storage tanks, their associated equipment and contents;
2. Conduct reasonable monitoring or testing;
3. Permit the secretary, at all reasonable times, to inspect and copy records relating to aboveground storage tanks; and
4. Permit the secretary to have access to the aboveground storage tanks for corrective action.

(b) For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing any provision of this article, the secretary may:

1. Enter at any time any establishment or other place where an aboveground storage tank is located;
2. Inspect and obtain samples of any fluid contained in an aboveground storage tank from any person;
(3) Conduct monitoring or testing of the aboveground storage tanks, associated equipment, contents or surrounding soils, surface, water or groundwater; and

(4) Take corrective action as specified in this article.

Each inspection shall be commenced and completed with reasonable promptness.

(c) To ensure protection of the water resources of the state and compliance with any provision of this article or rule promulgated thereunder, the secretary shall inspect at least annually any aboveground storage tank facility located within twenty-five miles upstream of a public water system intake in zones of critical concern as determined by the secretary.

§22-30-17. Administrative orders; injunctive relief.

(a) Whenever the secretary determines, on the basis of any information, that any person is in violation of any requirement of this article or the rules promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or
in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary may, except as provided in subsection (b) of this section, stay any order he or she issues upon application, until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

§22-30-18. Civil and criminal penalties.

(a) Any person who fails to comply with an order of the secretary issued under subsection (a), section seventeen of this article within the time specified in the order is liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Any owner or operator of an aboveground storage tank who knowingly fails to register or obtain a permit for an
aboveground storage tank or submits false information pursuant to this article is liable for a civil penalty not to exceed $10,000 for each aboveground storage tank that is not registered or permitted or for which false information is submitted.

(c) Any owner or operator of an aboveground storage tank who fails to comply with any requirement of this article or any standard promulgated by the secretary pursuant to this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

(d) Any person who fails to comply with any requirement of section twenty-four of this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

(e) Any person who knowingly and intentionally violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a regional jail for a period of time not exceeding six months, and be fined an amount not to exceed $25,000.

§22-30-19. Appeal to Environmental Quality Board.

Any person aggrieved or adversely affected by an order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental
Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-30-20. Duplicative enforcement prohibited.

No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event, unless the subsequent proceeding involves the violation of a permit or permitting requirement of other article.


(a) Every three years, the secretary shall submit a report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance which assesses the effectiveness of this article and provides other information as may be requested by the Commission to allow it to assess the effectiveness of this article, including without limitation the secretary’s observations concerning all aspects of compliance with this article and any legislative rules promulgated pursuant hereto, the regulatory process, and any pertinent changes to federal rules or regulations.
(b) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Aboveground Storage Tank Administrative Fund and shall make a detailed annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

(c) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Leaking Aboveground Storage Tank Response Fund and shall make a specific annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

§22-30-22. Interagency cooperation.

(a) In implementation of this article, the secretary shall coordinate with the State Department of Health and Human Resources, the West Virginia Public Service Commission and local health departments to ensure the successful planning and implementation of this act, including consideration of the role of those agencies in providing services to owners and operators of aboveground storage tanks and public water systems.
(b) The secretary shall also coordinate with state and local emergency response agencies to prepare and issue appropriate emergency response plans to address facility emergency response and incident command when the functions are provided by the owner or operator of the aboveground storage tank and the public water system.

(c) The secretary shall also coordinate with the State Fire Marshal in addressing the periodic inspection of local fire departments to include a requirement for inspectors to examine and identify the status of National Incident Management System fire department personnel training.

§22-30-23. Imminent and substantial danger.

(a) Notwithstanding any other provision in this chapter, upon receipt of evidence that an aboveground storage tank may present an imminent and substantial danger to human health, water resources or the environment, the secretary may bring suit on behalf of the State of West Virginia in the Circuit Court of Kanawha County against any owner or operator of an aboveground storage tank who has contributed or who is contributing to imminent and substantial danger to public health, safety, water resources or the environment to order the person to take action as may be necessary to abate
the situation and protect human health, safety, water resources and the environment from contamination caused by a release of fluid from an aboveground storage tank.

(b) Upon receipt of information that there is any aboveground storage tank that presents an imminent and substantial danger to human health, safety, water resources or the environment, the secretary shall provide immediate notice to the appropriate state and local government agencies and any affected public water system. In addition, the secretary shall require notice of any danger to be promptly posted at the aboveground storage tank facility containing the aboveground storage tank at issue.


(a) In addition to all other powers and duties prescribed in this chapter or otherwise by law, and unless otherwise specifically set forth in this article, the secretary has the sole and exclusive authority to perform any and all acts necessary to implement a aboveground storage tank regulatory program designed to protect each public water system in the state from contamination of its source water supply caused by the release of fluid from an aboveground storage tank consistent with the requirements of this article.
(b) By July 1, 2015, each existing public water system shall remit an annual fee in an amount to be specified in emergency and legislative rules promulgated pursuant to this article and article three, chapter twenty-nine-A of this code, to be deposited into the Aboveground Storage Tank Administrative Fund created pursuant to this article and submit a source water protection plan to protect its system from contamination of its source water supply caused by release of fluid from an aboveground storage tank, which plan, at a minimum, shall include the following:

(1) A contingency plan that documents each public water system’s planned response to contamination of the source water supply;

(2) Alternative water source or intake, with particular emphasis on single-source intake systems, focusing on source replacement should the system be required to use a new or alternate source of water due to contamination;

(3) A management plan that identifies specific activities that will be pursued by the system to protect its source water supply from contamination, including coordination with government agencies and periodic surveys of the system; and
(4) A communications plan that documents the manner in which the public shall be notified of information related to any contamination of the source water supply.

(c) Any public water system that comes into existence on or after the effective date of this article shall submit prior to the commencement of its operations a source water protection plan satisfying the requirements of subsection (a) of this section.

(d) The Secretary of the Department of Health and Human Resources shall accept a plan submitted pursuant to this section and provide a copy to the secretary. Thereafter, within ninety days, the secretary and the Secretary of the Department of Health and Human Resources may reject the plan and require modifications as may be necessary and reasonable to satisfy the purposes of this article. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The secretary may request a public water system to conduct one or more studies to determine the actual risk and consequences related to any potential contaminant sources identified by the secretary.
(f) A public water system shall submit an updated source water protection plan not less frequently than every three years.

1 The secretary shall promulgate emergency and legislative rules as necessary to implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

1 (a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.
2 (b) The secretary may receive and expend money from the federal government or any other sources to implement this article.
3 (c) The secretary may revoke any registration, authorization or permit for a violation of this article or the rules promulgated hereunder.
4 (d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings and prosecute violations of this article as necessary.
(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.
Oil and Gas Well Inspections

Summary: SB 202 requires a risk-based strategy be used for inspecting oil and gas well locations that targets operational phases most likely to contribute to spills, excess air emissions, and other types of violations. More in depth inspections would be prioritized based on findings.

Status: Signed into law May 24, 2013.

Comment: From Natural Gas Intelligence Press (April 22, 2013)
SB 202 would require the Colorado Oil and Gas Conservation Commission (OGCC) to use a risk-based strategy to identify factors most likely to contribute to spills, excess air emissions and other types of violations, according to its author, state Sen. Matt Jones.

Jones told local news media that the bill is intended to help lawmakers focus on their top priority of public safety. Senate officials said the risk-based approach should lead to more comprehensive OGCC inspections.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
SENATE BILL 13-202

BY SENATOR(S) Jones, Aguilar, Carroll, Giron, Guzman, Heath, Jahn, Kefalas, Kerr, Newell, Nicholson, Schwartz, Todd, Ulibarri, Morse; also REPRESENTATIVE(S) Singer, Fields, Fischer, Ginal, Hamner, Hullinghorst, Labuda, Melton, Rosenthal, Ryden, Schafer, Williams.

CONCERNING ADDITIONAL INSPECTIONS OF OIL AND GAS FACILITIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that the substantial increase in oil and gas development in Colorado, while very beneficial to Colorado's economy:

(I) Has led to increased risks to Colorado's natural environment and public health; and

(II) Has not been accompanied by a proportionate increase in the inspections staff of the Colorado oil and gas conservation commission;

(b) Determines that:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
(I) Timely inspections of new and producing oil and gas wells, including those that are hydraulically fractured, are critical to protecting public health, minimizing environmental contamination, detecting spills before they worsen, and ensuring public trust; and

(II) Given the limitations of its current authorization for only sixteen inspectors, the inspection staff of the Colorado oil and gas conservation commission can inspect the more than fifty thousand active wells in Colorado, on average, only about once every four years, with each staff member inspecting more than three thousand wells per year; and

(c) Declares that this act to increase the frequency of inspections of oil and gas wells is necessary for the immediate preservation of the public peace, health, and safety.

SECTION 2. In Colorado Revised Statutes, 34-60-106, add (15.5) as follows:

34-60-106. Additional powers of commission - rules - repeal. (15.5) The commission shall use a risk-based strategy for inspecting oil and gas locations that targets the operational phases that are most likely to experience spills, excess emissions, and other types of violations and that prioritizes more in-depth inspections. The commission shall:

(a) (I) Submit a report by February 1, 2014, to the general assembly's joint budget committee and the senate and house of representatives committees of reference with jurisdiction over energy that includes findings, recommendations, and a plan, including staffing and equipment needs.

(II) This paragraph (a) is repealed, effective September 1, 2014.

(b) Implement the systematic risk-based strategy by July 1, 2014. The commission may use a pilot project to test the risk-based strategy.

SECTION 3. Appropriation. In addition to any other
appropriation, there is hereby appropriated, out of any moneys in the oil and
gas conservation and environmental response fund created in section
34-60-122 (5), Colorado Revised Statutes, not otherwise appropriated, to
the department of natural resources, for the fiscal year beginning July 1,
2013, the sum of $100,000, or so much thereof as may be necessary, for
allocation to the oil and gas conservation commission for a risk-based
inspection study related to the implementation of this act.

SECTION 4. Applicability. This act applies to conduct occurring
on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John P. Morse  
PRESIDENT OF THE SENATE

Mark Ferrandino  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Cindi L. Markwell  
SECRETARY OF THE SENATE

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED

John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO

PAGE 4-SENATE BILL 13-202
Reducing Air Pollution Associated with Diesel Emissions

**Washington Bill/Act:** HB 2569

**Summary:** Washington HB 2569 creates a self-funded loan account program where municipalities can apply for loans from the state to implement emissions reduction technology. When cities and counties pay off the debt, the funding goes back into account so that other governments can use it.

**Status:** Signed into law on March 27, 2014,

**Comment:** From *Governing Technology* (February 27, 2014)

House Bill 2569 creates a self-funded loan account program where municipalities can apply for loans from the state to implement emissions reduction technology. When cities and counties pay off the debt, the funding goes back into account so that other governments can use it.

The legislation is based on an idea tested a couple of years ago when Cummins Northwest Inc., a diesel engine manufacturer in Renton, Wash., placed a small generator on a fire engine. When the vehicle got to a location, the driver shut down the motor in favor of the generator, reducing emissions and saving fuel costs.

HB 2569’s financing mechanism enables local governments to conduct similar generator installations or other diesel idle reduction measures such as electrified parking spaces and truck stops, battery-powered systems and other projects that achieve emissions reductions.

In an interview with *Government Technology*, Hargrove explained that the savings derived from green technology can potentially lead to job creation. A portion of those savings would also be sent back to the state account to help build the fund. “To get any money out of the budget is always a challenge,” Hargrove said. “But if there’s money being created from the savings … it can fund things, money is returned to the account and it’s self-perpetuating.”


**Disposition of Entry:**

SSL Committee Meeting: 2015 B

() Include in Volume

() Defer consideration:

( ) next SSL mtg.

( ) next SSL cycle

() Reject

Comments/Note to staff:
AN ACT Relating to reducing air pollution associated with diesel emissions; reenacting and amending RCW 43.84.092 and 43.84.092; adding a new chapter to Title 70 RCW; providing a contingent effective date; and providing a contingent expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature finds that investments in diesel engine idling reduction projects cost-effectively improve public health by reducing harmful diesel emissions. The legislature further finds that these investments also result in long-term savings in fuel and maintenance costs. It is therefore the intent of the legislature to establish a stable, wholly self-sustaining account for the department of ecology to use for investments in diesel idle reduction projects.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the diesel idle reduction account created in section 4 of this act.

(2) "Department" means the department of ecology.
"Loan recipient" means a state, local, or other governmental entity that owns diesel vehicles or equipment.

NEW SECTION. Sec. 3. (1) The department shall use the moneys in the account to provide loans with low or no interest to loan recipients for the purpose of reducing exposure to diesel emissions and improving public health by investing in diesel idle emission reduction technologies and infrastructure. The department shall, to the extent practical, integrate communications, outreach, and other aspects of the administration of loans from the account with the administration of existing grant programs to reduce diesel emissions from vehicles and equipment. In selecting loan recipients, the department shall consider anticipated human health, environmental, and greenhouse gas benefits from reduced exposure to harmful air emissions associated with diesel idling.

(2) The department shall make loans in such a manner that the remittances from loan recipients are of equal value over a long-term planning horizon to the disbursals from the fund.

(3) Loan moneys may not be spent on vehicles or equipment that spend less than one-half of their operating time in Washington. Permissible diesel idle reduction expenditures include, but are not limited to:

(a) Electrified parking spaces and truck stops;
(b) Shore connection systems and alternative maritime power;
(c) Shore connection systems for locomotives;
(d) Auxiliary power units and generator sets;
(e) Fuel-operated heaters or direct-fired heaters, including engine fluid preheaters and cab air heaters;
(f) Battery powered systems, including battery powered heating and air conditioning systems;
(g) Thermal storage systems;
(h) Automatic engine start-up and shutdown systems;
(i) Projects to augment or replace diesel engines or power systems with engines or power systems that use liquefied or compressed natural gas; and
(j) Other operation or maintenance efficiencies that achieve emission reduction benefits for the public.
NEW SECTION. Sec. 4. The diesel idle reduction account is created in the state treasury. All receipts from remittances made by loan recipients pursuant to section 3 of this act and any moneys appropriated to the account by law must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter, including the costs of program administration.

Sec. 5. RCW 43.84.092 and 2013 2nd sp.s. c 23 s 24 and 2013 2nd sp.s. c 11 s 15 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings
credited to the treasury income account. The state treasurer shall
credit the general fund with all the earnings credited to the treasury
income account except:

(a) The following accounts and funds shall receive their
proportionate share of earnings based upon each account's and fund's
average daily balance for the period: The aeronautics account, the
aircraft search and rescue account, the Alaskan Way viaduct replacement
project account, the brownfield redevelopment trust fund account, the
budget stabilization account, the capital vessel replacement account,
the capitol building construction account, the Cedar River channel
construction and operation account, the Central Washington University
capital projects account, the charitable, educational, penal and
reformatory institutions account, the cleanup settlement account, the
Columbia river basin water supply development account, the Columbia
river basin taxable bond water supply development account, the Columbia
river basin water supply revenue recovery account, the common school
construction fund, the county arterial preservation account, the county
criminal justice assistance account, the deferred compensation
administrative account, the deferred compensation principal account,
the department of licensing services account, the department of
retirement systems expense account, the developmental disabilities
community trust account, the diesel idle reduction account, the
drinking water assistance account, the drinking water assistance
administrative account, the drinking water assistance repayment
account, the Eastern Washington University capital projects account,
the Interstate 405 express toll lanes operations account, the education
construction fund, the education legacy trust account, the election
account, the energy freedom account, the energy recovery act account,
the essential rail assistance account, The Evergreen State College
capital projects account, the federal forest revolving account, the
ferry bond retirement fund, the freight mobility investment account,
the freight mobility multimodal account, the grade crossing protective
fund, the public health services account, the high capacity
transportation account, the state higher education construction
account, the higher education construction account, the highway bond
retirement fund, the highway infrastructure account, the highway safety
fund, the high occupancy toll lanes operations account, the hospital
safety net assessment fund, the industrial insurance premium refund
account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of
Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 6. RCW 43.84.092 and 2013 2nd sp.s. c 23 s 25 and 2013 2nd sp.s. c 11 s 16 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.
The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia
river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving
account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond
retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 7. The department may adopt rules necessary to implement this chapter only after the legislature appropriates moneys to the account created in section 4 of this act.

NEW SECTION. Sec. 8. Sections 1 through 4 and 7 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 9. Section 5 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 10. Section 6 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met.
Summary: The legislation allows landowners to utilize a property valuation incentive they already qualify for, while incentivizing different land management strategies that will improve water conservation and quality. Very few states currently provide incentives for protecting water resources – and even fewer, if any at all, use the property valuation model proposed in the legislation.

Status: Signed into law on June 17, 2011. Note: The law could not go into effect unless the voters approved a constitutional amendment (SJR 16). In November 2011, the measure, known as Proposition 8, was defeated by voters and SB 449 did not go into effect.

Comment: From the Nature Conservancy
Currently, landowners can qualify for several property tax valuation options based on land management practices. One of the more commonly used options is the open space valuation option, commonly referred to as the “agricultural exemption.” While generally called an “exemption,” this valuation methodology does not exempt property from taxation. Instead, it simply allows the land to be appraised based on its use for agricultural or open space, which is generally a lower value than an appraisal for highest and best use. This usually results in lower property taxes for the landowner.

Among the many activities that fit the definition of agricultural use for the purpose of the open space valuation is wildlife management. Wildlife management was added to the definition of agricultural use, in part, to solve the problem of property owners over-grazing their property in order to maintain an open space valuation. As a compromise to appraisal districts, landowners must already qualify to obtain an open space appraisal at the time they add wildlife management as a land use. This made the addition of wildlife management as an eligible land use, “revenue neutral” to taxing entities.

SB 449 works hand-in-hand with Prop 8 and will create a water stewardship valuation option in statute similar to the wildlife management valuation option. Just like with wildlife management, the water stewardship valuation would flow through the open space valuation first, thereby making it revenue neutral. Essentially, it will give landowners another tool in the tool box to better manage their property and incentivize doing so in a way that is not cost prohibitive. This will help protect valuable open space land in Texas and keep family lands intact while also protecting water resources and advancing the State Water Plan.

Here are the activities that currently make up the statutory definition of wildlife management. To qualify, a landowner must do 3 and submit a plan to the appraisal district if requested.

A. habitat control;
B. erosion control;
C. predator control;
D. providing supplemental supplies of water;
E. providing supplemental supplies of food;
F. providing shelters; and
G. making census counts to determine population.

The Water Stewardship valuation option that would be added to statute by SB 449 (once Prop 8 is approved by the voters) would include the following criteria (again with the idea being that a landowner picks 3 to qualify):

A. erosion control;
B. habitat stewardship benefiting water quality or conservation;
C. restoration of native aquatic and riparian animal and plant species;
D. reductions in domestic and livestock water uses;
E. riparian and wetland habitat and buffer restoration and protection;
F. allowance of groundwater and surface water monitoring for data collection purposes in accordance with state water planning or groundwater management area planning;
G. invasive aquatic plant and animal control
H. donation of water rights to the Texas Water Trust; and
I. amendment of a water right to dedicate all or part of the right to environmental purposes

In addition, the law would establish that the Texas Parks and Wildlife, with the assistance of the Comptroller and local Chief Appraisers, will develop standards for determining whether land qualifies under these provisions and that the Comptroller will adopt these standards by rule, similar to what was done for the wildlife valuation option.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
S.B. No. 449

AN ACT

relating to the appraisal for ad valorem tax purposes of open-space
land devoted to water stewardship purposes on the basis of its
productive capacity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 23.51, Tax Code, is amended by amending
Subdivision (2) and adding Subdivision (9) to read as follows:

(2) "Agricultural use" includes but is not limited to
the following activities: cultivating the soil, producing crops for
human food, animal feed, or planting seed or for the production of
fibers; floriculture, viticulture, and horticulture; raising or
keeping livestock; raising or keeping exotic animals for the
production of human food or of fiber, leather, pelts, or other
tangible products having a commercial value; planting cover crops
or leaving land idle for the purpose of participating in a
governmental program, provided the land is not used for residential
purposes or a purpose inconsistent with agricultural use; and
planting cover crops or leaving land idle in conjunction with
normal crop or livestock rotation procedure. The term also
includes the use of land to produce or harvest logs and posts for
the use in constructing or repairing fences, pens, barns, or other
agricultural improvements on adjacent qualified open-space land
having the same owner and devoted to a different agricultural use.
The term also includes the use of land for wildlife management or
(9) "Water stewardship" means actively using land that at the time the water-stewardship use began was appraised as qualified open-space land under this subchapter or as qualified timber land under Subchapter E in at least three of the following ways to promote and sustain water quality and conservation of water resources:

(A) erosion control;

(B) habitat stewardship benefiting water quality or conservation;

(C) restoration of native aquatic and riparian animal and plant species;

(D) implementation of practices that result in a reduction of the amount of water used from a well that is exempt from permitting under Section 36.117(b)(1), Water Code;

(E) riparian and wetland habitat and buffer restoration and protection;

(F) allowance of groundwater and surface water monitoring for data collection purposes in accordance with state water planning or groundwater management area planning;

(G) invasive aquatic plant and animal control;

(H) maintaining a water right on deposit in the Texas Water Trust in accordance with Section 15.7031, Water Code, if the source of supply or point of diversion is located on land that at the time the water right was deposited was appraised as qualified open-space land under this subchapter or as qualified timber land under Subchapter E; and
holding a water right that authorizes the use
of water for instream flows dedicated to environmental needs or bay
and estuary inflows as provided by Section 11.0237, Water Code, if
the source of supply or point of diversion is located on land that,
at the time the water right was amended to authorize that use, was
appraised as qualified open-space land under this subchapter or as
qualified timber land under Subchapter E.

SECTION 2. Subsection (g), Section 23.52, Tax Code, is
amended to read as follows:

(g) The category of land that qualifies under Section
23.51(7) or (9) is the category of the land under this subchapter or
Subchapter E, as applicable, before the wildlife-management use or
water-stewardship use, as applicable, began.

SECTION 3. Subchapter D, Chapter 23, Tax Code, is amended by
adding Section 23.5215 to read as follows:

Sec. 23.5215. STANDARDS FOR QUALIFICATION OF LAND FOR
APPRAISAL BASED ON WATER-STEWARDSHIP USE. (a) The Parks and
Wildlife Department, with the assistance of the comptroller, shall
develop standards for determining whether land qualifies under
Section 23.51(9) for appraisal under this subchapter. On request
of the Parks and Wildlife Department or the comptroller, the Texas
AgriLife Extension Service shall assist the department and the
comptroller in developing the standards. The comptroller shall
designate one chief appraiser from a rural area of this state and
one chief appraiser from an urban area of this state to assist in
the development of the standards. The comptroller by rule shall
adopt the standards developed by the Parks and Wildlife Department
or adopt alternative standards and distribute those rules to each appraisal district.

(b) The standards adopted under Subsection (a) must:

(1) require that a tract of land:

(A) be at least a specified minimum size and not more than a specified maximum size as necessary to accomplish the water-stewardship use; and

(B) possess specific water-related attributes based on the intensity of use of the land and other requirements relating to the productivity of the land;

(2) require that the owner of the land hold a water right that authorizes the use of a specified minimum amount of water for instream flows dedicated to environmental needs or bay and estuary inflows for the land to qualify under Section 23.51(9)(I) for appraisal under this subchapter;

(3) specify the degree to which the land may be developed without becoming ineligible under Section 23.56(b) for appraisal as provided by this subchapter on the basis of use for water stewardship; and

(4) address:

(A) the activities listed in Section 23.51(9); and

(B) the region in this state in which the land is located; and

(C) any other factor the Parks and Wildlife Department or the comptroller determines is relevant.

(c) The standards adopted under Subsection (a) must limit eligibility of a tract of land for appraisal under this subchapter...
on the basis of use for water stewardship to the portion of the
tract of land that is currently devoted principally to use for that
purpose.

(d) The standards adopted under Subsection (a) may include
specifications for a written management plan to be developed by a
landowner if the landowner receives a request for a written
management plan from a chief appraiser as part of a request for
additional information under Section 23.57.

(e) In determining whether land qualifies under Section
23.51(9) for appraisal under this subchapter, the chief appraiser
and the appraisal review board shall apply the standards adopted
under Subsection (a) and, to the extent they do not conflict with
those standards, the appraisal manuals developed and distributed
under Section 23.52(d).

SECTION 4. Section 23.56, Tax Code, is amended to read as
follows:

Sec. 23.56. LAND INELIGIBLE FOR APPRAISAL AS OPEN-SPACE
LAND. (a) Land is not eligible for appraisal as provided by this
subchapter if:

(1) the land is located inside the corporate limits of
an incorporated city or town, unless:

(A) the city or town is not providing the land
with governmental and proprietary services substantially
equivalent in standard and scope to those services it provides in
other parts of the city or town with similar topography, land
utilization, and population density;

(B) the land has been devoted principally to
agricultural use continuously for the preceding five years; or

(C) the land:

(i) has been devoted principally to agricultural use or to production of timber or forest products continuously for the preceding five years; and

(ii) is used for wildlife management or water stewardship;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

(b) Land is not eligible for appraisal as provided by this subchapter on the basis of use for water stewardship if:

(1) the land was appraised as qualified open-space land under this subchapter at the time the water-stewardship use began and the land is developed to a degree that precludes the land from eligibility for appraisal under this subchapter on a basis other than use for water stewardship; or

(2) the land was appraised as qualified timber land under Subchapter E at the time the water-stewardship use began and...
the land is developed to a degree that precludes the land from eligibility for appraisal under that subchapter.

SECTION 5. Subsection (a), Section 23.60, Tax Code, is amended to read as follows:

(a) An owner of qualified open-space land, other than land used for wildlife management or water stewardship, on which the Texas Animal Health Commission has established a temporary quarantine of at least 90 days in length in the current tax year for the purpose of regulating the handling of livestock and eradicating ticks or exposure to ticks at any time during a tax year is entitled to a reappraisal of the owner's land for that year on written request delivered to the chief appraiser.

SECTION 6. (a) As soon as practicable after the effective date of this Act, the Parks and Wildlife Department, with the assistance of the comptroller of public accounts, shall develop the standards required by Section 23.5215, Tax Code, as added by this Act. As soon as practicable after those standards are developed, the comptroller by rule shall adopt those standards or adopt alternative standards and distribute those rules to each appraisal district as required by that section. The rules apply only to tax years beginning after the tax year in which the rules are adopted and distributed.

(b) This Act applies only to the appraisal of land for ad valorem tax purposes for a tax year that begins after the tax year in which the comptroller of public accounts adopts the rules described by Subsection (a) of this section and distributes those rules to each appraisal district.
SECTION 7. This Act takes effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, providing for the appraisal for ad valorem tax purposes of open-space land devoted to water stewardship purposes on the basis of its productive capacity is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

President of the Senate
Speaker of the House
I hereby certify that S.B. No. 449 passed the Senate on April 12, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate
I hereby certify that S.B. No. 449 passed the House on May 23, 2011, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor
Summary: SB 198 establishes that a property owners’ association may not prohibit or restrict the use of drought-resistant or water-conserving turf. It allows associations to require an owner to submit a detailed plan for the installation of such landscaping or turf for review and approval to ensure maximum aesthetic compatibility with other landscaping in the subdivision.

Status: Signed into law June 14, 2013.

Comment: From the Dallas Morning News (August 28, 2013):

The House approved a bill that would prevent homeowner’s associations from restricting drought-resistant landscaping, also known as xeriscaping. According to the bill by Sen. Kirk Watson, D-Austin, an association could require a plan for review or approval, but can’t unreasonably deny a landscaping design because it doesn’t fit with the other lawns in the neighborhood. The bill passed quickly and without debate on a voice vote. It will now go to the governor.

In March, East Dallas resident Burton Knight was told by the Dallas Landmark Commission that the water-saving lawn, which included cactuses, was not historically appropriate for the neighborhood. “Many Texans want to do their part to conserve water and it’s outrageous some busybodies in HOAs would stand in the way,” said Environment Texas Director Luke Metzger. “This legislation protects the rights of Texans to respond to the drought through smarter use of our limited water supply.”

A report by Environment Texas said that by replacing water-sucking lawns like turf grass that are native to wetter regions with native plants that can survive with the Texas heat without consuming too much water could save 14 billion gallons a year — enough to meet the water needs of 240,000 Texans by 2020.

AN ACT
relating to restrictive covenants regulating drought-resistant landscaping or water-conserving natural turf.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 202.007, Property Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:
(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:
(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;
(2) installing rain barrels or a rainwater harvesting system; [or]
(3) implementing efficient irrigation systems, including underground drip or other drip systems; or
(4) using drought-resistant landscaping or water-conserving natural turf.
(d) This section does not:
(1) restrict a property owners' association from regulating the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the
device on the property owner's property where there is reasonably
sufficient area to install the device;

(2) require a property owners' association to permit a
device described by Subdivision (1) to be installed in or on
property:

(A) owned by the property owners' association;

(B) owned in common by the members of the
property owners' association; or

(C) in an area other than the fenced yard or patio
of a property owner;

(3) prohibit a property owners' association from
regulating the installation of efficient irrigation systems,
including establishing visibility limitations for aesthetic
purposes;

(4) prohibit a property owners' association from
regulating the installation or use of gravel, rocks, or cacti;

(5) restrict a property owners' association from
regulating yard and landscape maintenance if the restrictions or
requirements do not restrict or prohibit turf or landscaping design
that promotes water conservation;

(6) require a property owners' association to permit a
rain barrel or rainwater harvesting system to be installed in or on
property if:

(A) the property is:

(i) owned by the property owners'
association;
property owners' association; or

(iii) located between the front of the property owner's home and an adjoining or adjacent street; or

(B) the barrel or system:

(i) is of a color other than a color consistent with the color scheme of the property owner's home; or

(ii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured; [or]

(7) restrict a property owners' association from regulating the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area if:

(A) the restriction does not prohibit the economic installation of the device or appurtenance on the property owner's property; and

(B) there is a reasonably sufficient area on the property owner's property in which to install the device or appurtenance; or

(B) prohibit a property owners' association from requiring an owner to submit a detailed description or a plan for the installation of drought-resistant landscaping or water-conserving natural turf for review and approval by the property owners' association to ensure, to the extent practicable, maximum aesthetic compatibility with other landscaping in the
subdivision.

(d-1) A property owners' association may not unreasonably deny or withhold approval of a proposed installation of drought-resistant landscaping or water-conserving natural turf under Subsection (d)(8) or unreasonably determine that the proposed installation is aesthetically incompatible with other landscaping in the subdivision.

SECTION 2. This Act takes effect September 1, 2013.

[Signatures]

President of the Senate
Speaker of the House

I hereby certify that S.B. No. 198 passed the Senate on March 18, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 198 passed the House on May 20, 2013, by the following vote: Yeas 88, Nays 58, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor
Gathering Pipeline Regulation

North Dakota

Bill/Act: HB 1333

Summary: Upon passage of the legislation, North Dakota became the first state to require that pipeline operators report the location of underground gathering lines to state regulators. According to the U.S. Pipeline and Hazardous Materials Safety Administration, a gathering pipeline transports "gases and liquids from the commodity's source - like rock formations located far below the drilling site - to a processing facility, refinery or a transmission (pipe) line." The bill requires an underground pipeline operator to submit, at least 180 days prior to service, a shape file showing the centerline of the pipeline to the state Public Service Commission (PSC). A company would also have 180 days to report the abandonment of any gathering line to the PSC, as well as provide an updated shape file. Any lines put into service before August 1, 2011 would be exempt from the reporting requirement to the PSC. In addition to the new reporting requirements, the law expands the state’s mediation service to include siting and construction of pipeline infrastructure as well as additional funding for plugging abandoned wells/pipelines and spill remediation efforts.

Status: Signed into law in April 2013.

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Comment: The North Dakota Department of Mineral Resources estimates the state has 18,000 miles of gathering pipelines.

From Natural Gas Intel.co:

Oil and gas companies operating in North Dakota could soon be required to report the location of thousands of miles of underground gathering lines to state regulators.

Under the new rule -- officially, Chapter 38-08-26 of the North Dakota Century Code -- an owner or operator of an underground gathering line after Aug. 1, 2013, would be required to submit, at least 180 days prior to service, a shape file showing the centerline of the pipeline to the state Public Service Commission (PSC). They would also have 180 days to report the abandonment of any gathering line to the PSC, as well as provide an updated shape file.

The rule also stipulates that for gathering lines that entered service after Aug. 1, 2011, pipeline owners and operators would be required to submit shape files for all existing underground gathering pipelines, including any known abandoned pipeline. Gathering lines that entered service before Aug. 1, 2011 are exempt.

The PSC would be authorized to create a geographic information system database for collecting pipeline shape files, but the database is not open to the public; the bill authorizes access only to the PSC, property owners affected by the gathering lines and any applicable tax commissioners.

The new rule was contained in HB 1333, which passed both chambers of the North Dakota Legislative Assembly and was signed by Gov. Jack Dalrymple in April.
Alison Ritter, spokeswoman for the North Dakota Department of Mineral Resources (DMR), told NGI’s Shale Daily that the North Dakota Industrial Commission (NDIC) approved the new rules last week.

Read more: http://www.naturalgasintel.com/articles/96865-north-dakota-may-require-company-maps-of-gathering-lines

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
A BILL for an Act to create and enact three new subsections to section 38-08-02, a new section to chapter 38-08, and a new section to chapter 38-11.1 of the North Dakota Century Code, relating to locating, definitions for, and mediation for pipeline facilities; to amend and reenact subsection 2 of section 38-08-04, sections 38-08-04.4 and 38-08-04.5, subsection 6 of section 38-08-15, subsection 1 of section 38-08-16, section 38-08-23, and subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to saltwater disposal wells, the abandoned oil and gas well plugging and site reclamation fund, reclamation of pipelines facilities, and oil and gas gross production tax for reclamation; to provide for application; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 38-08-02 of the North Dakota Century Code are created and enacted as follows:

"Abandoned pipeline" means an underground gathering pipeline that is no longer in service, is physically disconnected from in-service facilities, and is not intended to be reactivated for future use.

"Pipeline facility" means a pipeline, pump, compressor, storage, and any other facility, structure, and property incidental and necessary or useful in the interconnection of a pipeline or for the transportation, distribution, and deliver of energy-related commodities to points of sale or consumption or to the point of distribution for consumption located within or outside of this state.
"Underground gathering pipeline" means an underground gas or liquid pipeline that is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22.

SECTION 2. AMENDMENT. Subsection 2 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. To regulate:
   a. The drilling, producing, and plugging of wells, the restoration of drilling and production sites, and all other operations for the production of oil or gas.
   b. The shooting and chemical treatment of wells.
   c. The spacing of wells.
   d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations.
   e. Disposal of saltwater and oilfield wastes.
   f. Saltwater disposal wells and all associated facilities, including safety relating to location and road access to disposal wells and all associated facilities.
   g. The underground storage of oil or gas.

SECTION 3. AMENDMENT. Section 38-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.4. Commission authorized to enter into contracts.

The commission is hereby authorized to enter into public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, and the reclamation of abandoned oil and gas or injection well sites, and the reclamation of oil and gas-related pipelines and associated facilities, including reclamation as a result of leaks or spills from a pipeline or associated facility, if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, or cannot be legally required to plug or replug the well or to reclaim the well site, pipeline, or associated pipeline facility.
There is no bond covering the well to be plugged or the site to be reclaimed or there is a bond but the cost of plugging or replugging the well or reclaiming the site, pipeline, or associated pipeline facility exceeds the amount of the bond.

The well or equipment, pipeline, or associated pipeline facility is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Reclamation work must be limited to abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads. Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission and must be opened publicly at the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

SECTION 4. AMENDMENT. Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
   a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
   b. Moneys received from the forfeiture of drilling and reclamation bonds.
   c. Moneys received from any federal agency for the purpose of this section.
d. Moneys donated to the commission for the purposes of this section.

e. Moneys received from the state's oil and gas impact fund.

f. Moneys recovered under the provisions of section 38-08-04.8.

g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.

h. Moneys transferred from the cash bond fund under section 38-08-04.11.

i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.

j. Civil penalties assessed under section 38-08-16.

2. Moneys in the fund may be used for the following purposes:

a. Contracting for the plugging of abandoned wells.

b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.

c. To pay mineral owners their royalty share in confiscated oil.

d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and gas-related pipelines and associated facilities.

3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities.

4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

SECTION 5. AMENDMENT. Subsection 6 of section 38-08-15 of the North Dakota Century Code is amended and reenacted as follows:

6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter must be paid to the state treasurer and credited to the general fund.
SECTION 6. AMENDMENT. Subsection 1 of section 38-08-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission is subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. All amounts paid as civil penalties must be deposited in the abandoned oil and gas well plugging and site reclamation fund. The penalties provided in this section, if not paid, are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty may not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

SECTION 7. AMENDMENT. Section 38-08-23 of the North Dakota Century Code is amended and reenacted as follows:

38-08-23. Plats.

Any person reclaiming a drilling pit or reserve pit after the completion of oil and gas drilling operations shall record an accurate plat certified by a registered surveyor showing the location of the well and notice that an abandoned drilling pit or reserve pit may be on the location within six months of the completion of the reclamation with the recorder of the county in which the drilling pit or reserve pit is located. A plat filed for record in accordance with this section may be recorded without acknowledgment or further proof as required by chapter 47-19 and without the auditor's certificate referred to in section 11-18-02.

SECTION 8. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:
Submission of geographic information system data on oil and gas underground gathering pipelines required.

1. The commission shall create a geographic information system database for collecting pipeline shape files as submitted by each underground gathering pipeline owner or operator. The shape files and the resulting geographic information system database are exempt from any disclosure to parties outside the commission and are confidential except as provided in the section. The information may be used by the commission in furtherance of the commission's duties.

2. An owner or operator of an underground gathering pipeline shall submit to the commission, in a time period no longer than one hundred eighty days of putting any underground gathering pipeline into service, a shape file showing the centerline of the pipeline. Upon abandonment of any underground gathering pipeline, the owner or operator shall submit, in a time period no longer than one hundred eighty days of abandonment, to the commission an updated shape file reflecting the pipeline or portion of a pipeline that has been abandoned. For an oil and gas underground gathering pipeline that is in service after August 1, 2011, and before the effective date of this section, the owner or operator or most recent owner or operator shall submit, within eighteen months from the effective date for this section, shape files for all existing underground gathering pipelines, including any known abandoned pipeline.

3. Upon a written request by the owner or tenant of the real property regarding underground gathering pipelines located within the bounds of the real property owned or leased by that property owner or tenant, the commission shall provide to the owner or tenant the requested information. The commission may not include information on any underground gathering pipeline that exists outside the bounds of the real property owned or leased by the requesting party.

4. Upon request by the tax commissioner, the commission may allow access to information contained in the geographic information system database to the tax commissioner to be used for the sole purpose of administering the valuation and assessment of centrally assessed underground gathering pipeline property under chapter 57-06. The information obtained under this subsection is confidential and may be used only for the purposes identified in this subsection.
SECTION 9. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Mediation of disputes. The North Dakota mediation service may mediate disputes related to easements for oil and gas-related pipelines and associated facilities.

SECTION 10. AMENDMENT. Subsection 1 of section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall:
   a. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota;
   b. Credit revenues to the oil and gas impact grant fund, but not in an amount exceeding one hundred million dollars per biennium; and
   c. Credit four percent of the amount available under this subsection to the abandoned oil and gas well plugging and site reclamation fund, but not in an amount exceeding five million dollars in a state fiscal year and not in an amount that would bring the balance in the fund to more than seventy-five million dollars; and
   d. Allocate the remaining revenues under subsection 3.

SECTION 11. APPLICATION. This Act does not apply to the reclamation of an oil or gas-related pipeline or associated facility put into service before August 1, 1983.
Summary: The bill directed the state Public Utilities Commission to adopt appropriate targets in phased out-years for utilities to procure battery storage capabilities for renewable energy. The bill exempts electrical corporation with 60,000 or fewer customers within the state and a public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by Congress.

Status: Signed into law in September 2010.

Comment: From an October 2013 article in the *San Jose Mercury-News* (October 17, 2013)

In a bold move being closely watched by utilities, environmentalists and the clean technology industry, California on Thursday adopted the nation's first energy storage mandate. State regulators with the California Public Utilities Commission, meeting in Redding, unanimously approved Commissioner Carla Peterman's groundbreaking proposal that requires PG&E, Southern California Edison and San Diego Gas & Electric to expand their capacity to store electricity, including renewable energy generated from solar and wind. "The decision lays out an energy storage procurement policy guided by three principles: optimization of the grid, integration of renewable energy and reduction of greenhouse gas emissions," said Peterman, a rising star who was appointed to the agency by Gov. Jerry Brown in late 2012. The state's three investor-owned utilities must collectively buy 1.3 gigawatts -- or 1,325 megawatts -- of energy storage capacity by the end of 2020. That is roughly enough energy to supply nearly 1 million homes. The 1.3 gigawatts is a capacity target, because different storage technologies have different rates at which they can accept and discharge energy, and the mandate aims to be technology-neutral…The impact on household utility bills won't be known until after the procurement process begins. Utilities must begin moving toward the 1.3 gigawatt goal by buying a combined 200 megawatts of energy storage technology by 2014.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AB-2514 Energy storage systems. (2009-2010)

Assembly Bill No. 2514

CHAPTER 469

An act to amend Section 9620 of, and to add Chapter 7.7 (commencing with Section 2835) to Part 2 of Division 1 of, the Public Utilities Code, relating to energy.

[ Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 2514, Skinner. Energy storage systems.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. The existing Public Utilities Act requires the CPUC to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The existing California Renewables Portfolio Standard Program (RPS program) requires the CPUC to implement annual procurement targets for the procurement of eligible renewable energy resources, as defined, for all retail sellers, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, to achieve the targets and goals of the program.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission), and requires it to undertake a continuing assessment of trends in the consumption of electricity and other forms of energy and to analyze the social, economic, and environmental consequences of those trends and to collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy.

Existing law requires the CPUC, in consultation with the Independent System Operator (ISO), to establish resource adequacy requirements for all load-serving entities, as defined, in accordance with specified objectives. The definition of a "load-serving entity” excludes a local publicly owned electric utility. That law further requires each load-serving entity to maintain physical generating capacity adequate to meet its load...
requirements, including peak demand and planning and operating reserves, deliverable to locations and at times as may be necessary to provide reliable electric service. Other existing law requires that each local publicly owned electric utility serving end-use customers to prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers. That law additionally requires the utility, upon request, to provide the Energy Commission with any information the Energy Commission determines is necessary to evaluate the progress made by the local publicly owned electric utility in meeting those planning requirements, and requires the Energy Commission to report the progress made by each utility to the Legislature, to be included in the integrated energy policy reports. Under existing law, the governing body of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard for the utility that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

This bill would require the CPUC, by March 1, 2012, to open a proceeding to determine appropriate targets, if any, for each load-serving entity to procure viable and cost-effective energy storage systems and, by October 1, 2013, to adopt an energy storage system procurement target, if determined to be appropriate, to be achieved by each load-serving entity by December 31, 2015, and a 2nd target to be achieved by December 31, 2020. The bill would require the governing board of a local publicly owned electric utility, by March 1, 2012, to open a proceeding to determine appropriate targets, if any, for the utility to procure viable and cost-effective energy storage systems and, by October 1, 2014, to adopt an energy storage system procurement target, if determined to be appropriate, to be achieved by the utility by December 31, 2016, and a 2nd target to be achieved by December 31, 2021. The bill would require each load-serving entity and local publicly owned electric utility to report certain information to the CPUC, for a load-serving entity, or to the Energy Commission, for a local publicly owned electric utility. The bill would make other technical, nonsubstantive revisions to existing law. The bill would exempt from these requirements an electrical corporation that has 60,000 or fewer customers within California and a public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to a specified law.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the CPUC is a crime.

Because certain of the provisions of this bill require action by the CPUC to implement, a violation of these provisions would impose a state-mandated local program by creating a new crime. Because certain of the bill’s requirements are applicable to local publicly owned electric utilities, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Expanding the use of energy storage systems can assist electrical corporations, electric service providers, community choice aggregators, and local publicly owned electric utilities in integrating increased amounts of renewable energy resources into the electrical transmission and distribution grid in a manner that minimizes emissions of greenhouse gases.

(b) Additional energy storage systems can optimize the use of the significant additional amounts of variable, intermittent, and offpeak electrical generation from wind and solar energy that will be entering the California power mix on an accelerated basis.
(c) Expanded use of energy storage systems can reduce costs to ratepayers by avoiding or deferring the need for new fossil fuel-powered peaking powerplants and avoiding or deferring distribution and transmission system upgrades and expansion of the grid.

(d) Expanded use of energy storage systems will reduce the use of electricity generated from fossil fuels to meet peak load requirements on days with high electricity demand and can avoid or reduce the use of electricity generated by high carbon-emitting electrical generating facilities during those high electricity demand periods. This will have substantial cobenefits from reduced emissions of criteria pollutants.

(e) Use of energy storage systems to provide the ancillary services otherwise provided by fossil-fueled generating facilities will reduce emissions of carbon dioxide and criteria pollutants.

(f) There are significant barriers to obtaining the benefits of energy storage systems, including inadequate evaluation of the use of energy storage to integrate renewable energy resources into the transmission and distribution grid through long-term electricity resource planning, lack of recognition of technological and marketplace advancements, and inadequate statutory and regulatory support.

SEC. 2. Chapter 7.7 (commencing with Section 2835) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 7.7. Energy Storage Systems

2835. For purposes of this chapter, the following terms have the following meanings:

(a) (1) "Energy storage system" means commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter dispatching the energy. An "energy storage system" may have any of the characteristics in paragraph (2), shall accomplish one of the purposes in paragraph (3), and shall meet at least one of the characteristics in paragraph (4).

(2) An “energy storage system” may have any of the following characteristics:

(A) Be either centralized or distributed.

(B) Be either owned by a load-serving entity or local publicly owned electric utility, a customer of a load-serving entity or local publicly owned electric utility, or a third party, or is jointly owned by two or more of the above.

(3) An “energy storage system” shall be cost effective and either reduce emissions of greenhouse gases, reduce demand for peak electrical generation, defer or substitute for an investment in generation, transmission, or distribution assets, or improve the reliable operation of the electrical transmission or distribution grid.

(4) An “energy storage system” shall do one or more of the following:

(A) Use mechanical, chemical, or thermal processes to store energy that was generated at one time for use at a later time.

(B) Store thermal energy for direct use for heating or cooling at a later time in a manner that avoids the need to use electricity at that later time.

(C) Use mechanical, chemical, or thermal processes to store energy generated from renewable resources for use at a later time.

(D) Use mechanical, chemical, or thermal processes to store energy generated from mechanical processes that would otherwise be wasted for delivery at a later time.

(b) "Load-serving entity" has the same meaning as defined in Section 380.

(c) "New" means, in reference to an energy storage system, a system that is installed and first becomes operational after January 1, 2010.
(d) “Offpeak” means, in reference to electrical demand, a period that is not within a peak demand period.

(e) “Peak demand period” means a period of high daily, weekly, or seasonal demand for electricity. For purposes of this chapter, the peak demand period for a load-serving entity shall be determined, or approved, by the commission and shall be determined, or approved, for a local publicly owned electric utility, by its governing body.

(f) “Procure” and “procurement” means, in reference to the procurement of an energy storage system, to acquire by ownership or by a contractual right to use the energy from, or the capacity of, including ancillary services, an energy storage system owned by a load-serving entity, local publicly owned electric utility, customer, or third party. Nothing in this chapter, and no action by the commission, shall discourage or disadvantage development and ownership of an energy storage system by an electrical corporation.

2836. (a) (1) On or before March 1, 2012, the commission shall open a proceeding to determine appropriate targets, if any, for each load-serving entity to procure viable and cost-effective energy storage systems to be achieved by December 31, 2015, and December 31, 2020. As part of this proceeding, the commission may consider a variety of possible policies to encourage the cost-effective deployment of energy storage systems, including refinement of existing procurement methods to properly value energy storage systems.

(2) The commission shall adopt the procurement targets, if determined to be appropriate pursuant to paragraph (1), by October 1, 2013.

(3) The commission shall reevaluate the determinations made pursuant to this subdivision not less than once every three years.

(4) Nothing in this section prohibits the commission’s evaluation and approval of any application for funding or recovery of costs of any ongoing or new development, trialing, and testing of energy storage projects or technologies outside of the proceeding required by this chapter.

(b) (1) On or before March 1, 2012, the governing board of each local publicly owned electric utility shall initiate a process to determine appropriate targets, if any, for the utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2016, and December 31, 2021. As part of this proceeding, the governing board may consider a variety of possible policies to encourage the cost-effective deployment of energy storage systems, including refinement of existing procurement methods to properly value energy storage systems.

(2) The governing board shall adopt the procurement targets, if determined to be appropriate pursuant to paragraph (1), by October 1, 2014.

(3) The governing board shall reevaluate the determinations made pursuant to this subdivision not less than once every three years.

(4) A local publicly owned electric utility shall report to the Energy Commission regarding the energy storage system procurement targets and policies adopted by the governing board pursuant to paragraph (2), and report any modifications made to those targets as a result of a reevaluation undertaken pursuant to paragraph (3).

2836.2. In adopting and reevaluating appropriate energy storage system procurement targets and policies pursuant to subdivision (a) of Section 2836, the commission shall do all of the following:

(a) Consider existing operational data and results of testing and trial pilot projects from existing energy storage facilities.

(b) Consider available information from the California Independent System Operator derived from California Independent System Operator testing and evaluation procedures.

(c) Consider the integration of energy storage technologies with other programs, including demand-side management or other means of achieving the purposes identified in Section 2837 that will result in the most efficient use of generation resources and cost-effective energy efficient grid integration and management.
(d) Ensure that the energy storage system procurement targets and policies that are established are technologically viable and cost effective.

2836.4. (a) An energy storage system may be used to meet the resource adequacy requirements established for a load-serving entity pursuant to Section 380 if it meets applicable standards.

(b) An energy storage system may be used to meet the resource adequacy requirements established by a local publicly owned electric utility pursuant to Section 9620 if it meets applicable standards.

2836.6. All procurement of energy storage systems by a load-serving entity or local publicly owned electric utility shall be cost effective.

2837. Each electrical corporation’s renewable energy procurement plan, prepared and approved pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1, shall require the utility to procure new energy storage systems that are appropriate to allow the electrical corporation to comply with the energy storage system procurement targets and policies adopted pursuant to Section 2836. The plan shall address the acquisition and use of energy storage systems in order to achieve the following purposes:

(a) Integrate intermittent generation from eligible renewable energy resources into the reliable operation of the transmission and distribution grid.

(b) Allow intermittent generation from eligible renewable energy resources to operate at or near full capacity.

(c) Reduce the need for new fossil-fuel powered peaking generation facilities by using stored electricity to meet peak demand.

(d) Reduce purchases of electricity generation sources with higher emissions of greenhouse gases.

(e) Eliminate or reduce transmission and distribution losses, including increased losses during periods of congestion on the grid.

(f) Reduce the demand for electricity during peak periods and achieve permanent load-shifting by using thermal storage to meet air-conditioning needs.

(g) Avoid or delay investments in transmission and distribution system upgrades.

(h) Use energy storage systems to provide the ancillary services otherwise provided by fossil-fueled generating facilities.

2838. (a) (1) By January 1, 2016, each load-serving entity shall submit a report to the commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the commission pursuant to subdivision (a) of Section 2836.

(2) By January 1, 2021, each load-serving entity shall submit a report to the commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the commission pursuant to subdivision (a) of Section 2836.

(b) The commission shall ensure that a copy of each report required by subdivision (a), with any confidential information redacted, is available on the commission’s Internet Web site.

2838.5. Notwithstanding any provision of this chapter, the requirements of this chapter do not apply to either of the following:

(a) An electrical corporation that has 60,000 or fewer customer accounts within California.

(b) A public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386).
2839. (a) (1) By January 1, 2017, a local publicly owned electric utility shall submit a report to the Energy Commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the governing board pursuant to subdivision (b) of Section 2836.

(2) By January 1, 2022, a local publicly owned electric utility shall submit a report to the Energy Commission demonstrating that it has complied with the energy storage system procurement targets and policies adopted by the governing board pursuant to subdivision (b) of Section 2836.

(b) The Energy Commission shall ensure that a copy of each report or plan required by subdivisions (a) and (b), with any confidential information redacted, is available on the Energy Commission's Internet Web site, or on an Internet Web site maintained by the local publicly owned electric utility that can be accessed from the Energy Commission's Internet Web site.

(c) The commission does not have authority or jurisdiction to enforce any of the requirements of this chapter against a local publicly owned electric utility.

SEC. 3. Section 9620 of the Public Utilities Code is amended to read:

9620. (a) Each local publicly owned electric utility serving end-use customers, shall prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers. Customer generation located on the customer’s site or providing electric service through arrangements authorized by Section 218, shall not be subject to these requirements if the customer generation, or the load it serves, meets one of the following criteria:

(1) It takes standby service from the local publicly owned electric utility on a rate schedule that provides for adequate backup planning and operating reserves for the standby customer class.

(2) It is not physically interconnected to the electric transmission or distribution grid, so that, if the customer generation fails, backup power is not supplied from the electricity grid.

(3) There is physical assurance that the load served by the customer generation will be curtailed concurrently and commensurately with an outage of the customer generation.

(b) Each local publicly owned electric utility serving end-use customers shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council or the Western Electricity Coordinating Council.

(c) Each local publicly owned electric utility shall prudently plan for and procure energy storage systems that are adequate to meet the requirements of Section 2836.

(d) A local publicly owned electric utility serving end-use customers shall, upon request, provide the Energy Commission with any information the Energy Commission determines is necessary to evaluate the progress made by the local publicly owned electric utility in meeting the requirements of this section.

(e) The Energy Commission shall report to the Legislature, to be included in each integrated energy policy report prepared pursuant to Section 25302 of the Public Resources Code, regarding the progress made by each local publicly owned electric utility serving end-use customers in meeting the requirements of this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
Summary: HB 5802 requires all heating oil sold in the state of Rhode Island contain five percent of a biobased product. Definitions are outlined for biobased liquid fuel, biodiesel fuel, renewable biomass, renewable diesel fuel and heating oil.

Status: Signed into law July 11, 2013.

Comment: From Biodiesel (July 18, 2013)
The governor of Rhode Island signed landmark legislation recently that will ensure all of the state's heating oil becomes Bioheat® by 2014. Starting July 1, 2014, every gallon of oil heat in the state will contain at least 2 percent biodiesel. The Bioheat blend is a greener heating oil gaining popularity in Northeastern and Mid-Atlantic states.

Although other New England states have passed similar bills, Rhode Island is on track to be the first to implement a statewide Bioheat requirement.

…The legislation gradually increases the blend from 2 percent to 5 percent by 2017. Biodiesel is a renewable fuel made from agricultural byproducts and co-products such as soybean oil and other fats and oils. It is the only domestically produced, commercially available advanced biofuel in the U.S., and supports 50,000 American jobs.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO HEALTH AND SAFETY - BIODIESEL HEATING OIL ACT OF 2013

Introduced By: Representatives Handy, Ruggiero, Walsh, Ajello, and Tanzi

Date Introduced: February 28, 2013

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby amended by adding thereto the following chapter:

CHAPTER 23.7

BIODIESEL HEATING OIL ACT OF 2013

23-23.7-1. Short title. – This chapter shall be known and may be cited as the "Biodiesel Heating Oil Act of 2013."

23-23.7-2. Statement of intent and purpose. – The intent and purpose of this chapter is

to encourage the production of biofuels in the state of Rhode Island, to help create jobs in the
emerging biofuel industry, to improve air quality, to reduce Rhode Island greenhouse gas
emissions, to promote the installation and use of more efficient heating equipment and to promote
more energy independence by requiring heating oil sold in the state of Rhode Island to contain
biodiesel-blended heating oil.

23-23.7-3. Definitions. – As used in this chapter, the following words shall have the
following meanings:

(1) The term "ASTM" means ASTM International.

(2) "Biobased product" shall include the following:

(i) "Biobased liquid fuel" means a liquid fuel that is derived principally from renewable
biomass and meets the specifications or quality certification standards for use in residential,
commercial, or industrial heating applications established by ASTM International - ASTM
D6751, or the appropriate successor standard, as the case may be.

(ii) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from
plant or animal matters which meet the registration requirements for fuels and fuel additives
established by the United States environmental protection agency under section 211 of the clean

(iii) "Renewable biomass" means a material, including crops and crop residues, trees and
tree residues, organic portions of municipal solid waste, organic portions of construction and
demolition debris, grease trap waste, and algae, that can be used for fuel but does not have a
petroleum or other fossil fuel base. This definition does not include oil derived from palm trees.

(iv) "Renewable diesel fuel" means diesel fuel derived from biomass using a thermal
depolymerization process which meets the requirements of ASTM International - ASTM D975 or
D396.

(3) "Heating oil" means heating fuel or fuel oil used for heating residential, commercial,
or industrial properties, including No. 1 distillate, No. 2 distillate, No. 6 distillate, a liquid blended
with No. 1 distillate, No. 2 distillate, or No. 6 distillate with a three percent (3%) sulfate level, or
a five percent (5%) biobased liquid fuel that meets the specifications or quality certification
standards for use in residential, commercial, or industrial heating applications established by
ASTM International.

23-23.7-4. Heating oil biobased products. – (a) Notwithstanding any law, rule,
regulation, or order to the contrary, and in accordance with the compliance schedule established
in subsection (b) of this section, all heating oil sold in the state for residential, commercial, or
industrial uses within the state, shall contain, at a minimum, the specified percentage of biobased product, unless such requirement has been suspended pursuant to section 23-23.7-5.

(b) Not later than July 1, 2014, and thereafter, all heating oil sold in the state shall contain not less than five percent (5%) of a biobased product.

23-23.7-5. Suspension. – The governor of the state of Rhode Island may temporarily suspend the requirements imposed by section 23-23.7-4 if it is determined that the physical availability of biobased product heating oil which complies with these requirements is inadequate at commercially reasonable prices to meet the needs of the residential, commercial, or industrial uses in this state and the inadequate availability constitutes an emergency, provided that the governor, shall specify in writing, the period of time the suspension shall be in effect.

SECTION 2. This act shall take effect upon passage.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - BIODIESEL HEATING OIL ACT OF 2013

***

This act would enact the Biodiesel Heating Oil Act of 2013, which would require that all heating oil sold in the state contain five percent (5%) of a biobased product.

This act would take effect upon passage.
Summary: HB 1134 allows a one year grace period for the flaring of oil and gas wells from first production. After one year expires flaring must cease and the well be capped, connected to a gas collection line, equipped with electrical generator that uses 75% of the well’s gas, utilize a system that consumes 75% of gas or natural gas liquids to use in a variety of alternative methods, or equip the well with other value-added processes approved by the commission that will reduce the intensity of the flare by 60%. HB 1134 also creates an oil and gas production tax exemption for a period of two years and thirty days from first production if the gas is collected and used at well sites by a generator that consumes at least 75% of gas at the well, or gas is collected at the well site that intakes 75% of gas and natural gas liquids volume from the well for beneficial consumption.

Status: Signed into law April 26, 2013

Comment: From Lexology (May 1, 2013)
On April 26, 2013, North Dakota Governor Jack Dalrymple signed House Bill No. 1134 (HB 1134) into law, amending the state's flaring and oil and gas production tax statutes to promote reduction of natural gas flaring at the state's oil and gas wells.

While earlier proposed versions of HB 1134 included a reduction in the flaring grace period from one year to six months, the final legislation maintains the one-year grace period.

Upon the end of this grace period, a well operator's options are currently limited under statute to either: 1) capping the well, 2) connecting the well to a gas gathering line or 3) equipping the well site with an electric generator consuming 75% of the gas from the well, all subject to an "economic infeasibility" exception.

The final version of HB 1134, which becomes effective July 1, 2013, expands the state's list of permitted activities for an operator to undertake at the end of the grace period to include:

Equipping the well site with a collection system that intakes at least 75% of the gas and natural gas liquids volume from the well for beneficial consumption by means of:
- Compression to liquid for use as fuel.
- Transport to a processing facility.
- Production of petrochemicals or fertilizer.
- Conversion to liquid fuels.
- Separating and collecting over 50% of the propane and heavier hydrocarbons.

Other value-added processes as approved by the North Dakota Industrial Commission that reduce the volume or intensity of the flare by more than 60%.
Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to create and enact sections 57-51-02.6 and 57-51.1-02.1 of the North Dakota Century Code, relating to oil and gas gross production tax exemption for natural gas and an oil extraction tax exemption for liquids produced from natural gas extracted to encourage use of gas that might otherwise be flared; to amend and reenact sections 38-08-06.4 and 57-39.2-04.5 of the North Dakota Century Code, relating to flaring restrictions for natural gas and sales tax exemption for property used to process natural gas to encourage use of gas that might otherwise be flared; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority.

1. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well. Thereafter,

2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be capped, connected to a gas gathering line, or equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well:
   a. Capped;
   b. Connected to a gas gathering line;
   c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;
   d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or
   e. Equipped with other value-added processes as approved by the industrial commission which reduce the volume or intensity of the flare by more than sixty percent.

3. An electrical generator and its attachment units to produce electricity from gas and a collection system described in subdivision d of subsection 2 must be considered to be personal property for all purposes.

4. For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.
5. The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final.

6. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that shows to the satisfaction of the industrial commission that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible.

SECTION 2. AMENDMENT. Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, collecting, or refining of gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, collect, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, collect, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.

2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, collecting, or refining system must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state which the owner intends to purchase qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.

3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, processing, gathering, collecting, or refining system may apply to the tax commissioner for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

4. For purposes of this section, a gas collecting system means a collection system described in subdivision d of subsection 2 of section 38-08-06.4.

SECTION 3. Section 57-51-02.6 of the North Dakota Century Code is created and enacted as follows:

57-51-02.6. Temporary exemption for oil and gas wells employing a system to avoid flaring.

Gas is exempt from the tax under section 57-51-02.2 for a period of two years and thirty days from the time of first production if the gas is:

1. Collected and used at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well; or
2. Collected at the well site by a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons, or other value-added processes as approved by the industrial commission.

SECTION 4. Section 57-51.1-02.1 of the North Dakota Century Code is created and enacted as follows:

57-51.1-02.1. Temporary exemption for oil and gas wells employing a system to avoid flaring.

Liquids produced from a collection system described in subdivision d of subsection 2 of section 38-08-06.4 utilizing absorption, adsorption, or refrigeration are exempt from the tax under section 57-51.1-02 for a period of two years and thirty days from the time of first production.

SECTION 5. EFFECTIVE DATE. This Act becomes effective July 1, 2013.
Bill/Act: HB 5709

Summary: HB 5709 establishes a pilot program to demonstrate the feasibility of using densified biomass to heat public schools.

Status: Signed into law May 20, 2013.

Comment: From State Senator John Smith Press Release (May 21, 2013)

Signed Monday, Senate Bill 5709 is a measure that the governor said holds “great promise.”

Wood pellets – a heat source popular in Smith’s 7th Legislative District yet underutilized across the state, known as “densified biomass” in policy language – have the potential to save schools money on overhead costs. The bill creates a program to test the feasibility and money-saving results from using densified biomass to heat schools.

Washington State University’s energy program will spearhead a two-year pilot program in two Washington public schools to determine if schools and businesses all across the state could benefit from using densified biomass.

“This pilot program has the potential to not only save schools money, but also lead our state to energy independence while stimulating the economy and creating jobs,” Smith said. “The advantages of clean-burning, renewable, densified biomass are vast, and this is something that I am proud to support.”

Read here: http://johnsmith.src.wastateleg.org/two-smith-bills-to-study-wood-heat-technology-address-wolf-livestock-conflicts-signed-by-governor

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT Relating to a pilot program to demonstrate the feasibility of using densified biomass to heat public schools; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. Currently more than a million homes nationwide and approximately fifty thousand homes in Washington state are heated with wood pellets, or densified biomass, in modern high-efficiency appliances. This residential use establishes that many homeowners experience significant cost savings compared to other fossil fuel-based heating systems and that this technology can have a wide and varied acceptance. Bulk delivery that can be facilitated by large volume anchor users such as schools, institutions, and businesses could provide the next step in making this form of renewable energy utilization more efficient and convenient for the consumer. The legislature makes the following findings:

(1) That manufactured and direct thermal conversion of densified biomass is a renewable energy activity;

(2) That much of western Europe, China, Japan, and other Asian
countries have chosen to use renewable densified biomass as a renewable energy fuel to heat homes, businesses, and other facilities;

(3) That clean burning, renewable densified biomass will: (a) Lead our country to energy independence; (b) create jobs; (c) stimulate our economy by keeping more of our money circulating in the United States; (d) reduce carbon emissions; (e) improve air quality in noncompliant air sheds; (f) promote healthy forests; and (g) reduce the volume of waste in landfills; that the densified biomass industry will be complimentary to other biofuel industries, providing an outlet and use for the resultant high lignin by-products and agriculture residuals; and

(4) That a December 2012 report by the Washington State University energy program identified opportunities to develop and expand the in-state manufacturing of densified biomass.

Therefore, it is the intent of the legislature to have the Washington State University energy program conduct a pilot program to demonstrate the feasibility of using densified biomass as a renewable energy source to heat schools and other buildings.

NEW SECTION. Sec. 2. (1) Subject to receiving federal and private funds for this purpose, by December 1, 2013, the Washington State University energy program must develop and initiate a pilot program to demonstrate the feasibility of using densified biomass to heat public schools. Two public schools must be chosen for the pilot program, using the following criteria: The school's proximity to a currently operating densified biomass manufacturing facility, the age and condition of the school's current heating system, and the school's design is of a nature that most resembles other schools of its class. The pilot program must consist of the following: The replacement of the school's current heating system with one that uses densified biomass as a fuel; the measurement and evaluation of the heating system, including a cost comparison with other conventional fuels; and the measurement of emissions from the heating system. One of the public schools selected for the pilot must be located in a district east of the crest of the Cascade mountains and one must be located in a district west of the crest of the Cascade mountains. The school district east of the crest of the Cascade mountains must be located in
a county that shares an international border or borders the state of
Idaho.

(2) The office of the superintendent of public instruction must
notify all school districts about the pilot project and their
opportunity to participate.

(3) By December 31, 2015, the Washington State University energy
program must summarize and report its findings to the legislature. The
report must include an analysis extrapolating the results to other
similarly situated schools in the state.

(4) In designing the pilot program, the Washington State University
energy program must seek to leverage other existing private and federal
funding programs and resources.

(5) The Washington State University energy program may contract
with other entities for assistance in implementing the pilot program.


--- END ---
Legislative Summary: SB 43 would enact the Green Tariff Shared Renewables Program. The program would require a participating utility, defined as being an electrical corporation with 100,000 or more customers in California, to file with the commission an application requesting approval of a green tariff shared renewables program to implement a program enabling ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources, consistent with certain legislative findings and statements of intent. The bill would require the commission, by July 1, 2014, to issue a decision concerning the participating utility’s application, determining whether to approve or disapprove the application, with or without modifications. The bill would require the commission, after notice and opportunity for public comment, to approve the application if the commission determines that the proposed program is reasonable and consistent with the legislative findings and statements of intent. The bill would require the commission to require that a participating utility’s green tariff shared renewables program be administered in accordance with specified provisions. The bill would repeal the program on January 1, 2019.

Status: Signed into law September 28, 2013.

Comment: From Daily Democrat (October 2, 2013)
After a three-year effort, renters, small businesses and millions of others utility customers throughout California will soon be able to utilize wind, solar, and other forms of clean and affordable renewable energy through their utility provider.

This weekend, Gov. Jerry Brown signed into law legislation from Sen. Lois Wolk, D-Davis, enabling Californians who cannot install their own solar, wind, or other renewable power generation system to obtain up to 100 percent renewable energy through PG&E, Southern California Edison, and San Diego Gas & Electric as soon as the fall of 2014.

"Finally, the 75 percent of Californians currently unable to utilize solar power or other renewable energy, all the renters in California, all the businesses who lease, all those living in apartments and condos, everyone with low income or poor credit scores, will now be able to do so," said Wolk, the author of signed Senate Bill 43, in a statement. "Without any state funds or shifting costs to consumers who choose not to participate, I look forward to seeing this unique and exciting program provide these Californians with access to clean renewable energy while creating thousands of jobs, encouraging more investment in an important sector of our state's economy, and helping the state to meet its renewable energy goals."

The law establishes the Green Tariff Shared Renewables Program, a program through which the three utilities will make 600 MW of renewable energy -- enough electricity to power about 360,000 homes -- available to customers who wish to subscribe for a higher percentage of clean, renewable energy than the 20 percent of renewables currently available through their utilities' power mix.
"SB 43 opens the door for thousands of renters and other utility customers to go solar for the first time," said Susannah Churchill, Policy Advocate with the Vote Solar Initiative. "We thank Gov. Brown, Senator Wolk and other legislators for their leadership in creating an innovative new model that will allow more Californians to choose 100 percent renewable energy."

Of the renewable energy projects that will provide the 600 MW, projects generating a total of 100 MW must be built within communities determined by the California Environmental Protection Agency (Cal/EPA) to be disproportionately affected by environmental pollution and other hazards that can harm the public's health.

Another 100 MW will be reserved for residential customers, including renters and those who can't afford solar panels or other means of generating renewable power.


From *PV Magazine* *(September 13, 2013)*

California’s Legislature has given the green light for the state’s "Green Tariff Shared Renewables Program", which is the largest of its kind in the U.S. and will allow rental tenants, schools, cities and many other interested parties to invest in California’s renewable energy projects.

The program gives businesses and individuals the option to switch to a 100% "Green Rate" at the utility, which guarantees that their energy use is tied to a newly built renewable energy system that the utility procures for all green rate customers. The program is tied to the renewable developments of three investor-owned utilities – Pacific Gas and Electric Co. (PG&E), San Diego Gas & Electric Co. (SDG&E), and Southern California Edison Co. (SCE) – in return for a greener electricity supply and, in the future at least, lower bills.

The bill, labelled S.B 43, was passed by the Assembly and the Senate and is now on its way to the governor.

"S.B. 43 will allow millions of Californians who cannot install their own solar unit, windmill or other renewable power generation system to obtain renewable energy through their utility," said Senator Lois Wolk, who drew up the bill’s details. "The bill will create thousands of jobs and encourage more investment in an important sector of California’s economy, while helping the state meet its renewable energy goals."

The ruling allows the investment of up to 600 MW in renewable energy, of which 100 MW must be made available to residential customers. It will be overseen by the California Public Utilities Commission (CPUC), who will decide which clean energy projects qualify for the program and oversee how the cost benefits will trickle through to the customer.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
SB-43 Electricity: Green Tariff Shared Renewables Program. (2013-2014)

Senator Wolk. Electricity: Green Tariff Shared Renewables Program.

CHAPTER 413

An act to add and repeal Chapter 7.6 (commencing with Section 2831) of Part 2 of Division 1 of the Public Utilities Code, relating to energy.

[ Approved by Governor September 28, 2013. Filed with Secretary of State September 28, 2013. ]

LEGISLATIVE COUNSEL’S DIGEST

SB 43, Wolk. Electricity: Green Tariff Shared Renewables Program.

(1) Under existing law, the Public Utilities Commission has regulatory jurisdiction over public utilities, including electrical corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Under existing law, the local government renewable energy self-generation program authorizes a local government to receive a bill credit to be applied to a designated benefiting account for electricity exported to the electrical grid by an eligible renewable generating facility, as defined, and requires the commission to adopt a rate tariff for the benefiting account.

This bill would enact the Green Tariff Shared Renewables Program. The program would require a participating utility, defined as being an electrical corporation with 100,000 or more customers in California, to file with the commission an application requesting approval of a green tariff shared renewables program to implement a program enabling ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources, consistent with certain legislative findings and statements of intent. The bill would require the commission, by July 1, 2014, to issue a decision concerning the participating utility’s application, determining whether to approve or disapprove the application, with or without modifications. The bill would require the commission, after notice and opportunity for public comment, to approve the application if the commission determines that the proposed program is reasonable and consistent with the legislative findings and statements of intent. The bill would require the commission to require that a participating utility’s green tariff shared renewables program be administered in
accordance with specified provisions. The bill would repeal the program on January 1, 2019.

(2) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of the bill would require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FAILLOWS:

SECTION 1. Chapter 7.6 (commencing with Section 2831) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 7.6. Green Tariff Shared Renewables Program

2831. The Legislature finds and declares all of the following:

(a) Building operational generating facilities that utilize sources of renewable energy within California, to supply the state’s demand for electricity, provides significant financial, health, environmental, and workforce benefits to the State of California.

(b) The California Solar Initiative will achieve its goals, resulting in over 150,000 residential and commercial onsite installations of solar energy systems. However, the California Solar Initiative cannot reach all residents and businesses that want to participate and is limited to only solar energy systems and not other eligible renewable energy resources. A green tariff shared renewables program seeks to build on the success of the California Solar Initiative by expanding access to all eligible renewable energy resources to all ratepayers who are currently unable to access the benefits of onsite generation.

(c) There is widespread interest from many large institutional customers, including schools, colleges, universities, local governments, businesses, and the military, for the development of generation facilities that are eligible renewable energy resources to serve more than 33 percent of their energy needs.

(d) Public institutions will benefit from a green tariff shared renewables program’s enhanced flexibility to participate in shared generation facilities that are eligible renewable energy resources.

(e) Building operational generating facilities that are eligible renewable energy resources creates jobs, reduces emissions of greenhouse gases, and promotes energy independence.

(f) Many large energy users in California have pursued onsite electrical generation from eligible renewable energy resources, but cannot achieve their goals due to rooftop or land space limitations, or size limits on net energy metering. The enactment of this chapter will create a mechanism whereby institutional customers, such as military installations, universities, and local governments, as well as commercial customers and groups of individuals, can meet their needs with electrical generation from eligible renewable energy resources.

(g) It is the intent of the Legislature that a green tariff shared renewables program be implemented in such a manner that facilitates a large, sustainable market for offsite electrical generation from facilities that are eligible renewable energy resources, while fairly compensating electrical corporations for the services they provide, without affecting nonparticipating ratepayers.

(h) It is the further intent of the Legislature that a green tariff shared renewables program be implemented in a manner that ensures nonparticipating ratepayer indifference for the remaining bundled service, direct
2831.5. (a) This chapter shall be known, and may be cited, as the Green Tariff Shared Renewables Program. (b) For purposes of this chapter, the following terms have the following meanings:

(1) “Eligible renewable energy resource,” “renewable energy credit,” and “renewables portfolio standard” have the same meaning as those terms have for the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1).

(2) “Participating utility” means an electrical corporation with 100,000 or more customer accounts in California.

2832. (a) On or before March 1, 2014, a participating utility shall file with the commission an application requesting approval of a green tariff shared renewables program to implement a program that the utility determines is consistent with the legislative findings and statements of intent of Section 2831. Nothing in this chapter limits an electrical corporation with less than 100,000 customer accounts in California from filing an application with the commission to administer a green tariff shared renewables program that is consistent with the legislative findings and statements of intent of Section 2831.

(b) On or before July 1, 2014, the commission shall issue a decision on the participating utility’s application for a green tariff shared renewables program, determining whether to approve or disapprove it, with or without modifications.

(c) After notice and an opportunity for public comment, the commission shall approve an application by a participating utility for a green tariff shared renewables program if the commission determines that the program is reasonable and consistent with the legislative findings and statements of intent of Section 2831.

(d) The requirements of this chapter shall not apply to an electrical corporation that, prior to May 1, 2013, filed an application with the commission to have a green tariff shared renewables program, or an equivalent program of whatever name, provided the commission approves the application with a determination that the program does not shift costs to nonparticipating customers and the application is consistent with this chapter. If the commission has approved a settlement agreement relative to parties contesting an application filed prior to May 1, 2013, the requirements of this section shall not apply if the commission, within a reasonable period of time, requires revisions to the previously approved settlement agreement that requires the program to be consistent with this chapter.

2833. (a) The commission shall require a green tariff shared renewables program to be administered by a participating utility in accordance with this section.

(b) Generating facilities participating in a participating utility’s green tariff shared renewables program shall be eligible renewable energy resources with a nameplate rated generating capacity not exceeding 20 megawatts, except for those generating facilities reserved for location in areas identified by the California Environmental Protection Agency as the most impacted and disadvantaged communities pursuant to paragraph (1) of subdivision (d), which shall not exceed one megawatt nameplate rated generating capacity.

(c) A participating utility shall use commission-approved tools and mechanisms to procure additional eligible renewable energy resources for the green tariff shared renewables program from electrical generation facilities that are in addition to those required by the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1). For purposes of this subdivision, “commission-approved tools and mechanisms” means those procurement methods approved by the commission for an electrical corporation to procure eligible renewable energy resources for purposes of meeting the procurement requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1).

(d) A participating utility shall permit customers within the service territory of the utility to purchase electricity pursuant to the tariff approved by the commission to implement the utility’s green tariff shared access, and community choice aggregation customers.
renewables program, until the utility meets its proportionate share of a statewide limitation of 600 megawatts of customer participation, measured by nameplate rated generating capacity. The proportionate share shall be calculated based on the ratio of each participating utility’s retail sales to total retail sales of electricity by all participating utilities. The commission may place other restrictions on purchases under a green tariff shared renewables program, including restricting participation to a certain level of capacity each year. The following restrictions shall apply to the statewide 600 megawatt limitation:

(1) (A) One hundred megawatts shall be reserved for facilities that are no larger than one megawatt nameplate rated generating capacity and that are located in areas previously identified by the California Environmental Protection Agency as the most impacted and disadvantaged communities. These communities shall be identified by census tract, and shall be determined to be the most impacted 20 percent based on results from the best available cumulative impact screening methodology designed to identify each of the following:

(i) Areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.

(ii) Areas with socioeconomic vulnerability.

(B) (1) For purposes of this paragraph, “previously identified” means identified prior to commencing construction of the facility.

(2) Not less than 100 megawatts shall be reserved for participation by residential class customers.

(3) Twenty megawatts shall be reserved for the City of Davis.

(e) To the extent possible, a participating utility shall seek to procure eligible renewable energy resources that are located in reasonable proximity to enrolled participants.

(f) A participating utility’s green tariff shared renewables program shall support diverse procurement and the goals of commission General Order 156.

(g) A participating utility’s green tariff shared renewables program shall not allow a customer to subscribe to more than 100 percent of the customer’s electricity demand.

(h) Except as authorized by this subdivision, a participating utility’s green tariff shared renewables program shall not allow a customer to subscribe to more than two megawatts of nameplate generating capacity. This limitation does not apply to a federal, state, or local government, school or school district, county office of education, the California Community Colleges, the California State University, or the University of California.

(i) A participating utility’s green tariff shared renewables program shall not allow any single entity or its affiliates or subsidiaries to subscribe to more than 20 percent of any single calendar year’s total cumulative rated generating capacity.

(j) To the extent possible, a participating utility shall actively market the utility’s green tariff shared renewables program to low-income and minority communities and customers.

(k) Participating customers shall receive bill credits for the generation of a participating eligible renewable energy resource using the class average retail generation cost as established in the participating utility’s approved tariff for the class to which the participating customer belongs, plus a renewables adjustment value representing the difference between the time-of-delivery profile of the eligible renewable energy resource used to serve the participating customer and the class average time-of-delivery profile and the resource adequacy value, if any, of the resource contained in the utility’s green tariff shared renewables program. The renewables adjustment value applicable to a time-of-delivery profile of an eligible renewable energy resource shall be determined according to rules adopted by the commission. For these purposes, “time-of-delivery profile” refers to the daily generating pattern of a participating eligible renewable energy resource over time, the value of which is determined by comparing the generating pattern of that participating eligible renewable energy resource to the demand for electricity over time and other generating resources available to serve that demand.
(l) Participating customers shall pay a renewable generation rate established by the commission, the administrative costs of the participating utility, and any other charges the commission determines are just and reasonable to fully cover the cost of procuring a green tariff shared renewables program’s resources to serve a participating customer’s needs.

(m) A participating customer’s rates shall be debited or credited with any other commission-approved costs or values applicable to the eligible renewable energy resources contained in a participating utility’s green tariff shared renewables program’s portfolio. These additional costs or values shall be applied to new customers when they initially subscribe after the cost or value has been approved by the commission.

(n) Participating customers shall pay all otherwise applicable charges without modification.

(o) A participating utility shall provide support for enhanced community renewables programs to facilitate development of eligible renewable energy resource projects located close to the source of demand.

(p) The commission shall ensure that charges and credits associated with a participating utility’s green tariff shared renewables program are set in a manner that ensures nonparticipant ratepayer indifference for the remaining bundled service, direct access, and community choice aggregation customers and ensures that no costs are shifted from participating customers to nonparticipating ratepayers.

(q) A participating utility shall track and account for all revenues and costs to ensure that the utility recovers the actual costs of the utility’s green tariff shared renewables program and that all costs and revenues are fully transparent and auditable.

(r) Any renewable energy credits associated with electricity procured by a participating utility for the utility’s green tariff shared renewables program and utilized by a participating customer shall be retired by the participating utility on behalf of the participating customer. Those renewable energy credits shall not be further sold, transferred, or otherwise monetized for any purpose. Any renewable energy credits associated with electricity procured by a participating utility for the shared renewable energy self-generation program, but not utilized by a participating customer, shall be counted toward meeting that participating utility’s renewables portfolio standard.

(s) A participating utility shall, in the event of participant customer attrition or other causes that reduce customer participation or electrical demand below generation levels, apply the excess generation from the eligible renewable energy resources procured through the utility’s green tariff shared renewables program to the utility’s renewable portfolio standard procurement obligations or bank the excess generation for future use to benefit all customers in accordance with the renewables portfolio standard banking and procurement rules approved by the commission.

(t) In calculating its procurement requirements to meet the requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1), a participating utility may exclude from total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to the utility’s green tariff shared renewables program, commencing with the point in time at which the generating facility achieves commercial operation.

(u) All renewable energy resources procured on behalf of participating customers in the participating utility’s green tariff shared renewables program shall comply with the State Air Resources Board’s Voluntary Renewable Electricity Program. California-eligible greenhouse gas allowances associated with these purchases shall be retired on behalf of participating customers as part of the board’s Voluntary Renewable Electricity Program.

(v) A participating utility shall provide a municipality with aggregated consumption data for participating customers within the municipality’s jurisdiction to allow for reporting on progress toward climate action goals by the municipality. A participating utility shall also publicly disclose, on a geographic basis, consumption data and reductions in emissions of greenhouse gases achieved by participating customers in the utility’s green tariff shared renewables program, on an aggregated basis consistent with privacy protections as specified in Chapter 5 (commencing with Section 8380) of Division 4.1.
(w) Nothing in this section prohibits or restricts a community choice aggregator from offering its own voluntary renewable energy programs to participating customers of the community choice aggregation.

**2834.** This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
Wind Energy Facilities Siting  
North Carolina

Bill/Act: HB 484

Summary: HB 484 creates a new statewide permitting system for wind development. The bill also requires a public notification and hearing process to capture comments from citizens, local governments, military installations and others about an applicant’s intentions.

Status: Signed into law May 17, 2013.

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Comments: From Governor Pat McCrory Press Release (May 17, 2013)

Governor Pat McCrory signed into law landmark legislation (H.B. 484) today that creates a framework for the establishment of wind energy facilities in North Carolina and signals the governor’s continued support for an “all-of-the-above” energy plan.

“This law will help unleash our state’s energy resources to power our economy and enable us to harness those resources in a safe, reliable and cost-effective manner,” said Governor McCrory.

"Our pursuit of energy from biofuels, clean coal, natural gas, solar, nuclear and wind are part of a prosperous energy future in North Carolina. However, we could not have had such comprehensive legislation related to wind energy without strong support from the military, the wind industry, environmental groups and local communities.”

“The Permitting of Wind Energy Facilities” law states that the N.C. Department of Environment and Natural Resources must issue a permit before a wind energy operation can begin in North Carolina. The legislation provides a framework for the Department of Environment and Natural Resources to assist wind developers in identifying suitable locations for wind energy facilities in North Carolina and the steps that follow in the permitting process.

The law requires people pursuing wind energy projects to meet a timeline of requirements during the application process. It also establishes a public notification and hearing process to alert nearby citizens, local governments, military installations and others of an applicant’s intentions before an application is filed.

The Department of Environment and Natural Resources can deny a permit if there are issues that have adverse impacts to private landowners as well as the environment, natural resources, endangered and threatened species, cultural and recreational sites, or military operations and training.

Read more: http://www.governor.state.nc.us/newsroom/press-releases/20130517/governor-pat-mccrory-signs-wind-energy-bill-law-support-%E2%80%9Call-above%E2%80%9D
Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT TO ESTABLISH A PERMITTING PROGRAM FOR THE SITING AND
OPERATION OF WIND ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new
Article to read:

"Article 21C.
"Permitting of Wind Energy Facilities.

In addition to the definitions set forth in G.S. 143-212, the following definitions apply to
this Article:

(1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine
Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry
Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point,
the United States Coast Guard Air Station at Elizabeth City, Naval Support
Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher,
and Seymour Johnson Air Force Base, in its own right and as the responsible
entity for the Dare County Bombing Range, and any facility located within
the State that is subject to the installations' oversight and control.

(2) "Wind energy facility" means the turbines, accessory buildings, transmission
facilities, and any other equipment necessary for the operation of the facility
that cumulatively, with any other wind energy facility whose turbines are
located within one-half mile of one another, have a rated capacity of one
megawatt or more of energy.

(3) "Wind energy facility expansion" means any activity that (i) adds or
substantially modifies turbines or transmission facilities, including
increasing the height of such equipment, over that which was initially
permitted or (ii) increases the footprint of the wind energy facility over that
which was initially permitted.

§ 143-215.116. Permit to site wind energy facilities.
No person shall undertake construction, operation, or expansion activities associated with a
wind energy facility in this State without first obtaining a permit from the Department.

§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication
package requirements.
(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to
filing an application for a permit to construct, operate, or expand a wind energy facility, a
person shall request a preapplication site evaluation meeting to be held between the applicant
and the Department. The preapplication site evaluation meeting shall be held no less than 120
days prior to filing an application for a permit to construct, operate, or expand a wind energy
facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind
energy facility or wind energy facility expansion. The preliminary evaluation
of the proposed wind energy facility or proposed wind energy facility
expansion shall determine if the site or sites:

a. Pose serious risk to civil air navigation or military air navigation
routes, air traffic control areas, military training routes, special-use
air space, radar, or other potentially affected military operations.
b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

§ 143-215.118. Permit application scoping meeting and notice.

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the applicant and the Department. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.
§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

1. A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.
2. A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.
3. A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.
4. Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:
   a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.
   b. A description of the proposed wind energy facility or proposed wind energy facility expansion.
5. A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.
6. Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Siting Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
7. Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant’s engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.
8. A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.
9. A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.

10. A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

11. An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

12. The application fee required by subsection (b) of this section.

13. A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

14. Other data or information the Department may reasonably require.

(a1) Confidentiality of Trade Secrets and Business Information. – To the extent that any documents included in the permit application contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act.

(b) Fees. – An applicant for a permit for a proposed wind energy facility or proposed wind energy facility expansion under this section shall submit with the application required pursuant to subsection (a) of this section, an application fee of three thousand five hundred dollars ($3,500).

(c) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

1. A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

2. A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

3. A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.

(d) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.
(e) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

3. The commanding military officer of any potentially affected major military installation or the commanding military officer’s designee.
4. The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion unless the Department finds any one or more of the following:

1. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

2. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (c) of G.S. 143-215.119.

3. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

4. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

5. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

6. Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or
create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

"§ 143-215.121. Financial assurance requirements.

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of
credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

§ 143-215.122. Monitoring and reporting.

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.


The Department shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested.

§ 143-215.124. Record keeping.

The Department shall serve as the custodian of all data, information, and records received from a permit applicant or a major military installation pursuant to this Article and shall ensure that information provided to the Department that constitutes trade secrets, as that term is defined in G.S. 66-152, and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have executed a confidentiality agreement with the owner of such information. Information designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to disclosure pursuant to G.S. 132-6.


The Environmental Management Commission shall adopt any rules necessary for the implementation of this Article. In adopting rules, the Commission shall consult with the Coastal Resources Commission to ensure that the development of statewide permitting requirements is consistent with and in consideration of the characteristics unique to the coastal area of the State to the maximum extent practicable.

§ 143-215.126. Civil penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility or wind energy facility expansion without obtaining a permit under this Article or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day.

(b) The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without first obtaining a permit under this Article or who constructs or operates a wind energy facility or wind energy facility expansion in violation of its permit terms and conditions.
SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions that have not received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration on or before that date.

In the General Assembly read three times and ratified this the 16th day of May, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:11 a.m. this 17th day of May, 2013
Bill/Act: SB 1456

Status: Signed into law on April 21, 2014.

Summary: SB 1456 directs retail electric suppliers to create a new class of retail customer for those who install distributed power generation, i.e. on-site electricity generation that is connected to the grid. The new class and its associated tariff must be created by December 31, 2015, but does not apply to customers with distributed power generation as of November 1, 2014.

Comments: The Oklahoman (April 22, 2014)

Oklahoma Gov. Mary Fallin signed a bill Monday that would allow regulated electric utilities to establish a new customer class for users of rooftop solar panels or small wind turbines.

In signing Senate Bill 1456, Fallin also took the rare step of issuing an executive order directing its implementation. SB 1456 would allow electric utilities to apply to the Oklahoma Corporation Commission to establish a higher base customer charge for users of rooftop solar or small wind turbines. The higher fixed charge would be used to recover some of the infrastructure costs to safely send excess electricity back to the grid.

Fallin’s executive order emphasized the importance of renewable energy in her Oklahoma First Energy Plan, which was released in 2011. “A proper and required examination of these and other rate reforms will ensure that Oklahoma appropriately implements the Oklahoma First Energy Plan while protecting future distributed generation customers,” Fallin wrote in the executive order.

SB 1456 drew opposition from solar advocates, environmentalists and some conservative groups opposed to what they saw as an unnecessary roadblock to solar development by regulated utilities. The bill goes into effect Nov. 1, and any new tariffs covering distributed generation users would have to be finalized before the end of 2015.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
An Act

ENROLLED SENATE
BILL NO. 1456

By: Griffin of the Senate

and

Turner, Echols, Jackson, Newell, Schwartz, Murphey, Brumbaugh, Pittman, Rousselot and Fisher of the House

An Act relating to public utilities; amending 17 O.S. 2011, Section 156, which relates to distributed generation costs; defining terms; modifying prohibition relating to recovery of certain fixed costs from electric customers utilizing certain distributed generation; prohibiting subsidization of certain costs among customer class; requiring rate tariff adjustment by certain date; and providing an effective date.

SUBJECT: Electrical power distribution requirements

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 2011, Section 156, is amended to read as follows:

Section 156. A. As used in this section:

1. "Distributed generation" means:

   a. a device that provides electric energy that is owned, operated, leased or otherwise utilized by the customer,
b. is interconnected to and operates in parallel with the retail electric supplier's grid and is in compliance with the standards established by the retail electric supplier.

c. is intended to offset only the energy that would have otherwise been provided by the retail electric supplier to the customer during the monthly billing period,

d. does not include generators used exclusively for emergency purposes,

e. does not include generators operated and controlled by a retail electric supplier, and

f. does not include customers who receive electric service which includes a demand-based charge.

2. "Fixed charge" means any fixed monthly charge, basic service, or other charge not based on the volume of energy consumed by the customer, which reflects the actual fixed costs of the retail electric supplier.

3. “Retail electric supplier” means an entity engaged in the furnishing of retail electric service within the State of Oklahoma and is rate regulated by the Oklahoma Corporation Commission.

B. No public utility retail electric supplier shall increase rates charged or enforce a surcharge on the basis of the use or installation of a solar energy device by a consumer above that required to recover the full costs necessary to serve customers who install distributed generation on the customer side of the meter after the effective date of this act.

C. No retail electric supplier shall allow customers with distributed generation installed after the effective date of this act to be subsidized by customers in the same class of service who do not have distributed generation.
D. A higher fixed charge for customers within the same class of service that have distributed generation installed after the effective date of this act, as compared to the fixed charges of those customers who do not have distributed generation, is a means to avoid subsidization between customers within that class of service and shall be deemed in the public interest.

E. Retail electric suppliers shall implement tariffs in compliance with this act no later than December 31, 2015.

SECTION 2. This act shall become effective November 1, 2014.
Passed the Senate the 12th day of March, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2014.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this ________________
day of __________________, 20_____, at _____ o'clock _____ M.

By: ________________________________

Approved by the Governor of the State of Oklahoma this ______
day of __________________, 20_____, at _____ o'clock _____ M.

______________________________
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this ______
day of __________________, 20 _____, at _____ o'clock _____ M.

By: ________________________________
05-35B-01 Genetically Modified Food Labeling Vermont
Bill/Act: HB 112

Status: Signed into law on May 8, 2014.

Summary: (From Lexis/Nexus) Section 3403 sets forth the GMO labeling requirements in Vermont. Foods that are produced entirely or partially with genetic engineering must be labeled as follows:

• Packaged raw agricultural commodity (RAC): “produced with genetic engineering” on package.
• RAC that is not packaged: “produced with genetic engineering” posted on label on retail store shelf or bin.
• Processed food that contains a product or products of genetic engineering: “partially produced with genetic engineering,” “may be produced with genetic engineering,” or “produced with genetic engineering.”

Genetic engineering is defined as a process by which a food is produced from an organism or organisms in which the genetic material has been changed using rDNA technology or fusion cell techniques. One question raised by the legislation is whether it is drafted broadly enough to include processed foods that contain ingredients that were derived from GMOs even if the processed foods do not contain any detectable levels of GM material or protein. Are these foods truly partially produced with genetic engineering?

Prohibition on “Natural” Labeling
H.B. 112 would prohibit the manufacturer of foods produced with GMOs from labeling the food as “natural,” “naturally made,” “naturally grown,” “all natural” or similar terms that “would have a tendency to mislead a consumer.” The “natural” labeling prohibition would not apply, however, to any product subject to an exemption from the labeling mandate.

Exemptions
Like most other state GMO labeling bills, H.B. 112 provides exemptions from the labeling requirements to a number of products, including: food derived from animals fed GMO food, processed food that contains processing aids or enzymes produced with genetic engineering, alcoholic beverages, food containing less than 0.9% by weight of materials produced with genetic engineering, food certified by an independent organization as being GMO free, food intended for immediate human consumption or food served in restaurants, and medical food.

H.B. 112 would also exempt from the labeling requirements food produced without the knowing or intentional use of GMO ingredients. Food will only be deemed to be produced without the knowing or intentional use of GMO ingredients if a sworn statement is obtained from a supplier indicating the food was not knowingly or intentionally produced with genetic engineering and was segregated from food that may have been produced with genetic engineering.
Liability and Enforcement
Under H.B. 112, liability for failing to properly label food containing GMOs may result in civil penalties of $1,000.00 per day, per product. The Vermont Attorney General is vested with the authority to promulgate and enforce regulations specifying that violations of H.B. 112 constitute unfair or deceptive acts under Vermont's existing consumer protection laws. Consumers would be entitled to a private right of action to enforce violations of any regulations promulgated.

Retailers would not liable for failure to label a manufacturer’s processed food that contains GMOs; however, a retailer may be liable for failing to label a GMO-based raw agricultural commodity.

Comments: USAToday (May 8, 2014)
Standing on the Statehouse steps before a legion of activists, Vermont's governor signed a new law Thursday that could make the state the first to require labeling of foods containing genetically modified organisms — and also could make it the first to be sued over the issue.

The law would take effect in July 2016, giving the state Attorney General's Office time to prepare specific rules about the label. But supporters and opponents alike expect Vermont to be sued, possibly by food manufacturers who say the label would unfairly warn consumers away from genetically modified foods that they argue are safe.

"Today, we are the first state in America that says simply, 'Vermonters have spoken loud and clear: We want to know what's in our food,' " Gov. Peter Shumlin said, comparing the issue to other state laws that were first in the nation, banning slavery and allowing same-sex marriage. "We are pro-choice. We are pro-information."

Even as Shumlin and some 300 supporters of the law celebrated, the governor announced a website — www.foodfightfundvt.org — and encouraged people to donate to help pay legal expenses in case the law is challenged. "We will win the food fight," Shumlin said.

The national Grocery Manufacturers Association called the law "legally suspect" in a statement released Thursday. The statement also said the trade group will file suit in federal court to overturn the law. The group argues that GMOs are safe and that consumers seeking to avoid them may choose certified organic foods, which are GMO free.

Republicans in Congress also are working on a bill that would forbid states from passing and enforcing laws requiring GMO labeling.

State Attorney General Bill Sorrell said he has no doubt the law will be challenged but he will defend the state. The state lost a previous challenge to a milk-labeling law but won the challenge of a mercury-labeling law.

The new law requires most food sold in Vermont that contains genetically modified organisms to be labeled as of July 1, 2016. No other states have such laws in effect, but 64 countries require
labeling and Connecticut and Maine have laws that would take effect if neighboring states join in.

…Critics characterized the law as "irresponsible," based on scare tactics, costly and legally dicey:

- "Economic studies have shown that such a program could needlessly increase food costs on the average household by as much as $400 a year," said Cathleen Enright, executive vice president for food and agriculture with the Biotechnology Industry Organization.
- "These advocates willfully overlook the fact that GM foods have been principally responsible for increasing abundance and reducing the overall price of food," said Val Giddings, senior fellow with the Information Technology and Innovation Foundation, which supports genetically modified organisms.

Read more: http://www.usatoday.com/story/news/politics/2014/05/08/genetically-modified-foods/8860423/

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
No. 120. An act relating to the labeling of food produced with genetic engineering.

(H.112)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) Federal law does not provide for the labeling of food that is produced with genetic engineering, as evidenced by the following:

(A) Federal labeling and food and drug laws do not require manufacturers of food produced with genetic engineering to label such food as genetically engineered.

(B) As indicated by the testimony of a U.S. Food and Drug Administration (FDA) Supervisory Consumer Safety Officer, the FDA has statutory authority to require labeling of food products, but does not consider genetically engineered foods to be materially different from their traditional counterparts to require such labeling.

(C) No formal FDA policy on the labeling of genetically engineered foods has been adopted. Currently, the FDA only provides nonbinding guidance on the labeling of genetically engineered foods, including a 1992 draft guidance regarding labeling of food produced from genetic engineering and a 2001 draft guidance for industry regarding voluntary labeling of food produced from genetic engineering.

(2) Federal law does not require independent testing of the safety of food produced with genetic engineering, as evidenced by the following:
(A) In its regulation of food, the FDA does not distinguish genetically engineered foods from foods developed by traditional plant breeding.

(B) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers submit safety research and studies, the majority of which the manufacturers finance or conduct. The FDA reviews the manufacturers’ research and reports through a voluntary safety consultation, and issues a letter to the manufacturer acknowledging the manufacturer’s conclusion regarding the safety of the genetically engineered food product being tested.

(C) The FDA does not use meta-studies or other forms of statistical analysis to verify that the studies it reviews are not biased by financial or professional conflicts of interest.

(D) There is a lack of consensus regarding the validity of the research and science surrounding the safety of genetically engineered foods, as indicated by the fact that there are peer-reviewed studies published in international scientific literature showing negative, neutral, and positive health results.

(E) There have been no long-term or epidemiologic studies in the United States that examine the safety of human consumption of genetically engineered foods.
(F) Independent scientists may be limited from conducting safety and risk-assessment research of genetically engineered materials used in food products due to industry restrictions or patent restrictions on the use for research of those genetically engineered materials used in food products.

(3) Genetically engineered foods are increasingly available for human consumption, as evidenced by the fact that:

(A) it is estimated that up to 80 percent of the processed foods sold in the United States are at least partially produced from genetic engineering; and

(B) according to the U.S. Department of Agriculture, in 2012, genetically engineered soybeans accounted for 93 percent of U.S. soybean acreage, and genetically engineered corn accounted for 88 percent of U.S. corn acreage.

(4) Genetically engineered foods potentially pose risks to health, safety, agriculture, and the environment, as evidenced by the following:

(A) There are conflicting studies assessing the health consequences of food produced from genetic engineering.

(B) The genetic engineering of plants and animals may cause unintended consequences.

(C) The use of genetically engineered crops is increasing in commodity agricultural production practices, which contribute to genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests, diseases, and variable climate conditions.
(D) Cross-pollination of or cross-contamination by genetically engineered crops may contaminate organic crops and, consequently, affect marketability of those crops.

(E) Cross-pollination from genetically engineered crops may have an adverse effect on native flora and fauna. The transfer of unnatural deoxyribonucleic acid to wild relatives can lead to displacement of those native plants, and in turn, displacement of the native fauna dependent on those wild varieties.

(5) For multiple health, personal, religious, and environmental reasons, the State of Vermont finds that food produced from genetic engineering should be labeled as such, as evidenced by the following:

(A) Public opinion polls conducted by the Center for Rural Studies at the University of Vermont indicate that a large majority of Vermonters want foods produced with genetic engineering to be labeled as such.

(B) Polling by the New York Times indicated that many consumers are under an incorrect assumption about whether the food they purchase is produced from genetic engineering, and labeling food as produced from genetic engineering will reduce consumer confusion or deception regarding the food they purchase.

(C) Because genetic engineering, as regulated by this act, involves the direct injection of genes into cells, the fusion of cells, or the hybridization of genes that does not occur in nature, labeling foods produced with genetic
engineering as “natural,” “naturally made,” “naturally grown,” “all natural,” or other similar descriptors is inherently misleading, poses a risk of confusing or deceiving consumers, and conflicts with the general perception that “natural” foods are not genetically engineered.

(D) Persons with certain religious beliefs object to producing foods using genetic engineering because of objections to tampering with the genetic makeup of life forms and the rapid introduction and proliferation of genetically engineered organisms and, therefore, need food to be labeled as genetically engineered in order to conform to religious beliefs and comply with dietary restrictions.

(E) Labeling gives consumers information they can use to make decisions about what products they would prefer to purchase.

(6) Because both the FDA and the U.S. Congress do not require the labeling of food produced with genetic engineering, the State should require food produced with genetic engineering to be labeled as such in order to serve the interests of the State, notwithstanding limited exceptions, to prevent inadvertent consumer deception, prevent potential risks to human health, protect religious practices, and protect the environment.
Sec. 2. 9 V.S.A. chapter 82A is added to read:

CHAPTER 82A. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

§ 3041. PURPOSE

It is the purpose of this chapter to:

(1) Public health and food safety. Establish a system by which persons may make informed decisions regarding the potential health effects of the food they purchase and consume and by which, if they choose, persons may avoid potential health risks of food produced from genetic engineering.

(2) Environmental impacts. Inform the purchasing decisions of consumers who are concerned about the potential environmental effects of the production of food from genetic engineering.

(3) Consumer confusion and deception. Reduce and prevent consumer confusion and deception by prohibiting the labeling of products produced from genetic engineering as “natural” and by promoting the disclosure of factual information on food labels to allow consumers to make informed decisions.

(4) Protecting religious practices. Provide consumers with data from which they may make informed decisions for religious reasons.

§ 3042. DEFINITIONS

As used in this chapter:

(1) “Consumer” shall have the same meaning as in subsection 2451a(a) of this title.
(2) “Enzyme” means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

(3) “Food” means food intended for human consumption.

(4) “Genetic engineering” is a process by which a food is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or

(B) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

(5) “In vitro nucleic acid techniques” means techniques, including recombinant DNA or ribonucleic acid techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.
(6) “Manufacturer” means a person who:

(A) produces a processed food or raw agricultural commodity under its own brand or label for sale in or into the State;

(B) sells in or into the State under its own brand or label a processed food or raw agricultural commodity produced by another supplier;

(C) owns a brand that it licenses or licensed to another person for use on a processed food or raw commodity sold in or into the State;

(D) sells in, sells into, or distributes in the State a processed food or raw agricultural commodity that it packaged under a brand or label owned by another person;

(E) imports into the United States for sale in or into the State a processed food or raw agricultural commodity produced by a person without a presence in the United States; or

(F) produces a processed food or raw agricultural commodity for sale in or into the State without affixing a brand name.

(7) “Organism” means any biological entity capable of replication, reproduction, or transferring of genetic material.

(8) “Processed food” means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.
(9) “Processing aid” means:

(A) a substance that is added to a food during the processing of the food but that is removed in some manner from the food before the food is packaged in its finished form;

(B) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or

(C) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at levels that do not have any technical or functional effect in that finished food.

(10) “Raw agricultural commodity” means any food in its raw or natural state, including any fruit or vegetable that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing.

§ 3043. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth in section 3044 of this title, food offered for sale by a retailer after July 1, 2016 shall be labeled as produced entirely or in part from genetic engineering if it is a product:

(1) offered for retail sale in Vermont; and

(2) entirely or partially produced with genetic engineering.
(b) If a food is required to be labeled under subsection (a) of this section, it shall be labeled as follows:

(1) in the case of a packaged raw agricultural commodity, the manufacturer shall label the package offered for retail sale, with the clear and conspicuous words “produced with genetic engineering”;

(2) in the case of any raw agricultural commodity that is not separately packaged, the retailer shall post a label appearing on the retail store shelf or bin in which the commodity is displayed for sale with the clear and conspicuous words “produced with genetic engineering”; or

(3) in the case of any processed food that contains a product or products of genetic engineering, the manufacturer shall label the package in which the processed food is offered for sale with the words: “partially produced with genetic engineering”; “may be produced with genetic engineering”; or “produced with genetic engineering.”

(c) Except as set forth under section 3044 of this title, a manufacturer of a food produced entirely or in part from genetic engineering shall not label the product on the package, in signage, or in advertising as “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import that would have a tendency to mislead a consumer.

(d) This section and the requirements of this chapter shall not be construed to require:
(1) the listing or identification of any ingredient or ingredients that were genetically engineered; or

(2) the placement of the term “genetically engineered” immediately preceding any common name or primary product descriptor of a food.

§ 3044. EXEMPTIONS

The following foods shall not be subject to the labeling requirements of section 3043 of this title:

(1) Food consisting entirely of or derived entirely from an animal which has not itself been produced with genetic engineering, regardless of whether the animal has been fed or injected with any food, drug, or other substance produced with genetic engineering.

(2) A raw agricultural commodity or processed food derived from it that has been grown, raised, or produced without the knowing or intentional use of food or seed produced with genetic engineering. Food will be deemed to be as described in this subdivision only if the person otherwise responsible for complying with the requirements of subsection 3043(a) of this title with respect to a raw agricultural commodity or processed food obtains, from whomever sold the raw agricultural commodity or processed food to that person, a sworn statement that the raw agricultural commodity or processed food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic
engineering at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in this subdivision.

(3) Any processed food which would be subject to subsection 3043(a) of this title solely because it includes one or more processing aids or enzymes produced with genetic engineering.

(4) Any beverage that is subject to the provisions of Title 7.

(5) Any processed food that would be subject to subsection 3043(a) of this title solely because it includes one or more materials that have been produced with genetic engineering, provided that the genetically engineered materials in the aggregate do not account for more than 0.9 percent of the total weight of the processed food.

(6) Food that an independent organization has verified has not been knowingly or intentionally produced from or commingled with food or seed produced with genetic engineering. The Office of the Attorney General, after consultation with the Department of Health, shall approve by procedure the independent organizations from which verification shall be acceptable under this subdivision (6).

(7) Food that is not packaged for retail sale and that is:

(A) a processed food prepared and intended for immediate human consumption; or
(B) served, sold, or otherwise provided in any restaurant or other food establishment, as defined in 18 V.S.A. § 4301, that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

(8) Medical food, as that term is defined in 21 U.S.C. § 360ee(b)(3).

§ 3045. RETAILER LIABILITY

(a) A retailer shall not be liable for the failure to label a processed food as required by section 3043 of this title, unless the retailer is the producer or manufacturer of the processed food.

(b) A retailer shall not be held liable for failure to label a raw agricultural commodity as required by section 3043 of this title, provided that the retailer, within 30 days of any proposed enforcement action or notice of violation, obtains a sworn statement in accordance with subdivision 3044(2) of this title.

§ 3046. SEVERABILITY

If any provision of this chapter or its application to any person or circumstance is held invalid or in violation of the Constitution or laws of the United States or in violation of the Constitution or laws of Vermont, the invalidity or the violation shall not affect other provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

§ 3047. FALSE CERTIFICATION

It shall be a violation of this chapter for a person knowingly to provide a false statement under subdivision 3044(2) of this title that a raw agricultural
commodity or processed food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time.

§ 3048. PENALTIES; ENFORCEMENT

(a) Any person who violates the requirements of this chapter shall be liable for a civil penalty of not more than $1,000.00 per day, per product.

Calculation of the civil penalty shall not be made or multiplied by the number of individual packages of the same product displayed or offered for retail sale. Civil penalties assessed under this section shall accrue and be assessed per each uniquely named, designated, or marketed product.

(b) The Attorney General shall have the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title. Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title.

Sec. 3. ATTORNEY GENERAL RULEMAKING; LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

The Attorney General may adopt by rule requirements for the implementation of 9 V.S.A. chapter 82A, including:

(1) a requirement that the label required for food produced from genetic engineering include a disclaimer that the Food and Drug Administration does
not consider foods produced from genetic engineering to be materially different from other foods; and

(2) notwithstanding the labeling language required by 9 V.S.A. § 3043(b), a requirement that a label required under 9 V.S.A. chapter 82A identify food produced entirely or in part from genetic engineering in a manner consistent with requirements in other jurisdictions for the labeling of food, including the labeling of food produced with genetic engineering.

Sec. 4. GENETICALLY ENGINEERED FOOD LABELING SPECIAL FUND

(a) There is established a Genetically Engineered Food Labeling Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5 to pay costs or liabilities incurred by the Attorney General or the State in implementation and administration, including rulemaking, of the requirements under 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering.

(b) The Fund shall consist of:

(1) private gifts, bequests, grants, or donations of any amount made to the State from any public or private source for the purposes for which the Fund was established;

(2) except for those recoveries that by law are appropriated for other uses, up to $1,500,000.00 of settlement monies collected by the Office of the Attorney General that, as determined by the Office of the Attorney General after consultation with the Joint Fiscal Office and the Department of Finance
and Management, exceed the estimated amounts of settlement proceeds in
the July 2014 official revenue forecast issued under 32 V.S.A. § 305a for
fiscal year 2015; and

(3) such sums as may be appropriated or transferred by the General
Assembly.

(c) Monies in the Fund from settlement monies collected by the Office of
the Attorney General or from funds appropriated or transferred by the General
Assembly shall be disbursed only if monies in the Fund from private gifts,
bequests, grants, or donations are insufficient to the Attorney General to pay
the costs or liabilities of the Attorney General or the State incurred in
implementation and administration of the requirements of 9 V.S.A.
chapter 82A.

(d) On or after July 1, 2018, if the Attorney General is not involved in
ongoing litigation regarding the requirements of 9 V.S.A. chapter 82A and
monies in the Fund exceed the costs or liabilities of the Attorney General or
the State:

(1) unexpended monies in the Fund received from private or public
sources shall be appropriated by the General Assembly, after review by the
Senate and House Committees on Appropriations, the Senate Committee on
Agriculture, and the House Committee on Agriculture and Forest Products, for
the support of agricultural activities or agricultural purposes in the State.
including promotion of value-added products, compliance with water quality requirements, and marketing assistance and development; and

(2) unexpended State monies in the Fund shall revert to the General Fund.

Sec. 5. ATTORNEY GENERAL FISCAL YEAR BUDGET

If, in fiscal year 2015, $1,500,000.00 in monies is not collected in the Genetically Engineered Food Labeling Special Fund established under Sec. 4 of this act, the Attorney General shall request in the fiscal year 2016 budget proposal for the Office of the Attorney General the monies necessary to implement and administer the requirements established by 9 V.S.A. chapter 82A for the labeling of food produced from genetic engineering.

Sec. 6. ATTORNEY GENERAL REPORT ON LABELING OF MILK

(a) On or before January 15, 2015, the Office of the Attorney General, after consultation with the Agency of Agriculture, Food and Markets, shall submit to the Senate and House Committees on the Judiciary, the Senate Committee on Agriculture, and the House Committee on Agriculture and Forest Products a report regarding whether milk and milk products should be subject to the labeling requirements of 9 V.S.A. chapter 82A for food produced with genetic engineering. The report shall include:

(1) a recommendation as to whether milk or milk products should be subject to the requirements of 9 V.S.A. chapter 82A; and
(2) the legal basis for the recommendation under subdivision (1) of this subsection.

(b) In exercise of the Attorney General’s authority to defend the interests of the State, the Attorney General, in his or her discretion, may notify the General Assembly that it is not in the best interest of the State to submit the report required under subsection (a) of this section on or before January 15, 2015. Any notice submitted under this subsection shall estimate the date when the report shall be submitted to the General Assembly.

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 3 (Attorney General rulemaking), 4 (genetically engineered food labeling special fund), 5 (Attorney General budget fiscal year 2016), 6 (Attorney General report; milk) shall take effect on passage.

(b) Secs. 1 (findings) and 2 (labeling of food produced with genetic engineering) shall take effect on July 1, 2016.

Date Governor signed bill: May 8, 2014
Summary: S 734 requires that economic development tax incentives undergo regular and rigorous evaluations including details on the scope, quality and frequency of those reviews and how evaluations should be linked to budget decisions.

Status: Signed into law July 11, 2013.

Comment: From The Pew Charitable Trusts (July 15, 2013)

Earlier this month, Rhode Island adopted a law requiring that economic development tax incentives undergo regular and rigorous evaluations. The legislation (S 734) passed the General Assembly with only one dissenting vote and was signed by Governor Lincoln Chafee.

Because of this legislation, Rhode Island is on track to become a leader among the states on the evaluation of economic development tax incentives—those tax credits, deductions, and exemptions meant to increase jobs and businesses. Rhode Island is now one of only a handful of states to establish an ongoing schedule for such evaluations and ensure that evidence from these reviews informs lawmakers’ decisions on whether and how to use tax incentives.

Among the notable features of Rhode Island’s law are:

- The scope of evaluation: Regular reviews—every three years for existing programs—are required for 17 tax incentive programs that together are projected to cost the state more than $45 million in fiscal year 2013. Incentives created in the future must also be evaluated.
- The quality of evaluation: Evaluators must measure the benefits and costs of each incentive including its impact on the state’s budget and economy. The analysis must consider whether the economic benefits stayed in the state or flowed elsewhere, a key part of determining any incentive’s success. Each report must also draw clear conclusions about the incentive’s effectiveness—whether it meets the goals lawmakers set for the program and how it might be improved.
- The link to budget decisions: Following each incentive’s review, the governor’s budget proposal must make a recommendation to continue, reform, or end the program, encouraging policymakers to consider the evaluation findings. Budget hearings in the Legislature will provide opportunities to discuss and compare the results and costs of tax incentives alongside other types of state spending. Rhode Island approved a law in 2013 that builds review of tax incentives into the annual budget process. Starting in 2014, each incentive will be evaluated by the state’s tax office every three years. Informed by the findings, the governor’s budget proposal will include a recommendation on whether to continue, change, or end the program. These gubernatorial recommendations will then be the subject of legislative hearings, providing lawmakers with opportunities to review evaluation results and consider tax incentives alongside other state spending.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
2013 -- S 0734 SUBSTITUTE B

LC02050/SUB B

STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2013

A N A C T
RELATING TO TAXATION -- RHODE ISLAND ECONOMIC DEVELOPMENT TAX CREDIT ACCOUNTABILITY ACT OF 2013

Introduced By: Senators DaPonte, Goodwin, Ruggerio, Paiva Weed, and Lynch

Date Introduced: March 13, 2013

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

    SECTION 1. Section 35-1.1-3 of the General Laws in Chapter 35-1.1 entitled "Office of Management and Budget" is hereby amended to read as follows:

    35-1.1-3. Director of management and budget. -- Appointment and responsibilities.
    (a) Within the department of administration there shall be a director of management and budget, who shall be appointed by the director of administration with the approval of the governor. The director shall be responsible to the governor and director of administration for supervising the office of management and budget and for managing and providing strategic leadership and direction to the budget officer, the performance management office, and the federal grants management office.
    (b) The director of management and budget shall be responsible to:
        (1) Oversee, coordinate and manage the functions of the budget officer as set forth by section 35-3, program performance management as set forth by § 35-3-24.1, approval of agreements with federal agencies defined by § 35-3-25 and budgeting, appropriation and receipt of federal monies as set forth by chapter 42-41;
        (2) Manage federal fiscal proposals and guidelines, and serve as the State Clearinghouse for the application of federal grants; and,
        (3) Maximize the indirect cost recoveries by state agencies set forth by § 35-4-23.1.
        (4) To undertake a comprehensive review and inventory of all reports filed by the
executive office and agencies of the state with the general assembly. The inventory should include but not be limited to: the type, title, and summary of reports; the author(s) of the reports; the specific audience of the reports; and a schedule of the reports’ release. The inventory shall be presented to the general assembly as part of the budget submission on a yearly basis. The office of management and budget shall also make recommendations to consolidate, modernize the reports, and to make recommendations for elimination or expansion of each report.

SECTION 2. Section 35-3-7 of the General Laws in Chapter 35-3 entitled “State Budget” is hereby amended to read as follows:

35-3.7. Submission of budget to general assembly - Contents. --

(a) On or before the third Thursday in January in each year of each January session of the general assembly, the governor shall submit to the general assembly a budget containing a complete plan of estimated revenues and proposed expenditures, with a personnel supplement detailing the number and titles of positions of each agency and the estimates of personnel costs for the next fiscal year, and with the inventory required by subsection 35-1.1-3(b)(4). Provided, however, in those years that a new governor is inaugurated, the new governor shall submit the budget on or before the first Thursday in February. In the budget the governor may set forth in summary and detail:

(1) Estimates of the receipts of the state during the ensuing fiscal year under laws existing at the time the budget is transmitted and also under the revenue proposals, if any, contained in the budget, and comparisons with the estimated receipts of the state during the current fiscal year, as well as actual receipts of the state for the last two (2) completed fiscal years.

(2) Estimates of the expenditures and appropriations necessary in the governor's judgment for the support of the state government for the ensuing fiscal year, and comparisons with appropriations for expenditures during the current fiscal year, as well as actual expenditures of the state for the last two (2) complete fiscal years.

(3) Financial statements of the

(i) Condition of the treasury at the end of the last completed fiscal year;

(ii) The estimated condition of the treasury at the end of the current fiscal year; and

(iii) Estimated condition of the treasury at the end of the ensuing fiscal year if the financial proposals contained in the budget are adopted.

(4) All essential facts regarding the bonded and other indebtedness of the state.

(5) A report indicating those program revenues and expenditures whose funding source is proposed to be changed from state appropriations to restricted receipts, or from restricted receipts to other funding sources.
(6) Such other financial statements and data as in the governor's opinion are necessary or desirable.

(b) Any other provision of the general laws to the contrary notwithstanding, the proposed appropriations submitted by the governor to the general assembly for the next ensuing fiscal year should not be more than five and one-half percent (5.5%) in excess of total state appropriations, excluding any estimated supplemental appropriations, enacted by the general assembly for the fiscal year previous to that for which the proposed appropriations are being submitted; provided, that the increased state share provisions required to achieve fifty percent (50%) state financing of local school operations as provided for in P.L. 1985, ch. 182, shall be excluded from the definition of total appropriations.

(c) Notwithstanding the provisions of subsection 35-3-7(a), the governor shall submit to the general assembly a budget for the fiscal year ending June 30, 2006 not later than the fourth (4th) Thursday in January 2005.

(d) Notwithstanding the provisions of subsection 35-3-7(a), the governor shall submit to the general assembly a supplemental budget for the fiscal year ending June 30, 2006 and/or a budget for the fiscal year ending June 30, 2007 not later than Thursday, January 26, 2006.

(e) Notwithstanding the provisions of subsection 35-3-7(a), the governor shall submit to the general assembly a supplemental budget for the fiscal year ending June 30, 2007 and/or a budget for the fiscal year ending June 30, 2008 not later than Wednesday, January 31, 2007.

(f) Notwithstanding the provisions of subsection 35-3-7(a), the governor shall submit to the general assembly a budget for the fiscal year ending June 30, 2012 not later than Thursday, March 10, 2011.

(g) Notwithstanding the provisions of subsection 35-3-7(a), the governor shall submit to the general assembly a budget for the fiscal year ending June 30, 2013 not later than Tuesday, January 31, 2012.

SECTION 3. Section 22-12-3 of the General Laws in Chapter 22-12 entitled “Fiscal Notes” is hereby amended to read as follows:

22-12-3. Request for fiscal notes.-- (a) Fiscal notes shall only be requested by the chairperson of the house or senate finance committee upon being notified by another committee chairperson, the sponsor of the bill or resolution, or in the case of bills or resolutions affecting cities or towns, by the Rhode Island League of Cities and Towns in addition to the individuals referred to in this section, of the existence of any bill or resolution described in § 22-12-1. Requests shall be made in the form and substance as may be requested by the finance committee chairperson, and shall be forwarded through the house or senate fiscal adviser to the state budget
officer, who shall determine the agency or agencies affected by the bill, or for bills affecting cities
towns to the chief executive official of the cities and the towns, the Rhode Island League of
Cities and Towns, and the department of revenue. The budget officer shall then be responsible, in
cooperation with these agencies, for the preparation of the fiscal note, except that the department
of administration, in consultation and cooperation with the Rhode Island League of Cities and
Towns, shall be responsible for the preparation of the fiscal note for bills affecting cities and

(b) The chairperson of either the house finance or senate finance committee may also
require executive branch agencies to provide performance metrics when legislation affecting an
agency’s program or policy has an economic impact.

SECTION 4. Section 42-146-6 of the General Laws in Chapter 42-142 entitled
“Department of Revenue” is hereby amended to read as follows:

42-142-6. Annual unified economic development report. -- (a) The director of the
department of revenue shall, no later than January 15th of each state fiscal year, compile and
publish, in printed and electronic form, including on the Internet, an annual unified economic
development report which shall provide the following comprehensive information regarding the
tax credits or other tax benefits conferred pursuant to §§ 42-64-10, 44-63-3, 42-64.5-5, 42-64.3-1,
and 44-31.2-6.1 during the preceding fiscal year:

(1) The name of each recipient of any such tax credit or other tax benefit; the dollar
amount of each such tax credit or other tax benefit; and summaries of the number of full-time and
part-time jobs created or retained, an overview of benefits offered, and the degree to which job
creation and retention, wage and benefit goals and requirements of recipient and related
corporations, if any, have been met. The report shall include aggregate dollar amounts of each
category of tax credit or other tax benefit; to the extent possible, the amounts of tax credits and
other tax benefits by geographical area; the number of recipients within each category of tax
credit or retained; overview of benefits offered; and the degree to which job creation and
retention, wage and benefit rate goals and requirements have been met within each category of
tax credit or other tax benefit;

(2) The cost to the state and the approving agency for each tax credit or other tax benefits
conferred pursuant to §§ 42-64-10, 44-63-3, 42-64.5-5, 42-64.3-1, and 44-31.2-6.1 during the
preceding fiscal year;

(3) To the extent possible, the amounts of tax credits and other tax benefits by
geographical area; and

(4) The extent to which any employees of and recipients of any such tax credits or other
tax benefits has received RIte Care or RIte Share benefits or assistance; and

(5) To the extent the data exists, a cost-benefit analysis prepared by the office of revenue analysis based upon the collected data under sections 42-64-10, 44-63-3, 42-64.5-5, 42-64-3.1, and 44-31.2-6.1, and required for the preparation of the unified economic development report. The cost-benefit analysis may include but shall not be limited to the cost to the state for the revenues reductions, cost to administer the credit, projected revenues gained from the credit, and other metrics which can be measured along with a baseline assessment of the original intent of the legislation. The office of revenue analysis shall also indicate the purpose of the credit to the extent that it is provided in the enabling legislation, or note the absence of such information, and any measurable goals established by the granting authority of the credit. Where possible, the analysis shall cover a five (5) year period projecting the cost and benefits over this period. The office of revenue analysis may utilize outside services or sources for development of the methodology and modeling techniques. The unified economic development report shall include the cost-benefit analysis starting January 15, 2014. The office of revenue analysis shall work in conjunction with Rhode Island economic corporation as established chapter 42-64.

(b) After the initial report, the division of taxation will perform reviews of each recipient of this tax credit or other tax benefits to ensure the accuracy of the employee data submitted. The division of taxation will include a summary of the reviews performed along with any adjustments, modifications and/or allowable recapture of tax credit amounts and data included on prior year reports.

SECTION 5. Title 44 of the General Laws entitled “TAXATION” is hereby amended by adding thereto the following chapter:

CHAPTER 48.2
“RHODE ISLAND ECONOMIC DEVELOPMENT TAX INCENTIVES EVALUATION ACT OF 2013”

44-48.2-1. Short title. -- This chapter shall be known and may be cited as the “Economic Development Tax Incentives Evaluation Act of 2013.”

44-48.2-2. Legislative findings and purpose. -- The general assembly finds and declares that:

(1) The state of Rhode Island relies on a number of tax incentives, including credits, exemptions, and deductions, to encourage businesses to locate, hire employees, expand, invest, and/or remain in the state;

(2) These various tax incentives are intended as a tool for economic development, promoting new jobs and business growth in Rhode Island:
The state needs a systematic approach for evaluating whether incentives are fulfilling their intended purposes in a cost-effective manner;

In order to improve state government’s effectiveness in serving the residents of this state, the legislature finds it necessary to provide for the systematic and comprehensive analysis of economic development tax incentives, and for those analyses to be incorporated into the budget and policymaking processes.

44-48.2-3. Economic development tax incentive defined. -- (a) As used in this section, the term "economic development tax incentive" shall include:

(1) Those tax credits, deductions, exemptions, exclusions, and other preferential tax benefits associated with sections 42-64.3-6, 42-64.3-7, 42-64.5-3, 42-64.6-4, 42-64.11-4, 44-30-1.1, 44-31-1, 44-31-1.1, 44-31-2, 44-31-2-5, 44-32-1, 44-32-2, 44-32-3, 44-39.1-1, 44-43-2, 44-43-3, and 44-63-2, and:

(2) Any future incentives enacted after the effective date of this section for the purpose of recruitment or retention of businesses in the state of Rhode Island.

(b) In determining whether a future tax incentive is enacted for "the purpose of recruitment or retention of businesses," the office of revenue analysis shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive is promoted as a business incentive by the state’s economic development agency or other relevant state agency.

44-48.2-4. Economic Development Tax Incentive Evaluations, Schedule. -- (a) In accordance with the following schedule, the tax expenditure report produced by the chief of the office of revenue analysis pursuant to section 44-48.1-1, shall include an additional analysis component, consistent with section 44-48.2-5 and produced in consultation with the director of the economic development corporation, the director of the office of management and budget, and the director of the department of labor and training:

(1) Analyses of economic development tax incentives as listed in subdivision 44-48.2-3(1) shall be completed at least once between July 1, 2014 and June 30, 2017, and no less than once every three (3) years thereafter;

(2) Analyses of any economic development tax incentives created after July 1, 2013, shall be completed within five (5) years of taking effect, and no less than once every three (3) years thereafter;

(b) No later than the tenth (10th) of January each year, beginning in 2014, the office of revenue analysis will submit to the chairs of the senate and house finance committees a three (3) year plan for evaluating economic development tax incentives.
44-48.2-5. Economic Development Tax Incentive Evaluations, Analysis. --

(a) The additional analysis as required by section 44-48.2-4 shall include, but not be limited to:

(1) A baseline assessment of the tax incentive, including, if applicable, the number of aggregate jobs associated with the taxpayers receiving such tax incentive and the aggregate annual revenue that such taxpayers generate for the state through the direct taxes applied to them and through taxes applied to their employees;

(2) The statutory and programmatic goals and intent of the tax incentive, if said goals and intentions are included in the incentive’s enabling statute or legislation;

(3) The number of taxpayers granted the tax incentive during the previous twelve (12) month period;

(4) The value of the tax incentive granted, and ultimately claimed, listed by the North American Industrial Classification System (NAICS) Code associated with the taxpayers receiving such benefit, if such NAICS Code is available;

(5) An assessment and five (5) year projection of the potential impact on the state's revenue stream from carry forwards allowed under such tax incentive;

(6) An estimate of the economic impact of the tax incentive including, but not limited to:

(i) A cost-benefit comparison of the revenue foregone by allowing the tax incentive compared to tax revenue generated by the taxpayer receiving the credit, including direct taxes applied to them and taxes applied to their employees;

(ii) An estimate of the number of jobs that were the direct result of the incentive; and

(iii) A statement by the director of the economic development corporation as to whether, in his or her judgment, the statutory and programmatic goals of the tax benefit are being met, with obstacles to such goals identified, if possible;

(7) The estimated cost to the state to administer the tax incentive, if such information is available;

(8) An estimate of the extent to which benefits of the tax incentive remained in state or flowed outside the state, if such information is available;

(9) In the case of economic development tax incentives where measuring the economic impact is significantly limited due to data constraints, whether any changes in statute would facilitate data collection in a way that would allow for better analysis;

(10) Whether the effectiveness of the tax incentive could be determined more definitively if the general assembly were to clarify or modify the tax incentive’s goals and intended purpose;

(11) A recommendation as to whether the tax incentive should be continued, modified or
terminated, the basis for such recommendation, and the expected impact of such recommendation on the state's economy;

(12) The methodology and assumptions used in carrying out the assessments, projections and analyses required pursuant to subdivisions (1) through (8) of this section.

(b) All departments, offices, boards, and agencies of the state shall cooperate with the chief of the office of revenue analysis and shall provide to the office of revenue analysis any records, information (documentary and otherwise), data, and data analysis as may be necessary to complete the report required pursuant to this section.

44-482.6. Consideration by the governor. -- The governor's budget submission as required under chapter 35-3 shall identify each economic development tax incentive for which an evaluation was completed in accordance with this chapter in the period since the governor's previous budget submission. For each evaluated tax incentive, the governor's budget submission shall include a recommendation as to whether the tax incentive should be continued, modified, or terminated.

SECTION 6. Sections 1, 2, 3 and 4 of this act shall take effect January 1, 2014. Section 5 of this act shall take effect sixty (60) days after passage.

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LC02050/SUB B
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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N   A C T

RELATING TO TAXATION – RHODE ISLAND ECONOMIC DEVELOPMENT TAX CREDIT ACCOUNTABILITY ACT OF 2013

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This act would require the director management and budge to prepare a comprehensive review and inventory of all reports from the executive office and other state agencies that are filed with the general assembly. This act would also provide that this inventory would be presented to the general assembly as part of the annual budget submission. This act would also require that a cost-benefit analysis be incorporated into the annual unified economic development report that is prepared by the office of revenue analysis. This act would also create the “Rhode Island Economic Development Tax Incentives Evaluation Act of 2013” to provide an assessment of the state's tax incentive programs.

Sections 1, 2, 3 and 4 of this act would take effect January 1, 2014. Section 5 of this act would take effect sixty (60) days after passage.

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LC02050/SUB B

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Summary: AB 45 regulates charter party-carriers (commonly known as party buses) to prevent underage drinking, by requiring chaperones for any party that has members under 21 if alcohol will be present. Chaperones must check IDs and are responsible for telling the driver if there is underage drinking.

Status: Signed into law on September 23, 2012.

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Comments: From the *Santa Cruz Sentinel* (September 24, 2012)

Party buses with alcohol and any underage passengers will require chaperones and ID checks starting in January as part of a new law signed Sunday by Gov. Jerry Brown. Authored by state Sen. Jerry Hill, D-San Mateo, the law brings drinking rules on party buses in line with current rules for limousines. It comes in the wake of the deaths of a Santa Cruz woman who died after falling out of a party bus in July and a 19-year-old Burlingame man who died in a collision after drinking on a party bus in 2010.

"In recent years, the party bus industry has expanded and not kept up with the times," Hill said in August. "These buses are essentially 'booze cruises' -- parties on wheels with dance floors, neon lighting, sound systems, lounging areas and dancing poles."

Starting Jan. 1, party bus companies must ask customers during booking whether there will be any passengers younger than 21 and whether alcohol will be served. If the customer says yes, then the customer has to designate a chaperone age 25 or older to check identifications. The chaperone also has to tell them that if alcohol is found, the trip will end and the money will be forfeited to the bus company.

Once the trip starts, the chaperone also will be responsible for notifying the bus driver if underage passengers are consuming alcohol. If anyone younger than 21 is caught drinking, the bus must return to where it started. The chaperone also has to make sure anyone suspected of drinking makes it home safely. Chaperones can face misdemeanor penalties if they break the rules.

The law also has new rules for bus drivers. On buses where there are underage passengers and there is supposed to be no alcohol, the driver must check for alcohol on board if it is suspected. If the driver finds alcohol, then the trip will be terminated unless the alcohol is locked under the bus. Bus drivers who break the rules also can face a misdemeanor. The party bus company also can be fined up to $2,000 and face a 30-day license suspension or license revocation.

Hill said he initially introduced the bill, adopted as AB45, in 2010 after Burlingame teen Brett Studebaker was killed. Studebaker had been drinking on a party bus on Feb. 6, 2010, during a friend's birthday celebration. He later drove into a sound wall on Highway 101 near San Mateo.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Assembly Bill No. 45

CHAPTER 461

An act to amend Section 5384.5 of, to add Section 5355.5 to, and to repeal and add Section 5384.1 of, the Public Utilities Code, and to amend Section 23229.1 of, and to add Section 40000.20 to, the Vehicle Code, relating to charter-party carriers of passengers.

[Approved by Governor September 23, 2012. Filed with Secretary of State September 23, 2012.]

LEGISLATIVE COUNSEL'S DIGEST


The Passenger Charter-party Carriers’ Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act, except as specified, requires the driver of any limousine for hire operated by a charter-party carrier of passengers (carrier) under a valid certificate or permit to comply with prescribed requirements relating to alcoholic beverages, including ascertaining whether any passenger is under the age of 21 years, reading to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful, requiring such a passenger to sign the statement, and, if a minor passenger, after signing the statement, is found to be, or to have been, consuming any alcoholic beverage during the course of the ride, immediately terminating the contract of hire and returning the passenger to the point of origin. The act also subjects the carrier to specified civil penalties, based on the number of offenses, for conviction of a driver, or any officer, director, agent, or employee of the carrier, of a violation of the Vehicle Code that prohibits storage of an opened container of an alcoholic beverage in a motor vehicle.

This bill would repeal the above-described provisions concerning the responsibilities of a driver of a limousine for hire operated by a carrier relating to the consumption of alcoholic beverages by passengers under 21 years of age. The bill would instead require the charter-party carrier of passengers to ask the chartering party, as defined, to disclose at the time transportation service is prearranged or the contract of carriage is made and, upon being asked, would require the chartering party to disclose (1) if alcoholic beverages will be served by the chartering party, as defined, or be transported in the passenger compartment of the vehicle during transportation and (2) if any member of the party to be provided with transportation services will be under 21 years of age. The bill would require the chartering party to designate a designee, as defined, and would impose
different requirements for a designee of the chartering party and the driver of the vehicle depending upon the presence of specified circumstances. The bill would make the designee or, when present, the parent or legal guardian legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by a violation of laws prohibiting the consumption of alcoholic beverages by a person under 21 years of age when alcoholic beverages are consumed during the provision of transportation services under certain circumstances. The bill would make failure to comply with certain of its requirements a misdemeanor and would make any violation of its requirements by a charter-party carrier of passengers or its driver subject to civil penalties imposed by the commission. The bill, by creating a new crime, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Brett Studebaker Law.

SEC. 2. Section 5355.5 is added to the Public Utilities Code, to read:

5355.5. (a) “Chartering party” means the person, corporation, or other entity that prearranges with a charter-party carrier of passengers for transportation services.

(b) “Designee” means a person who is 25 years of age or older and who is designated by the chartering party as being the person responsible for compliance with the requirements of Section 5384.1 during the provision of transportation services whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian. If the chartering party is a person and the minor is not accompanied by a parent or legal guardian, the chartering party shall be the designee unless the chartering party identifies another person to be the designee and the person so designated acknowledges and agrees that he or she is the designee. If there is more than one chartering party for a joint carriage of passengers, each chartering party shall designate a designee who is responsible for compliance with the requirements of Section 5384.1 whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian, and that person shall be the designee only for those passengers provided with transportation services on behalf of that chartering party.

SEC. 3. Section 5384.1 of the Public Utilities Code is repealed.

SEC. 4. Section 5384.1 is added to the Public Utilities Code, to read:

5384.1. (a) At the time transportation service is prearranged or the contract of carriage is made, the charter-party carrier of passengers shall ask the chartering party and, upon being asked, the chartering party shall
disclose to the charter-party carrier of passengers, whether the following are true:

1. Alcoholic beverages will be served by the chartering party or be transported in the passenger compartment of the vehicle during transportation.

2. A member of the party to be provided with transportation services will be under 21 years of age.

   (b) If, at the time transportation was prearranged with the charter-party carrier of passengers, the chartering party discloses that alcoholic beverages will be served or transported in the passenger compartment and a member of the party is under 21 years of age, each of the following applies:

1. The charter-party carrier of passengers, at the time transportation services are arranged, shall notify the chartering party of all of the following:

   (A) A designee who is 25 years of age or older shall be present whenever persons under 21 years of age who are not accompanied by a parent or legal guardian are being transported.

   (B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.

   (C) The designee shall check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver shall not commence transport until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are picked up at more than one location, the driver shall not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

   (D) The designee shall notify the driver of the vehicle if, at any time during the trip, a passenger in their party who is under 21 years of age is consuming or has consumed alcoholic beverages.

   (E) The designee shall be responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age or has consumed alcoholic beverages while being supplied with transportation services.

   (F) If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee’s responsibility for that minor shall continue until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.
(2) (A) The charter-party carrier of passengers shall provide a copy of the written form described in paragraph (4) to the chartering party and shall verify the written form has been returned with the signature of the designee no later than 72 hours prior to the commencement of the travel date. If the transportation service is prearranged within 72 hours of the travel date, the charter-party carrier of passengers shall immediately provide the written form described in paragraph (4) to the chartering party as a stand-alone form separate from the contract of carriage, to be returned prior to the commencement of transportation services with the signature of the designee. A charter-party carrier of passengers may supply the chartering party with additional forms for a replacement designee in the event the planned designee is unable to accompany the party during transport. The charter-party carrier of passengers shall verify the written form of a replacement designee has been returned with the signature of the replacement designee no later than 72 hours prior to the commencement of the travel date.

(B) (i) If the charter-party carrier of passengers does not provide the written notice specified in subparagraph (A), and the designee does not return the signed form prior to the commencement of the transport, the charter-party carrier of passengers shall do any of the following:

(I) Provide a designee who is not the driver and shall incur any and all liabilities of that designee.

(II) Remove and lock all alcoholic beverages in the vehicle’s trunk or other locked compartment.

(III) Prohibit all persons under 21 years of age from boarding the vehicle.

(IV) Cancel the trip and refund all payments for the transportation services.

(ii) A charter-party carrier of passengers that fails to comply with clause (i) shall incur the liabilities of a designee.

(3) The charter-party carrier of passengers shall inform the driver of the vehicle that alcohol will be present and that there will be persons under 21 years of age present during the provision of transportation services and the name of the designee.

(4) The driver of the vehicle shall obtain the designee’s signature or initials on a written form indicating the designee’s acknowledgment and agreement to all of the following:

(A) Alcoholic beverages will be served by the chartering party or be transported in the passenger compartment of the vehicle during transportation.

(B) A member of the party to be provided with transportation services will be under 21 years of age.

(C) The person signing or initialing is the designee and is 25 years of age or older.

(D) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.
The designee must check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver will not commence transportation services until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are to be picked up at more than one location, the driver will not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

The designee is responsible for notifying the driver of the vehicle if, at any time during the trip, a passenger in their party who is under 21 years of age is consuming or has consumed alcoholic beverages and that the designee is in violation of the law if he or she fails to notify the driver.

The designee is legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age and is consuming or has consumed alcoholic beverages while being supplied with transportation services.

If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee’s responsibility for that person under 21 years of age continues until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.

The designee shall be a passenger of the vehicle during the provision of transportation services and shall make reasonable efforts to ensure the lawful conduct of all persons in the vehicle who are members of the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(A) The designee shall make reasonable efforts to ensure compliance with all laws related to the consumption of alcoholic beverages by persons in the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the providing of alcoholic beverages to persons under 21 years of age by adult members of the party who are 21 years of age or older.

(C) If a person under 21 years of age is accompanied by a parent or legal guardian, then the parent or legal guardian shall make reasonable efforts to ensure that person complies with laws prohibiting the consumption of alcoholic beverages.

(D) A designee or, when present, the parent or legal guardian who fails to act reasonably shall be responsible for any reasonably foreseeable personal
injury or property damage that is proximately caused by a violation of laws
prohibiting the consumption of alcoholic beverages by a person under 21
years of age when alcoholic beverages are consumed during the provision
of transportation services if the designee, parent, or legal guardian knew or
reasonably should have known that the person is under 21 years of age and
is consuming or has consumed alcoholic beverages during the provision of
transportation services.

(E) Nothing in this paragraph limits the right of a designee to seek
indemnity from any person, corporation, or other entity other than the
charter-party carrier of passengers.

(F) Nothing in this section relieves a passenger of legal responsibility
for his or her own conduct.

(7) (A) The designee shall read the following statement to those persons
under 21 years of age:

“Consumption of alcoholic beverages by persons under 21 years of age
is illegal. It is also illegal for an adult to provide alcoholic beverages to a
person under 21 years of age. If you consume alcoholic beverages, this trip
will be terminated and all payments for transportation services shall be
forfeited and not subject to refund.”

(B) The terms of the statement required to be read pursuant to
subparagraph (A) shall be a part of the contract of carriage between the
charter-party carrier of passengers and the chartering party.

(8) (A) If during the course of providing transportation services, any
person under 21 years of age is found to be, or to have been, consuming
any alcoholic beverage, the designee shall immediately notify the driver
and the driver shall terminate the trip. All passengers, including all
passengers of a joint carriage if more than one party is participating in the
trip, shall be brought back to the point of origin of the trip. All payment for
transportation services shall be forfeited and not subject to refund.

(B) Should the designee, or when present, the parent or legal guardian,
fail to inform the driver, or if the designee, parent, or legal guardian permits
the drinking of alcoholic beverages by persons under 21 years of age to
occur in the vehicle, the designee, parent, or legal guardian shall be subject
to prosecution for violation of subdivision (a) of Section 25658 of the
Business and Professions Code.

(c) If at the time transportation is prearranged with the charter-party
carrier of passengers, the chartering party discloses that alcoholic beverages
will be served or transported in the passenger compartment, but that no
member of the party is or will be under 21 years of age, each of the following
applies:

(1) If the driver has reason to believe that passengers under 21 years of
age will be present during transportation services, the driver shall verify the
age of all passengers to be transported in the vehicle with the chartering
party or designee.
If any passenger is under 21 years of age, the failure to disclose the age of this passenger is a violation of the contract of carriage, and transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(d) If, at the time transportation is prearranged with the charter-party carrier of passengers, the chartering party discloses that a member of the party is under 21 years of age, but that no alcoholic beverages will be served or transported in the passenger compartment, each of the following applies:

(1) If the driver of the vehicle has reason to believe that alcoholic beverages are, or will be, transported in the vehicle and accessible to passengers, the driver shall verify whether alcoholic beverages were brought into the vehicle.

(2) If alcoholic beverages were brought into the vehicle without prior notification to the charter-party carrier of passengers, that act is a violation of the contract of carriage, and the transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(e) (1) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and a member of the party is under 21 years of age, the failure by the driver to do any of the following is a misdemeanor:

(A) To commence or continue transport without a designee who is 25 years of age or older present, unless the person who is under 21 years of age is accompanied by a parent or guardian.

(B) To commence transport without obtaining the designee’s signature or initials on the form described in paragraph (4) of subdivision (b).

(C) To commence transport without the designee verifying to the driver that the designee has checked the identifications of all passengers to determine who is under 21 years of age and read the statement specified in paragraph (7) of subdivision (b) to each member of the party who is under 21 years of age.

(D) To not terminate the trip and to return the chartering party to the place of origin if informed by the designee or, if present, a parent or guardian, that a person under 21 years of age is consuming or has consumed alcoholic beverages or by otherwise learning that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(2) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and is informed that no member of the party is under 21 years of age, the failure to do any of the following is a misdemeanor:

(A) To fail to take reasonable steps to verify the age of any passenger reasonably believed to be under 21 years of age.

(B) To commence transport if a party member is under 21 years of age, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.
(C) To not terminate the trip and to return the chartering party to the place of origin if the driver learns that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(3) If the driver is informed or learns that one or more members of the party are under 21 years of age and is informed that no alcoholic beverages will be served or transported in the passenger compartment, the failure to do any of the following is a misdemeanor:

(A) If the driver reasonably believes that alcoholic beverages were brought into the vehicle, to fail to take reasonable steps to verify that no alcoholic beverages were brought into the vehicle.

(B) To commence or continue transport if the driver learns that alcoholic beverages were brought onto the vehicle, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(f) A failure by the designee to do any of the following is a misdemeanor:

(1) To check the identifications of all passengers to determine who is under 21 years of age.

(2) To read the statement specified in paragraph (7) of subdivision (b) to each passenger in the party who is under 21 years of age.

(3) To notify the driver of the vehicle if, at any time during the trip, a passenger in the designee’s party who is under 21 years of age is consuming or has consumed alcoholic beverages.

(4) Upon termination of a trip because of the consumption of alcoholic beverages by a person under 21 years of age, to safely return any person under 21 years of age who is a member of the designee’s party to his or her home, to take him or her to a location reasonably believed to be safer than his or her home, or to entrust him or her into the care of his or her parent or legal guardian.

(g) When present, the failure of a parent or guardian to notify the driver when a member of the party who is under 21 years of age and for whom the parent or guardian is responsible is consuming or has consumed alcoholic beverages during the provision of transportation services is guilty of a misdemeanor.

(h) If the commission, after a hearing, finds that a charter-party carrier of passengers or the driver of a charter-party carrier of passengers has violated this section, the commission shall do the following:

(1) For a first violation, the commission shall impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier, as determined appropriate by the commission.

(2) For a second violation, the commission shall impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier or may suspend the carrier’s certificate or permit for not more than 30 days, or both, as determined appropriate by the commission.

(3) For a third violation, the commission shall revoke the carrier’s certificate or permit.

(i) The authority granted the commission in subdivision (h) is in addition to any authority the commission has to enforce the requirements of this
chapter, and the commission may impose any penalties available pursuant to this chapter for a violation of this section.

(j) Nothing in this section shall change the liability of a party knowingly furnishing the alcoholic beverage to a person who they know or reasonably should know to be under 21 years of age.

SEC. 5. Section 5384.5 of the Public Utilities Code is amended to read:

5384.5. If the driver of any charter-party carrier of passengers for hire operating under a valid certificate or permit, or any officer, director, agent, or employee of a charter-party carrier of passengers operating vehicles used in the transportation of passengers for hire under such a certificate or permit, is convicted of a violation of Section 23225 of the Vehicle Code, the commission, after a hearing, shall do the following:

(a) For a first offense, the commission may impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier, as determined appropriate by the commission.

(b) For a second offense, the commission may impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier or suspend the carrier’s certificate or permit for not more than 30 days, or both, as determined appropriate by the commission.

(c) For a third offense, the commission shall revoke the carrier’s certificate or permit.

SEC. 6. Section 23229.1 of the Vehicle Code is amended to read:

23229.1. (a) Subject to subdivision (b), Sections 23223 and 23225 apply to any driver providing transportation services on a prearranged basis as a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code, when the driver of the vehicle transports any passenger under 21 years of age and fails to comply with the requirements of Section 5384.1 of the Public Utilities Code.

(b) For purposes of subdivision (a), it is not a violation of Section 23225 for any driver providing transportation services on a prearranged basis as a charter-party carrier of passengers that is licensed pursuant to the Public Utilities Code to keep any bottle, can, or other receptacle containing any alcoholic beverage in a locked utility compartment within the area occupied by the driver and passengers.

(c) In addition to the requirements of Section 1803, every clerk of a court in which any driver in subdivision (a) was convicted of a violation of Section 23225 shall prepare within 10 days after conviction, and immediately forward to the Public Utilities Commission at its office in San Francisco, an abstract of the record of the court covering the case in which the person was convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the commission within 10 days after sentencing, and the abstract shall be certified, by the person required to prepare it, to be true and correct. For the purposes of this subdivision, a forfeiture of bail is equivalent to a conviction.

SEC. 7. Section 40000.20 is added to the Vehicle Code, to read:

40000.20. A third or subsequent violation of Section 23225, relating to the storage of an opened container of an alcoholic beverage, or Section
23223, relating to the possession of an open container of an alcoholic beverage, of a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers’ Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
09-35B-02 Crowdfunding for Entrepreneurs  
Maine

Bill/Act: LD 1512

Summary: Creates a process by which businesses can raise capital by selling small amounts of equity to individual investors, often referred to as “crowdsourcing.” Individual investors are limited to an investment of $5,000 and the total amount to be raised by the business cannot exceed $1 million. A business must register with the Maine Office of Securities and include a target amount to be raised and a funding deadline. If the preset funding goal deadline is not realized, all investors must have their funds returned to them.

Status: Emergency Enacted Without Governor’s Signature March 3, 2014.

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Comment: From Portland Press Herald (March 6, 2014)

A measure allowing Maine businesses to raise up to $1 million through “crowd investing” became law Monday.

The bill, L.D. 1512, “An Act To Increase Funding for Start-ups,” was approved overwhelmingly in both the House and Senate last month and allowed to take effect without the usual wait. The measure allows small businesses in Maine to raise up to $1 million by advertising and selling company shares to Maine residents, even those who do not meet federal “accredited investor” standards.

Businesses seeking investors now can advertise publicly on “crowd investing” websites such as Wefunder.com, which allows registered users to invest as little as $100 in the startup of their choosing.

The law prohibits the companies offering shares from selling more than $5,000 worth per year to any single investor. It only applies to investment activity between companies and investors located in Maine. A similar federal law governs crowd-investment activity that crosses state lines, but the specific rules of conduct have yet to be approved by the U.S. Securities and Exchange Commission.

The Maine law’s sponsor, Senate President Justin Alfond, a Democrat from Portland, said its purpose is to enable small businesses in Maine to raise capital while giving residents a chance to invest in firms with high-growth potential. “Maine is a great place to start a business. This new law will support entrepreneurs and increase investing opportunities for more Maine people,” Alfond said in a written statement. “Maine can be a national leader in turning great ideas into great jobs.”

As a result of the law’s passage, any Maine-based business interested in crowd investing can register with the state Office of Securities and sell small amounts of equity to individual investors. The business must set a target amount to raise of no more than $1 million, along with a
hard deadline to raise it by. If the business owners do not raise the target amount by the set
deadline, all of the contributed money must be returned to the investors.
Prior to April 2012 when the federal Jumpstart Our Business Startups Act, or JOBS Act, was
approved, advertising and selling shares in a private company to non-accredited investors was a
violation of federal law.

The Securities Act of 1933 established criteria for what it called an accredited investor, including
a net worth of at least $1 million or annual income of at least $200,000. The point was to protect
people of modest means from losing all of their money in a risky business venture.

The JOBS Act created an exception for relatively small investment amounts. It allows companies
to publicly advertise and sell $2,000 to $5,000 worth of shares per person to investors earning no
more than $100,000 a year. The allowed investment amount is based on the investor’s annual
income.

Investors earning $100,000 per year or more may invest up to 10 percent of their annual income,
with a maximum limit of $100,000.

However, the crowd investment activity authorized by the JOBS Act remains suspended until the
U.S. Securities and Exchange Commission approves a set of proposed rules by which shares can
be advertised and sold. Without such rules, investors could face the risk of losing their money to
fraudulent schemes, regulators have said. The SEC has missed multiple deadlines to approve the
new rules. On Oct. 23, it finally issued a set of proposed rules that some investment experts say
are overly complex and would be prohibitively expensive for most startup companies to follow.

The federal rules do not preclude states from creating their own, with the proviso that a state’s
rules only supersede the federal ones if the company issuing the shares and the investor buying
them are both located in that state. In other words, Mainers investing in an out-of-state business
and Maine-based companies seeking investors outside the state would still be subject to the SEC
rules.

Read More:

Disposition of Entry:
SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Assembly Bill No. 45

CHAPTER 461

An act to amend Section 5384.5 of, to add Section 5355.5 to, and to repeal and add Section 5384.1 of, the Public Utilities Code, and to amend Section 23229.1 of, and to add Section 40000.20 to, the Vehicle Code, relating to charter-party carriers of passengers.

[Approved by Governor September 23, 2012. Filed with Secretary of State September 23, 2012.]

LEGISLATIVE COUNSEL’S DIGEST


The Passenger Charter-party Carriers’ Act, with certain exceptions, prohibits a charter-party carrier of passengers from engaging in transportation services subject to regulation by the Public Utilities Commission without obtaining a specified certificate or permit, as appropriate, from the commission. The act, except as specified, requires the driver of any limousine for hire operated by a charter-party carrier of passengers (carrier) under a valid certificate or permit to comply with prescribed requirements relating to alcoholic beverages, including ascertaining whether any passenger is under the age of 21 years, reading to the passenger a statement that the consumption of any alcoholic beverage in the vehicle is unlawful, requiring such a passenger to sign the statement, and, if a minor passenger, after signing the statement, is found to be, or to have been, consuming any alcoholic beverage during the course of the ride, immediately terminating the contract of hire and returning the passenger to the point of origin. The act also subjects the carrier to specified civil penalties, based on the number of offenses, for conviction of a driver, or any officer, director, agent, or employee of the carrier, of a violation of the Vehicle Code that prohibits storage of an opened container of an alcoholic beverage in a motor vehicle.

This bill would repeal the above-described provisions concerning the responsibilities of a driver of a limousine for hire operated by a carrier relating to the consumption of alcoholic beverages by passengers under 21 years of age. The bill would instead require the charter-party carrier of passengers to ask the chartering party, as defined, to disclose at the time transportation service is prearranged or the contract of carriage is made and, upon being asked, would require the chartering party to disclose (1) if alcoholic beverages will be served by the chartering party, as defined, or be transported in the passenger compartment of the vehicle during transportation and (2) if any member of the party to be provided with transportation services will be under 21 years of age. The bill would require the chartering party to designate a designee, as defined, and would impose
different requirements for a designee of the chartering party and the driver of the vehicle depending upon the presence of specified circumstances. The bill would make the designee or, when present, the parent or legal guardian legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by a violation of laws prohibiting the consumption of alcoholic beverages by a person under 21 years of age when alcoholic beverages are consumed during the provision of transportation services under certain circumstances. The bill would make failure to comply with certain of its requirements a misdemeanor and would make any violation of its requirements by a charter-party carrier of passengers or its driver subject to civil penalties imposed by the commission. The bill, by creating a new crime, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Brett Studebaker Law.

SEC. 2. Section 5355.5 is added to the Public Utilities Code, to read:

5355.5. "Chartering party" means the person, corporation, or other entity that prearranges with a charter-party carrier of passengers for transportation services.

(b) "Designee" means a person who is 25 years of age or older and who is designated by the chartering party as being the person responsible for compliance with the requirements of Section 5384.1 during the provision of transportation services whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian. If the chartering party is a person and the minor is not accompanied by a parent or legal guardian, the chartering party shall be the designee unless the chartering party identifies another person to be the designee and the person so designated acknowledges and agrees that he or she is the designee. If there is more than one chartering party for a joint carriage of passengers, each chartering party shall designate a designee who is responsible for compliance with the requirements of Section 5384.1 whenever persons under 21 years of age are to be transported unaccompanied by a parent or legal guardian, and that person shall be the designee only for those passengers provided with transportation services on behalf of that chartering party.

SEC. 3. Section 5384.1 of the Public Utilities Code is repealed.

SEC. 4. Section 5384.1 is added to the Public Utilities Code, to read:

5384.1. (a) At the time transportation service is prearranged or the contract of carriage is made, the charter-party carrier of passengers shall ask the chartering party and, upon being asked, the chartering party shall
disclose to the charter-party carrier of passengers, whether the following are true:

(1) Alcoholic beverages will be served by the chartering party or be transported in the passenger compartment of the vehicle during transportation.

(2) A member of the party to be provided with transportation services will be under 21 years of age.

(b) If, at the time transportation was prearranged with the charter-party carrier of passengers, the chartering party discloses that alcoholic beverages will be served or transported in the passenger compartment and a member of the party is under 21 years of age, each of the following applies:

(1) The charter-party carrier of passengers, at the time transportation services are arranged, shall notify the chartering party of all of the following:

(A) A designee who is 25 years of age or older shall be present whenever persons under 21 years of age who are not accompanied by a parent or legal guardian are being transported.

(B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.

(C) The designee shall check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver shall not commence transport until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are picked up at more than one location, the driver shall not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

(D) The designee shall notify the driver of the vehicle if, at any time during the trip, a passenger in their party who is under 21 years of age is consuming or has consumed alcoholic beverages.

(E) The designee shall be responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age or has consumed alcoholic beverages while being supplied with transportation services.

(F) If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee’s responsibility for that minor shall continue until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.
(2) (A) The charter-party carrier of passengers shall provide a copy of the written form described in paragraph (4) to the chartering party and shall verify the written form has been returned with the signature of the designee no later than 72 hours prior to the commencement of the travel date. If the transportation service is prearranged within 72 hours of the travel date, the charter-party carrier of passengers shall immediately provide the written form described in paragraph (4) to the chartering party as a stand-alone form separate from the contract of carriage, to be returned prior to the commencement of transportation services with the signature of the designee. A charter-party carrier of passengers may supply the chartering party with additional forms for a replacement designee in the event the planned designee is unable to accompany the party during transport. The charter-party carrier of passengers shall verify the written form of a replacement designee has been returned with the signature of the replacement designee no later than 72 hours prior to the commencement of the travel date.

(B) (i) If the charter-party carrier of passengers does not provide the written notice specified in subparagraph (A), and the designee does not return the signed form prior to the commencement of the transport, the charter-party carrier of passengers shall do any of the following:

(I) Provide a designee who is not the driver and shall incur any and all liabilities of that designee.

(II) Remove and lock all alcoholic beverages in the vehicle’s trunk or other locked compartment.

(III) Prohibit all persons under 21 years of age from boarding the vehicle.

(IV) Cancel the trip and refund all payments for the transportation services.

(ii) A charter-party carrier of passengers that fails to comply with clause (i) shall incur the liabilities of a designee.

(3) The charter-party carrier of passengers shall inform the driver of the vehicle that alcohol will be present and that there will be persons under 21 years of age present during the provision of transportation services and the name of the designee.

(4) The driver of the vehicle shall obtain the designee’s signature or initials on a written form indicating the designee’s acknowledgment and agreement to all of the following:

(A) Alcoholic beverages will be served by the chartering party or be transported in the passenger compartment of the vehicle during transportation.

(B) A member of the party to be provided with transportation services will be under 21 years of age.

(C) The person signing or initialing is the designee and is 25 years of age or older.

(D) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the consumption of alcoholic beverages by persons under 21 years of age who are members of the party and are not accompanied by a parent or legal guardian.
(E) The designee must check the identifications of all passengers to determine who is under 21 years of age and shall read the statement specified in paragraph (7) to each passenger in the party who is under 21 years of age. The driver will not commence transportation services until the designee has verified with the driver that the designee has checked the identifications of all passengers and has read the statement. If passengers are to be picked up at more than one location, the driver will not commence transport from the subsequent location until the designee has verified with the driver that the designee has checked the identifications of all passengers boarding the vehicle at that location and has read the statement to all passengers boarding the vehicle at that location.

(F) The designee is responsible for notifying the driver of the vehicle if, at any time during the trip, a passenger in their party who is under 21 years of age is consuming or has consumed alcoholic beverages and that the designee is in violation of the law if he or she fails to notify the driver.

(G) The designee is legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by the consumption of alcoholic beverages by a person under 21 years of age while being supplied with transportation services if the designee knew or reasonably should have known that the person is under 21 years of age and is consuming or has consumed alcoholic beverages while being supplied with transportation services.

(H) If a trip is terminated because of the consumption of alcoholic beverages by a person under 21 years of age who is a member of their party, the designee’s responsibility for that person under 21 years of age continues until that person who is under 21 years of age is returned safely to his or her home or entrusted into the care of his or her parent or legal guardian or taken to a location reasonably believed to be safer than his or her home.

(5) The designee shall be a passenger of the vehicle during the provision of transportation services and shall make reasonable efforts to ensure the lawful conduct of all persons in the vehicle who are members of the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(6) (A) The designee shall make reasonable efforts to ensure compliance with all laws related to the consumption of alcoholic beverages by persons in the party who are under 21 years of age and who are not accompanied by a parent or legal guardian.

(B) The designee shall make reasonable efforts to ensure compliance with all laws prohibiting the providing of alcoholic beverages to persons under 21 years of age by adult members of the party who are 21 years of age or older.

(C) If a person under 21 years of age is accompanied by a parent or legal guardian, then the parent or legal guardian shall make reasonable efforts to ensure that person complies with laws prohibiting the consumption of alcoholic beverages.

(D) A designee or, when present, the parent or legal guardian who fails to act reasonably shall be responsible for any reasonably foreseeable personal
injury or property damage that is proximately caused by a violation of laws prohibiting the consumption of alcoholic beverages by a person under 21 years of age when alcoholic beverages are consumed during the provision of transportation services if the designee, parent, or legal guardian knew or reasonably should have known that the person is under 21 years of age and is consuming or has consumed alcoholic beverages during the provision of transportation services.

(E) Nothing in this paragraph limits the right of a designee to seek indemnity from any person, corporation, or other entity other than the charter-party carrier of passengers.

(F) Nothing in this section relieves a passenger of legal responsibility for his or her own conduct.

(7) (A) The designee shall read the following statement to those persons under 21 years of age:

“Consumption of alcoholic beverages by persons under 21 years of age is illegal. It is also illegal for an adult to provide alcoholic beverages to a person under 21 years of age. If you consume alcoholic beverages, this trip will be terminated and all payments for transportation services shall be forfeited and not subject to refund.”

(B) The terms of the statement required to be read pursuant to subparagraph (A) shall be a part of the contract of carriage between the charter-party carrier of passengers and the chartering party.

(8) (A) If, during the course of providing transportation services, any person under 21 years of age is found to be, or to have been, consuming any alcoholic beverage, the designee shall immediately notify the driver and the driver shall terminate the trip. All passengers, including all passengers of a joint carriage if more than one party is participating in the trip, shall be brought back to the point of origin of the trip. All payment for transportation services shall be forfeited and not subject to refund.

(B) Should the designee, or when present, the parent or legal guardian, fail to inform the driver, or if the designee, parent, or legal guardian permits the drinking of alcoholic beverages by persons under 21 years of age to occur in the vehicle, the designee, parent, or legal guardian shall be subject to prosecution for violation of subdivision (a) of Section 25658 of the Business and Professions Code.

(c) If, at the time transportation is prearranged with the charter-party carrier of passengers, the chartering party discloses that alcoholic beverages will be served or transported in the passenger compartment, but that no member of the party is or will be under 21 years of age, each of the following applies:

(1) If the driver has reason to believe that passengers under 21 years of age will be present during transportation services, the driver shall verify the age of all passengers to be transported in the vehicle with the chartering party or designee.
(2) If any passenger is under 21 years of age, the failure to disclose the age of this passenger is a violation of the contract of carriage, and transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(d) If, at the time transportation is prearranged with the charter-party carrier of passengers, the chartering party discloses that a member of the party is under 21 years of age, but that no alcoholic beverages will be served or transported in the passenger compartment, each of the following applies:

(1) If the driver of the vehicle has reason to believe that alcoholic beverages are, or will be, transported in the vehicle and accessible to passengers, the driver shall verify whether alcoholic beverages were brought into the vehicle.

(2) If alcoholic beverages were brought into the vehicle without prior notification to the charter-party carrier of passengers, that act is a violation of the contract of carriage, and the transportation services shall be terminated, and no refund given, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(e) (1) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and a member of the party is under 21 years of age, the failure by the driver to do any of the following is a misdemeanor:

(A) To commence or continue transport without a designee who is 25 years of age or older present, unless the person who is under 21 years of age is accompanied by a parent or guardian.

(B) To commence transport without obtaining the designee’s signature or initials on the form described in paragraph (4) of subdivision (b).

(C) To commence transport without the designee verifying to the driver that the designee has checked the identifications of all passengers to determine who is under 21 years of age and read the statement specified in paragraph (7) of subdivision (b) to each member of the party who is under 21 years of age.

(D) To not terminate the trip and to return the chartering party to the place of origin if informed by the designee or, if present, a parent or guardian, that a person under 21 years of age is consuming or has consumed alcoholic beverages or by otherwise learning that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(2) If the driver is informed or learns that alcoholic beverages will be served or transported in the passenger compartment and is informed that no member of the party is under 21 years of age, the failure to do any of the following is a misdemeanor:

(A) To fail to take reasonable steps to verify the age of any passenger reasonably believed to be under 21 years of age.

(B) To commence transport if a party member is under 21 years of age, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.
(C) To not terminate the trip and to return the chartering party to the place of origin if the driver learns that a person under 21 years of age is consuming or has consumed alcoholic beverages.

(3) If the driver is informed or learns that one or more members of the party are under 21 years of age and is informed that no alcoholic beverages will be served or transported in the passenger compartment, the failure to do any of the following is a misdemeanor:

(A) If the driver reasonably believes that alcoholic beverages were brought into the vehicle, to fail to take reasonable steps to verify that no alcoholic beverages were brought into the vehicle.

(B) To commence or continue transport if the driver learns that alcoholic beverages were brought onto the vehicle, unless all alcoholic beverages are removed and locked in the vehicle trunk or other locked compartment.

(f) A failure by the designee to do any of the following is a misdemeanor:

(1) To check the identifications of all passengers to determine who is under 21 years of age.

(2) To read the statement specified in paragraph (7) of subdivision (b) to each passenger in the party who is under 21 years of age.

(3) To notify the driver of the vehicle if, at any time during the trip, a passenger in the designee’s party who is under 21 years of age is consuming or has consumed alcoholic beverages.

(4) Upon termination of a trip because of the consumption of alcoholic beverages by a person under 21 years of age, to safely return any person under 21 years of age who is a member of the designee’s party to his or her home, to take him or her to a location reasonably believed to be safer than his or her home, or to entrust him or her into the care of his or her parent or legal guardian.

(g) When present, the failure of a parent or guardian to notify the driver when a member of the party who is under 21 years of age and for whom the parent or guardian is responsible is consuming or has consumed alcoholic beverages during the provision of transportation services is guilty of a misdemeanor.

(h) If the commission, after a hearing, finds that a charter-party carrier of passengers or the driver of a charter-party carrier of passengers has violated this section, the commission shall do the following:

(1) For a first violation, the commission shall impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier, as determined appropriate by the commission.

(2) For a second violation, the commission shall impose a civil penalty of not more than two thousand dollars ($2,000) upon the carrier or may suspend the carrier’s certificate or permit for not more than 30 days, or both, as determined appropriate by the commission.

(3) For a third violation, the commission shall revoke the carrier’s certificate or permit.

(i) The authority granted the commission in subdivision (h) is in addition to any authority the commission has to enforce the requirements of this
chapter, and the commission may impose any penalties available pursuant
to this chapter for a violation of this section.

(j) Nothing in this section shall change the liability of a party knowingly
furnishing the alcoholic beverage to a person who they know or reasonably
should know to be under 21 years of age.

SEC. 5. Section 5384.5 of the Public Utilities Code is amended to read:

5384.5. If the driver of any charter-party carrier of passengers for hire
operating under a valid certificate or permit, or any officer, director, agent,
or employee of a charter-party carrier of passengers operating vehicles used
in the transportation of passengers for hire under such a certificate or permit,
is convicted of a violation of Section 23225 of the Vehicle Code, the
commission, after a hearing, shall do the following:

(a) For a first offense, the commission may impose a civil penalty of not
more than two thousand dollars ($2,000) upon the carrier, as determined
appropriate by the commission.

(b) For a second offense, the commission may impose a civil penalty of
not more than two thousand dollars ($2,000) upon the carrier or suspend
the carrier’s certificate or permit for not more than 30 days, or both, as
determined appropriate by the commission.

(c) For a third offense, the commission shall revoke the carrier’s
certificate or permit.

SEC. 6. Section 23229.1 of the Vehicle Code is amended to read:

23229.1. (a) Subject to subdivision (b), Sections 23223 and 23225 apply
to any driver providing transportation services on a prearranged basis as a
charter-party carrier of passengers, as defined in Section 5360 of the Public
Utilities Code, when the driver of the vehicle transports any passenger under
21 years of age and fails to comply with the requirements of Section 5384.1
of the Public Utilities Code.

(b) For purposes of subdivision (a), it is not a violation of Section 23225
for any driver providing transportation services on a prearranged basis as a
charter-party carrier of passengers that is licensed pursuant to the Public
Utilities Code to keep any bottle, can, or other receptacle containing any
alcoholic beverage in a locked utility compartment within the area occupied
by the driver and passengers.

(c) In addition to the requirements of Section 1803, every clerk of a court
in which any driver in subdivision (a) was convicted of a violation of Section
23225 shall prepare within 10 days after conviction, and immediately forward
to the Public Utilities Commission at its office in San Francisco, an abstract
of the record of the court covering the case in which the person was
convicted. If sentencing is not pronounced in conjunction with the
conviction, the abstract shall be forwarded to the commission within 10
days after sentencing, and the abstract shall be certified, by the person
required to prepare it, to be true and correct. For the purposes of this
subdivision, a forfeiture of bail is equivalent to a conviction.

SEC. 7. Section 40000.20 is added to the Vehicle Code, to read:

40000.20. A third or subsequent violation of Section 23225, relating to
the storage of an opened container of an alcoholic beverage, or Section
23223, relating to the possession of an open container of an alcoholic beverage, of a driver of any vehicle used to provide transportation services on a prearranged services, operating under a valid certificate or permit pursuant to the Passenger Charter-party Carriers’ Act (Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code), is a misdemeanor.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
Summary: New Jersey was an early state to outlaw the sale of e-cigarettes to minors. About half do currently. The 2010 law also prohibits using e-cigarettes indoors, adding e-cigarettes to the definition of products prohibited under the state smoking ban already in place.


Comment: From NJToday (Jan. 14, 2010)

A bill sponsored by Sen. Bob Gordon and Sen. Joseph Vitale was signed into law this week banning the use of electronic smoking devices, commonly known as “e-cigarettes,” in indoor public places and the sale of the devices to minors.

“This is yet another victory for public health,” said Gordon (D-Bergen). “No matter how manufacturers attempt to market these devices, they are still cigarettes. In many ways, they may be more dangerous than traditional cigarettes because of their lack of oversight or any conclusive studies into their health effects.”

“With all of the overwhelming statistics on the hazards of smoking, the e-cigarette is nothing more than an attempt by the tobacco industry to reinvent itself as a healthier alternative,” said Vitale (D-Middlesex). “Meanwhile, they are using propylene glycol, a known irritant, to create the vaporizing effect of the cigarette.”

The bill applies the provisions of the 2005 “New Jersey Smoke Free Air Act” to the use of e-cigarettes by expanding the definition of “smoking” as the burning or inhaling of tobacco or any other matter than can be smoked or inhaled, or the inhaling of smoke or vapor from an electronic smoking device. The act already prohibits the smoking of a cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked in indoor public places and workplaces.

Under the bill, the penalties that currently apply to a person who smokes tobacco in an indoor public place or workplace would apply to a person who uses an e-cigarette: a fine of not less than $250 for the first offense, $500 for the second offense and $1,000 for each subsequent offense.

The new law, which goes into effect 180 days from its signing, also prohibits the sale of e-cigarettes to anyone under the age of 19, the legal age to purchase other traditional tobacco products. The same penalties listed above would apply to any retailer who sells a tobacco product to someone under the age of 19.
Read more: http://njtoday.net/2010/01/14/e-cigarette-restrictions-signed.into-law/#ixzz31X11vwxE

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to read as follows:

   2. The Legislature finds and declares that: [tobacco]
   a. Tobacco is the leading cause of preventable disease and death in the State and the nation; and tobacco;]
   b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public; [the]
   c. Electronic smoking devices have not been approved as to safety and efficacy by the federal Food and Drug Administration, and their use may pose a health risk to persons exposed to their smoke or vapor because of a known irritant contained therein and other substances that may, upon evaluation by that agency, be identified as potentially toxic to those inhaling the smoke or vapor;
   d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system; and [therefore]
   e. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces. (cf: P.L.2005, c.383, s.2)

2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to read as follows:

3. As used in this act:

   "Bar" means a business establishment or any portion of a nonprofit entity, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages.

   "Cigar bar" means any bar, or area within a bar, designated specifically for the smoking of tobacco products, purchased on the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
premises or elsewhere; except that a cigar bar that is in an area
within a bar shall be an area enclosed by solid walls or windows, a
ceiling and a solid door and equipped with a ventilation system
which is separately exhausted from the nonsmoking areas of the bar
so that air from the smoking area is not recirculated to the
nonsmoking areas and smoke is not backstreamed into the
nonsmoking areas.

"Cigar lounge" means any establishment, or area within an
establishment, designated specifically for the smoking of tobacco
products, purchased on the premises or elsewhere; except that a
cigar lounge that is in an area within an establishment shall be an
area enclosed by solid walls or windows, a ceiling and a solid door
and equipped with a ventilation system which is separately
exhausted from the nonsmoking areas of the establishment so that
air from the smoking area is not recirculated to the nonsmoking
areas and smoke is not backstreamed into the nonsmoking areas.

“Electronic smoking device” means an electronic device that can
be used to deliver nicotine or other substances to the person
inhaling from the device, including, but not limited to, an electronic
cigarette, cigar, cigarillo, or pipe.

"Indoor public place" means a structurally enclosed place of
business, commerce or other service-related activity, whether
publicly or privately owned or operated on a for-profit or nonprofit
basis, which is generally accessible to the public, including, but not
limited to: a commercial or other office building; office or building
owned, leased or rented by the State or by a county or municipal
government; public and nonpublic elementary or secondary school
building; board of education building; theater or concert hall; public
library; museum or art gallery; bar; restaurant or other
establishment where the principal business is the sale of food for
consumption on the premises, including the bar area of the
establishment; garage or parking facility; any public conveyance
operated on land or water, or in the air, and passenger waiting
rooms and platform areas in any stations or terminals thereof; health
care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
seq.); patient waiting room of the office of a health care provider
licensed pursuant to Title 45 of the Revised Statutes; child care
center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
race track facility; facility used for the holding of sporting events;
ambulatory recreational facility; shopping mall or retail store; hotel,
motel or other lodging establishment; apartment building lobby or
other public area in an otherwise private building; or a passenger
elevator in a building other than a single-family dwelling.

"Person having control of an indoor public place or workplace”
means the owner or operator of a commercial or other office
building or other indoor public place from whom a workplace or
space within the building or indoor public place is leased.
"Smoking" means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

"Tobacco retail establishment" means an establishment in which at least 51% of retail business is the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

"Workplace" means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

(cf: P.L.2005, c.383, s.3)

3. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to read as follows:

1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 19 years of age:

   (1) any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco; or

   (2) any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

   (1) that the purchaser of the tobacco product or electronic smoking device or the recipient of the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to make the purchase or receive the sample;

   (2) that the appearance of the purchaser of the tobacco product or electronic smoking device or the recipient of the promotional sample was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to make the purchase or receive the sample; and

   (3) that the sale or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this
subsection, the appearance of the purchaser or recipient, and in the
reasonable belief that the purchaser or recipient was of legal age to
make the purchase or receive the sample.

c. A person who violates the provisions of subsection a. of this
section, including an employee of a retail dealer licensee under
P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
provides a tobacco product to a person under 19 years of age, shall
be liable to a civil penalty of not less than $250 for the first
violation, not less than $500 for the second violation, and $1,000
for the third and each subsequent violation. The civil penalty shall
be collected pursuant to the "Penalty Enforcement Law of 1999,"
P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
before the municipal court having jurisdiction. An official
authorized by statute or ordinance to enforce the State or local
health codes or a law enforcement officer having enforcement
authority in that municipality may issue a summons for a violation
of the provisions of subsection a. of this section, and may serve and
execute all process with respect to the enforcement of this section
consistent with the Rules of Court. A penalty recovered under the
provisions of this subsection shall be recovered by and in the name
of the State by the local health agency. The penalty shall be paid
into the treasury of the municipality in which the violation occurred
for the general uses of the municipality.

d. In addition to the provisions of subsection c. of this section,
upon the recommendation of the municipality, following a hearing
by the municipality, the Division of Taxation in the Department of
the Treasury may suspend or, after a second or subsequent violation
of the provisions of subsection a. of this section, revoke the license
issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail
dealer. The licensee shall be subject to administrative charges,
based on a schedule issued by the Director of the Division of
Taxation, which may provide for a monetary penalty in lieu of a
suspension.

e. A penalty imposed pursuant to this section shall be in
addition to any penalty that may be imposed pursuant to section 3
(cf: P.L.2005, c.384, s.1)

4. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to
read as follows:

3. a. A person who sells or gives to a person under 19 years of
age any cigarettes made of tobacco or of any other matter or
substance which can be smoked, or any cigarette paper or tobacco
in any form, including smokeless tobacco, or any electronic
smoking device that can be used to deliver nicotine or other
substances to the person inhaling from the device, including, but not
limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any
cartridge or other component of the device or related product,
including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product or electronic smoking device to a person under 19 years of age, shall be punished by a fine as provided for a petty disorderly persons offense. A person who has been previously punished under this section and who commits another offense under it may be punishable by a fine of twice that provided for a petty disorderly persons offense.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser or recipient of the tobacco product or electronic smoking device falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device;

(2) that the appearance of the purchaser or recipient of the tobacco product or electronic smoking device was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to purchase or receive the tobacco product or electronic smoking device; and

(3) that the sale or distribution of the tobacco product or electronic smoking device was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product or electronic smoking device.

c. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 1 of P.L.2000, c.87 (C.2A:170-51.4).

(cf: P.L.2005, c.384, s.5)

5. Sections 1 and 2 of this act shall take effect on the 180th day after enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of those sections. Sections 3 and 4 of this act shall take effect on the 60th day after enactment.

Prohibits use of electronic smoking devices in indoor public places and sale to minors.
Access to Social Media Accounts by Employers, Landlords, and Educational Institutions

Wisconsin

Bill/Act: SB 223

Status: Signed into law on April 9, 2014.

Summary: Uniform Law Commission: Wisconsin’s Act 208 contains many of the components of other states’ social media privacy laws, including, among others: non-retaliation provisions; exceptions for publicly available information, compliance with regulatory screening requirements, preventing the transfer of proprietary or confidential information, and inadvertent access; and a private cause of action provision. Wisconsin is unique, however, in that in addition to employers and schools, the law also provides for restrictions on a landlord’s access to a tenant or prospective tenant’s personal internet accounts.

NOTE: Following this section, please see the Uniform Law Commission’s summary description of state efforts on this issue.

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Comments: From Government Technology (January 28, 2014)

New legislation should shield Wisconsin job seekers from prospective employers who want access to their private social media accounts.

SB 223 prohibits employers, schools and landlords from requesting the passwords for applicant, student or potential tenants’ Facebook and other social media pages. Authored by Rep. Melissa Sargent, D-Madison, SB 223 prohibits employers, schools and landlords from requesting the passwords for applicant, student or potential tenants’ Facebook and other social media pages. 

…. Once law, the bill will protect people from being penalized or discriminated against by refusing to turn over personal Internet and social media account information. The legislation does not, however, prevent an employer from observing or acting on a person’s publicly-available social media data.

In an interview with Government Technology, Sargent said she decided to work on the legislation after seeing that the messaging aspects of social media platforms were being used as primary communication vehicles, instead of just fun diversions. She believes the bill will protect the 4th Amendment rights of the account holder and the people with whom that person is communicating.

Sargent was adamant that if an employer is not allowed to ask an employee or prospective employee for their private snail mail or emails, then they shouldn’t have access to private social media information either. “If someone has your login and password, they can see all that backend stuff … and it’s that type of protection that I am taking into account in bringing our laws up-to-date with the times,” Sargent said.

Wisconsin would be one of several states to adopt this kind of legislation. Washington set social media privacy policy early last year, while a New Jersey bill on social media protection went
into effect last December. According to NJ.com, the Garden State was the 12th state in the U.S. to implement a law regulating social media privacy in the workplace.

In an email to Government Technology, Sheila Gladstone, principal attorney with the Lloyd Gosselink Rochelle & Townsend law firm in Austin, Texas, noted that 15 more states have a social media password protection law pending. She added that a similar law was proposed but didn’t pass in Texas, but she’s advising her employer clients to respect the trend and not ask prospective employees for access. Instead, she’s encouraging them to review only what is open to the public or to any members of a particular social media site.

The Journal Sentinel reported that many of the social media password protection laws being circulated around the country have received bipartisan support. Sargent agreed and said her bill was bipartisan in both houses. In addition, she revealed the Wisconsin bill had support from a local chamber of commerce, a conservative business group and a branch of the ACLU.

Issues and Concerns

An amendment to the bill was made last week to ensure employers still had the right to “friend” employees on the various social media platforms. Sargent explained some parties were concerned that the legislation would prohibit employers and employees who had personal relationships from connecting online.

In addition to employee protections, Sargent’s bill also maintains a variety of employer rights. For example, some employees are in charge of providing social media for a company or use social media on equipment owned by a company. Under the new legislation, employers are still allowed to monitor what’s being done on a company owned computer, and the employer has the right to conduct investigations and compel employees to cooperate if there are any alleged unauthorized use of confidential information using social media.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to amend 111.322 (2m) (a) and 111.322 (2m) (b); and to create 106.54 (10), 111.91 (2) (im) and 995.55 of the statutes; relating to: employer access to, and observation of, the personal Internet accounts of employees and applicants for employment; educational institution access to, and observation of, the personal Internet accounts of students and prospective students; landlord access to, and observation of, the personal Internet accounts of tenants and prospective tenants; and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 106.54 (10) of the statutes is created to read:

106.54 (10) (a) The division shall receive complaints under s. 995.55 (6) (b) and shall process the complaints in the same manner as employment discrimination complaints are processed under s. 111.39.

(b) The division shall receive complaints under s. 995.55 (6) (c) and shall process the complaints in the same manner as housing discrimination complaints are processed under s. 106.50.

SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is amended to read:

111.322 (2m) (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997, or 995.55, or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 4. 111.91 (2) (im) of the statutes is created to read:

111.91 (2) (im) Employer access to the social networking Internet site of an employee that provides fewer rights and remedies to employees than are provided under s. 995.55.

SECTION 5. 995.55 of the statutes is created to read:

995.55 Internet privacy protection. (1) DEFINITIONS. In this section:

(a) "Access information" means a user name and password or any other security information that protects access to a personal Internet account.
(b) "Educational institution" means an institution of higher education, as defined in s. 108.02 (18); a technical college established under s. 38.02; a school, as defined in s. 38.50 (11) (a) 2.; a public school, as described in s. 115.01 (1); a charter school, as defined in s. 115.001 (1); a private school, as defined in s. 115.001 (3r); or a private educational testing service or administrator.

(c) "Employer" means any person engaging in any activity, enterprise, or business employing at least one individual. "Employer" includes the state, its political subdivisions, and any office, department, independent agency, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(d) "Personal Internet account" means an Internet-based account that is created and used by an individual exclusively for purposes of personal communications.

(2) RESTRICTIONS ON EMPLOYER ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in pars. (b), (c), and (d), no employer may do any of the following:

1. Request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow observation of that account.

2. Discharge or otherwise discriminate against an employee for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the employee's personal Internet account, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

3. Refuse to hire an applicant for employment because the applicant refused to disclose access information for, grant access to, or allow observation of the applicant's personal Internet account.

(b) Paragraph (a) does not prohibit an employer from doing any of the following:

1. Requesting or requiring an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer or in order for the employer to gain access to an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.

2. Discharging or disciplining an employee for transferring the employer's proprietary or confidential information or financial data to the employee's personal Internet account without the employer's authorization.

3. Subject to this subdivision, conducting an investigation or requiring an employee to cooperate in an investigation or requiring an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer or in order for the employer to gain access to an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.

4. Restricting or prohibiting an employee's access to certain Internet sites while using an electronic communications device supplied or paid for in whole or in part by the employer or while using the employer's network or other resources.

5. Complying with a duty to screen applicants for employment prior to hiring or a duty to monitor or retain employee communications that is established under state or federal laws, rules, or regulations or the rules of a self-regulatory organization, as defined in 15 USC 78c (a) (26).

6. Viewing, accessing, or using information about an employee or applicant for employment that can be obtained without access information or that is available in the public domain.

7. Requesting or requiring an employee to disclose the employee's personal electronic mail address.

(c) Paragraph (a) does not apply to a personal Internet account or an electronic communications device of an employee engaged in providing financial services who uses the account or device to conduct the business of an employer that is subject to the content, supervision, and retention requirements imposed by federal securities laws and regulations or by the rules of a self-regulatory organization, as
defined in 15 USC 78c (a) (26).

(d) An employer that inadvertently obtains access information for an employee's personal Internet account through the use of an electronic device or program that monitors the employer's network or through an electronic communications device supplied or paid for in whole or in part by the employer is not liable under par. (a) for possessing that access information so long as the employer does not use that access information to access the employee's personal Internet account.

(3) RESTRICTIONS ON EDUCATIONAL INSTITUTION ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in par. (b), no educational institution may do any of the following:

1. Request or require a student or prospective student, as a condition of admission or enrollment, to disclose access information for the personal Internet account of the student or prospective student or to otherwise grant access to or allow observation of that account.

2. Expel, suspend, discipline, or otherwise penalize any student for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the student's personal Internet account, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

3. Refuse to admit a prospective student because the prospective student refused to disclose access information for, grant access to, or allow observation of the prospective student's personal Internet account.

(b) Paragraph (a) does not prohibit an educational institution from doing any of the following:

1. Requesting or requiring a student to disclose access information to the educational institution in order for the institution to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the institution or in order for the educational institution to gain access to an account or service provided by the institution, obtained by virtue of the student's admission to the educational institution, or used for educational purposes.

2. Viewing, accessing, or using information about a student or prospective student that can be obtained without access information or that is available in the public domain.

(4) RESTRICTIONS ON LANDLORD ACCESS TO PERSONAL INTERNET ACCOUNTS. (a) Except as provided in par. (b), no landlord may do any of the following:

1. Request or require a tenant or prospective tenant, as a condition of tenancy, to disclose access information for the personal Internet account of the tenant or prospective tenant or to otherwise grant access to or allow observation of that account.

2. Discriminate in a manner described in s. 106.50 (2) against a tenant or prospective tenant for exercising the right under subd. 1. to refuse to disclose access information for, grant access to, or allow observation of the personal Internet account of the tenant or prospective tenant, opposing a practice prohibited under subd. 1., filing a complaint or attempting to enforce any right under subd. 1., or testifying or assisting in any action or proceeding to enforce any right under subd. 1.

(b) Paragraph (a) does not prohibit a landlord from viewing, accessing, or using information about a tenant or prospective tenant that can be obtained without access information or that is available in the public domain.

(5) NO DUTY TO MONITOR. (a) Nothing in this section creates a duty for an employer, educational institution, or landlord to search or monitor the activity of any personal Internet account.

(b) An employer, educational institution, or landlord is not liable under this section for any failure to request or require that an employee, applicant for employment, student, prospective student, tenant, or prospective tenant grant access to, allow observation of, or disclose information that allows access to or observation of a personal Internet account of the employee, applicant for employment, student, prospective student, tenant, or prospective tenant.

(6) ENFORCEMENT. (a) Any person who violates sub. (2) (a), (3) (a), or (4) (a) may be required to forfeit not more than $1,000.

(b) An employee who is discharged or otherwise discriminated against in violation of sub. (2) (a) 2., an applicant for employment who is not hired in violation of sub. (2) (a) 3., a student who is expelled, suspended, disciplined, or otherwise penalized in violation of sub. (3) (a) 2., or a prospective student who is not admitted in violation of sub. (3) (a) 3., may file a complaint with the department of workforce development, and that department shall process the complaint in the same manner as employment discrimination complaints are processed under s. 111.39. If the department of workforce development
finds that a violation of sub. (2) (a) 2. or 3. or (3) (a) 2. or 3. has been committed, that department may order the employer or educational institution to take such action authorized under s. 111.39 as will remedy the violation. Section 111.322 (2m) applies to a discharge or other discriminatory act arising in connection with any proceeding under this paragraph.

(c) A tenant or prospective tenant who is discriminated against in violation of sub. (4) (a) 2. may file a complaint with the department of workforce development, and that department shall process the complaint in the same manner as housing discrimination complaints are processed under s. 106.50. If the department of workforce development finds that a violation of sub. (4) (a) 2. has been committed, that department may order the landlord to take such action authorized under s. 106.50 as will remedy the violation.

Section 6. Initial applicability.

(1) Collective bargaining agreement. This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.
Status: Signed into law on April 22, 2013.

Summary: To prohibit an employer from requiring or requesting a current or prospective employee from disclosing his or her username or password for a social media account.

Comments: From Privacy Law Corner (May 9, 2013)
Arkansas Governor Mike Beebe recently signed H.B. 1901 into law, prohibiting employers from asking employees or job applicants for social media log-in information. Additionally, employers may not require that current or prospective employees add a supervisor to their social media contacts (i.e., "friending"), or require that privacy settings on social media accounts be changed. If an employer inadvertently obtains social media log-in information through an employer-provided electronic device, or through monitoring of the employer's network, the employer will not be liable for possessing the information but may not use it to access the social media account. Employers may not retaliate against current or prospective employees for exercising their social media privacy rights, but may still view information on social media sites that is publicly available.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

By: Representative Steel

For An Act To Be Entitled

AN ACT TO PROHIBIT AN EMPLOYER FROM REQUIRING OR REQUESTING A CURRENT OR PROSPECTIVE EMPLOYEE FROM DISCLOSING HIS OR HER USERNAME OR PASSWORD FOR A SOCIAL MEDIA ACCOUNT OR TO PROVIDE ACCESS TO THE CONTENT OF HIS OR HER SOCIAL MEDIA ACCOUNT; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT AN EMPLOYER FROM REQUIRING OR REQUESTING A CURRENT OR PROSPECTIVE EMPLOYEE FROM DISCLOSING HIS OR HER USERNAME OR PASSWORD FOR A SOCIAL MEDIA ACCOUNT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 11, Chapter 2, Subchapter 1, is amended to add an additional section to read as follows:

11-2-124. Social media accounts of current and prospective employees.
(a) As used in this section:
(1) "Employee" means an individual who provides services or labor for wages or other remuneration for an employer;
(2) "Employer" means a person or entity engaged in business, an industry, a profession, a trade, or other enterprise in the state or a unit of state or local government, including without limitation an agent, representative, or designee of the employer; and
(3)(A) "Social media account" means a personal account with an
electronic medium or service where users may create, share, or view user-generated content, including without limitation:

(i) Videos;
(ii) Photographs;
(iii) Blogs;
(iv) Podcasts;
(v) Messages;
(vi) Emails; or
(vii) Website profiles or locations.

(B) "Social media account" does not include an account:
(i) Opened by an employee at the request of an employer;
(ii) Provided to an employee by an employer such as a company email account or other software program owned or operated exclusively by an employer;
(iii) Setup by an employee on behalf of an employer; or
(iv) Setup by an employee to impersonate an employer through the use of the employer’s name, logos, or trademarks.

(C) "Social media account" includes without limitation an account established with Facebook, Twitter, LinkedIn, MySpace, or Instagram.
(b)(1) An employer shall not require, request, suggest, or cause a current or prospective employee to:
(A) Disclose his or her username and password to the current or prospective employee’s social media account;
(B) Add an employee, supervisor, or administrator to the list or contacts associated with his or her social media account; or
(C) Change the privacy settings associated with his or her social media account.

(2) If an employer inadvertently receives an employee’s username, password, or other login information to the employee’s social media account through the use of an electronic device provided to the employee by the employer or a program that monitors an employer’s network the employer is not liable for having the information but may not use the information to gain access to an employee’s social media account.

(c) An employer shall not:
(1) Take action against or threaten to discharge, discipline, or otherwise penalize a current employee for exercising his or her rights under
subsection (b) of this section; or

(2) Fail or refuse to hire a prospective employee for exercising his or her rights under subsection (b) of this section.

(d) This section does not prohibit an employer from viewing information about a current or prospective employee that is publicly available on the Internet.

(e) Nothing in this section:

(1) Prevents an employer from complying with the requirements of federal, state, or local laws, rules, or regulations or the rules or regulations of self-regulatory organizations; or

(2)(A) Affects an employer's existing rights or obligations to request an employee to disclose his or her username and password for the purpose of accessing a social media account if the employee's social media account activity is reasonably believed to be relevant to a formal investigation or related proceeding by the employer of allegations of an employee's violation of federal, state, or local laws or regulations or of the employer's written policies.

(B) If an employer exercises its rights under subdivision (e)(2)(A) of this section, the employee's username and password shall only be used for the purpose of the formal investigation or a related proceeding.

/s/Steel
11-35B-03 Access to Social Media Accounts by Higher Educational Institutions  Arkansas
Bill/Act: HB 1902

Status: Signed into law on April 8, 2013.

Summary: To prohibit an institution of higher education from requiring or requesting a current or prospective employee or student from disclosing his or her username or password for a social media account.

Comments: From Privacy Law Corner (May 9, 2013)
Governor Beebe also signed a similar law prohibiting higher education institutions from obtaining log-in information from current or prospective students, requiring that students add a school employee or volunteer as contact or requiring that students change their privacy settings.


Disposition of Entry:

SSL Committee Meeting: 2015 B
() Include in Volume
() Defer consideration:
() next SSL mtg.
() next SSL cycle
() Reject

Comments/Note to staff:
For An Act To Be Entitled

AN ACT TO PROHIBIT AN INSTITUTION OF HIGHER EDUCATION
FROM REQUIRING OR REQUESTING A CURRENT OR PROSPECTIVE
EMPLOYEE OR STUDENT FROM DISCLOSING HIS OR HER
USERNAME OR PASSWORD FOR A SOCIAL MEDIA ACCOUNT OR TO
PROVIDE ACCESS TO THE CONTENT OF HIS OR HER SOCIAL
MEDIA ACCOUNT; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT AN INSTITUTION OF HIGHER
EDUCATION FROM REQUIRING OR REQUESTING A
CURRENT OR PROSPECTIVE EMPLOYEE OR
STUDENT FROM DISCLOSING HIS OR HER
USERNAME OR PASSWORD FOR A SOCIAL MEDIA
ACCOUNT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 60, Subchapter 1, is amended
to add an additional section to read as follows:

6-60-104. Social media accounts of current and prospective students or
employees.

(a) As used in this section:

(1) "Employee" means an individual who provides services or
labor for wages or other remuneration for an institution of higher education;

(2) "Institution of higher education" means a public or private
institution that provides postsecondary education or training to students
that is academic, technical, trade-oriented, or in preparation for gaining
employment in a recognized occupation;

(3)(A) "Social media account" means a personal account with an electronic medium or service where users may create, share, or view user-generated content, including without limitation:

(i) Videos;
(ii) Photographs;
(iii) Blogs;
(iv) Podcasts;
(v) Messages;
(vi) Emails; or
(vii) Website profiles or locations.

(B) "Social media account" does not include an account:

(i) Opened by an employee or student at the request of an institution of higher education;

(ii) Provided to an employee or student by an institution of higher education, such as an institutional email account or other software program owned or operated exclusively by an institution of higher education;

(iii) Setup by an employee or student on behalf of an institution of higher education; or

(iv) Setup by an employee or student to impersonate an institution of higher education through the use of the institution's name, logos, or trademarks.

(C) "Social media account" includes without limitation an account established with Facebook, Twitter, LinkedIn, MySpace, or Instagram; and

(4) "Student" means a person enrolled part-time or full-time at an institution of higher education in an organized course of study.

(b) An institution of higher education shall not require, request, suggest, or cause:

(1) A current or prospective employee or student to disclose his or her username and password to the current or prospective employee or student's social media account; or

(2) A current or prospective student, as a condition of acceptance in curricular or extracurricular activities, to:

(A) Add an employee or volunteer of the institution of higher education, including without limitation a coach, professor, or
administrator, to the list of contacts associated with his or her social
media account; or

(B) Change the privacy settings associated with his or her
social media account.

(c) An institution of higher education shall not:

(1) Take action against or threaten to discharge, discipline,
prohibit from participating in curricular or extracurricular activities, or
otherwise penalize a current student for exercising his or her rights under
subsection (b) of this section; or

(2) Fail or refuse to admit or hire a prospective employee or
student for exercising his or her rights under subsection (b) of this
section.

(d) This section does not prohibit an institution of higher education
from viewing information about a current or prospective employee or student
that is publicly available on the Internet.

(e) Nothing in this section prevents an institution of higher
education from complying with the requirements of federal or state laws,
rules, or regulations.

/s/Steel
11-35B-04 Access to Social Media Accounts by Employers or Educational Institutions
Michigan
Bill/Act: HB 5523

Status: Signed into law on December 31, 2012.

Summary: The bill would create a new act, to be known as the Internet Privacy Protection Act, which would, generally speaking, prohibit employers and educational institutions from requesting "access information" associated with "personal internet accounts" for prospective and/or current employees and students.

"Access information" would mean a user name, password, login information, or other security information that protects access to a social networking account. "Social networking account" would mean a personalized, privacy-protected website that allows an individual to (1) construct a public or semipublic profile within a bounded system established by an internet-based service and (2) create a list of other system users who are granted access to, and reciprocal communication privileges with, the individual's website.

Prohibited acts by an employer: Employers would be prohibited from (1) requesting an employee or applicant to disclose access information associated with a personal internet account; and (2) from discharging, disciplining, failing to hire, or otherwise discriminating against an employee or applicant for failing to disclose access information.

Prohibited acts by an educational institution: Educational institutions would be prohibited from (1) requesting a current or prospective student to disclose access information associated with that student's personal internet accounts; and (2) from discharging, disciplining, failing to admit, or otherwise discriminating against that student for failing to disclose personal internet account access information.

Permitted acts by an employer: The bill would not prohibit an employer from:

- Requesting or requiring an employee to disclose access information to the employer to gain access to or operate (1) an electronic communications device paid for in whole or part by the employer, or (2) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for business purposes.
- Disciplining or discharging an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal internet account without prior authorization.
- Conducting an investigation or requiring an employee to cooperate in an investigation if (1) there is specific information about activity on the employee's personal account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related misconduct; or (2) the employer has specific information about an unauthorized transfer of the employer's proprietary or confidential information, or financial data to an employee's personal account.
- Restricting or prohibiting an employee's access to certain websites while using an electronic communication device paid for in whole or part by the employer or while using an employer's network or resources, in accordance with state and federal law.
- Monitoring, reviewing, or accessing electronic data stored on an electronic communications device paid for in whole or part by the employer, or traveling through or stored on an employer's network, in accordance with state or federal law.

The bill also would not prohibit or restrict an employer from (1) complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, or (2) viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.

Permitted acts by an educational institution: The bill would not prohibit an educational institution from requesting or requiring a student to disclose access information to the institution to gain access to or operate (1) an electronic communications device paid for in whole or part by the institution, or (2) an account or service provided by the institution that is either obtained by virtue of the student's admission to the institution or used by the student for educational purposes.

Educational institutions would also be allowed to view, access, or utilize information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.

Employer and educational institution liability: The bill would not create a duty for an employer or educational institution to search or monitor activity on a personal internet account.

Neither an employer nor an educational institution would be liable under the bill for failing to request or require an employee, student, applicant, or prospective student to grant access to or disclose information that allows access to a personal internet account.

Penalties for violation: Anyone found in violation of the act would be guilty of a misdemeanor and subject to imprisonment up to 93 days and/or a maximum fine of $1,000.

Civil action: An individual who is the subject of a violation could bring a civil action and recover actual damages or $1,000, whichever is greater, and reasonable attorney fees and court costs. Except for good cause, not later than 60 days before filing a civil action, the individual would have to make a written demand of the alleged violator for the greater of the amount of the actual damages or $1,000. The written demand would have to include reasonable documentation of the violation and damages, and would have to be served in the manner provided by law for the service of process in civil actions or be sent by certified mail to the alleged violator's residence, principal office, or place of business. Civil actions could be brought in the circuit court where the alleged violation occurred or in the county where the alleged violator resides or has a principal place of business. It would be an affirmative defense to an action under this bill that the employer or educational institution acted to comply with the requirements of federal or state law.
Comments: From LexisNexis (January 30, 2013)
The law prohibits employers from requiring employees or applicants to grant access to; to allow
observation of; or to disclose information that allows access to personal internet accounts. The
law does not prevent an employer from "surfing the web" to find out non password protected
information about the employer. An employer may not discipline, terminate, or otherwise
penalize employees and applicants who refuse to provide access/passwords.

A violation of the law is a misdemeanor with a fine of up to $1,000. The law provides for a
private right of action after an individual serves written demand of the alleged violation
with supporting documentation of the violation. Compliance with state or federal law is an
affirmative defense to a claim.

The law has exceptions when the electronic device is paid for, in whole or part, by the employer;
when the account is obtained by virtue of the employment relationship or when it is used for the
employer's business; and when an employee has transferred proprietary or confidential
information or financial information to a person account without authorization.

There is also an exception where an employer is conducting an investigation where there
is specific information about activity on a personal account concerning compliance with
applicable law and regulatory requirement, or about work related misconduct; and about
unauthorized transfer of confidential, proprietary, or financial data; or about access to certain
websites while using the an employer paid for electronic communications device. An
investigation to review, monitor, or access electronic data stored on a device paid for by the
employer or traveling through on the employer's network in accordance with state or federal law
is not a violation.

Read more: http://www.lexisnexis.com/legalnewsroom/labor-employment/b/labor-employment-
top-blogs/archive/2013/01/30/social-media-password-privacy-in-michigan.aspx

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
ENROLLED HOUSE BILL No. 5523

AN ACT to prohibit employers and educational institutions from requiring certain individuals to grant access to, allow observation of, or disclose information that allows access to or observation of personal internet accounts; to prohibit employers and educational institutions from taking certain actions for failure to allow access to, observation of, or disclosure of information that allows access to personal internet accounts; and to provide sanctions and remedies.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the “internet privacy protection act”.

Sec. 2. As used in this act:

(a) “Access information” means user name, password, login information, or other security information that protects access to a personal internet account.

(b) “Educational institution” means a public or private educational institution or a separate school or department of a public or private educational institution, and includes an academy; elementary or secondary school; extension course; kindergarten; nursery school; school system; school district; intermediate school district; business, nursing, professional, secretarial, technical, or vocational school; public or private educational testing service or administrator; and an agent of an educational institution. Educational institution shall be construed broadly to include public and private institutions of higher education to the greatest extent consistent with constitutional limitations.

(c) “Employer” means a person, including a unit of state or local government, engaged in a business, industry, profession, trade, or other enterprise in this state and includes an agent, representative, or designee of the employer.

(d) “Personal internet account” means an account created via a bounded system established by an internet-based service that requires a user to input or store access information via an electronic device to view, create, utilize, or edit the user's account information, profile, display, communications, or stored data.

Sec. 3. An employer shall not do any of the following:

(a) Request an employee or an applicant for employment to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal internet account.

(b) Discharge, discipline, fail to hire, or otherwise penalize an employee or applicant for employment for failure to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal internet account.

(266)
Sec. 4. An educational institution shall not do any of the following:

(a) Request a student or prospective student to grant access to, allow observation of, or disclose information that allows access to or observation of the student’s or prospective student’s personal internet account.

(b) Expel, discipline, fail to admit, or otherwise penalize a student or prospective student for failure to grant access to, allow observation of, or disclose information that allows access to or observation of the student’s or prospective student’s personal internet account.

Sec. 5. (1) This act does not prohibit an employer from doing any of the following:

(a) Requesting or requiring an employee to disclose access information to the employer to gain access to or operate any of the following:

(i) An electronic communications device paid for in whole or in part by the employer.

(ii) An account or service provided by the employer, obtained by virtue of the employee’s employment relationship with the employer, or used for the employer’s business purposes.

(b) Disciplining or discharging an employee for transferring the employer’s proprietary or confidential information or financial data to an employee’s personal internet account without the employer’s authorization.

(c) Conducting an investigation or requiring an employee to cooperate in an investigation in any of the following circumstances:

(i) If there is specific information about activity on the employee’s personal internet account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.

(ii) If the employer has specific information about an unauthorized transfer of the employer’s proprietary information, confidential information, or financial data to an employee’s personal internet account.

(d) Restricting or prohibiting an employee’s access to certain websites while using an electronic communications device paid for in whole or in part by the employer or while using an employer’s network or resources, in accordance with state and federal law.

(e) Monitoring, reviewing, or accessing electronic data stored on an electronic communications device paid for in whole or in part by the employer, or traveling through or stored on an employer’s network, in accordance with state and federal law.

(2) This act does not prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined in section 3(a)(26) of the securities and exchange act of 1934, 15 USC 78c(a)(26).

(3) This act does not prohibit or restrict an employer from viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.

Sec. 6. (1) This act does not prohibit an educational institution from requesting or requiring a student to disclose access information to the educational institution to gain access to or operate any of the following:

(a) An electronic communications device paid for in whole or in part by the educational institution.

(b) An account or service provided by the educational institution that is either obtained by virtue of the student’s admission to the educational institution or used by the student for educational purposes.

(2) This act does not prohibit or restrict an educational institution from viewing, accessing, or utilizing information about a student or applicant that can be obtained without any required access information or that is available in the public domain.

Sec. 7. (1) This act does not create a duty for an employer or educational institution to search or monitor the activity of a personal internet account.

(2) An employer or educational institution is not liable under this act for failure to request or require that an employee, a student, an applicant for employment, or a prospective student grant access to, allow observation of, or disclose information that allows access to or observation of the employee’s, student’s, applicant for employment’s, or prospective student’s personal internet account.

Sec. 8. (1) A person who violates section 3 or 4 is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) An individual who is the subject of a violation of this act may bring a civil action to enjoin a violation of section 3 or 4 and may recover not more than $1,000.00 in damages plus reasonable attorney fees and court costs. Not later than 60 days before filing a civil action for damages or 60 days before adding a claim for damages to an action seeking
injunctive relief, the individual shall make a written demand of the alleged violator for not more than $1,000.00. The written demand shall include reasonable documentation of the violation. The written demand and documentation shall either be served in the manner provided by law for service of process in civil actions or mailed by certified mail with sufficient postage affixed and addressed to the alleged violator at his or her residence, principal office, or place of business. An action under this subsection may be brought in the district court for the county where the alleged violation occurred or for the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) It is an affirmative defense to an action under this act that the employer or educational institution acted to comply with requirements of a federal law or a law of this state.

This act is ordered to take immediate effect.

\[Signature\]
Clerk of the House of Representatives

\[Signature\]
Secretary of the Senate

Approved ..........................................................

\[Signature\]
Governor
ULC Study Committee on Social Media Privacy
Issues List
March 2014

The following items are potential issues for a drafting committee to consider in creating a uniform law on social media privacy. Many of the items on this list are based on current—enacted or pending—state social media privacy laws.

1) Who To Protect

A key question for a drafting committee on this topic is how protective should a uniform law be of individuals’ privacy in the social media realm (prospective and current employees and/or prospective and current students), versus to what extent should it safeguard employers’ and/or schools’ ability to effectively and efficiently run their operations and shield them from liability.

2) Categories of Entities Covered by the Act

What categories of entities should a law on social media privacy address? Currently, states have (and continue to introduce) laws governing: (1) employers’ access to employees’ and/or prospective employees’ social media accounts; and/or (2) educational institutions’ access to students’ and/or prospective students’ social media accounts. Of the thirteen current state social media privacy laws, eight are applicable to both categories1, four states cover employers only2, and one addresses only schools.3

A second consideration within the broad categories of entities to be covered is what types of subcategories should be included. For instance, Michigan’s social media privacy law covers educational institutions including “an academy; elementary or secondary school; extension course; kindergarten; nursery school; school system; school district; intermediate school district; business, nursing, professional, secretarial, technical, or vocational school; public or private educational testing service or administrator; and an agent of an educational institution.” It further provides that the term “educational institution” “shall be construed broadly to include public and private institutions of higher education to the greatest extent consistent with constitutional limitations.”4 Illinois’ school-specific statute also provides certain conditions for elementary or secondary schools.5 Most of the existing laws that address schools, however, are limited to postsecondary institutions/institutions of higher education.

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1 States include: Arkansas, California, Illinois, Michigan, New Jersey, New Mexico, Oregon, and Utah.
2 States include: Colorado, Maryland, Nevada, and Washington.
3 Delaware.
4 MCL 37.271 et seq. (2012).
5 105 ILCS 75/1 (2013).
It is also worth noting that while almost all of the states address both prospective and current employees/students (where applicable), New Mexico addresses both in the school realm, but only applicants in the employment context, and Illinois addresses both in the employment context, but only current students in the school realm.

3) Form

If a uniform law were to address both employers and educational institutions, would it do so in one act, or two standalone acts. Of the eight current state social media privacy laws that cover both categories, one did so in one act, while seven separated the two.

4) Type of Access Prohibited

How broad should the limitation be on an employers’ and/or school’s access to social media accounts? States currently vary in the scope and types of access that are restricted.

The access limitation could be narrowly drawn—e.g., prohibiting the entity from requesting the person’s username and password, only. Or, the limitations could be more robust: prohibiting the entity from requesting/requiring the person add someone affiliated with the entity as a contact in their social media network; prohibiting the entity from requesting/requiring the person to alter their privacy settings; prohibiting the entity from accessing the person’s social media account through a third party (e.g., someone who is already connected to the person); prohibiting the entity from requesting/requiring to observe the person access their own social media account (sometimes known as “shoulder surfing”); and/or prohibiting the entity from inquiring whether a person has a social media account (the most far-reaching limitation, imposed by New Jersey’s school-specific statute).

5) Non-Retaliation Provisions

Should a uniform law prohibit an employer and/or school from retaliating against a person for refusing to provide access to his or her social media account? All but one of the states (Illinois) that have enacted social media privacy laws have included non-retaliation provisions.

6) Private Cause of Action

Should a uniform law create a private cause of action for a prospective or current employee or student who is aggrieved in violation of the act? About half of the states that have social media

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7 105 ILCS 75/1 (2013) (schools) and 820 ILCS 55/10 (2012) (employers).
8 Michigan.
9 States include: Arkansas, California, Illinois, New Jersey, New Mexico, Oregon, and Utah. (Note that they were introduced under one bill in Utah, but as two acts with separate titles.)
privacy laws provide for a private cause of action. In addition to a civil cause of action, Michigan also provides that a person who violates its social media privacy law is guilty of a misdemeanor, punishable by a $1,000 fine or less.

7) Exceptions

What types of exceptions should a uniform social media law provide? Many of the states with social media privacy laws have included exceptions to protect employers and/or schools where appropriate. In general terms, common exceptions include:

a. Allowing an entity to request/require access to an electronic communications device that is paid for by the entity, or likewise a social media account that is provided by the employer or used for work-related purposes or non-personal accounts that provide access to an employer’s computer or information systems.

b. Making clear that the entity may access or use information that is publicly available about the person.

c. Allowing an entity to request access to an individual’s social media account if relevant to an investigation.

d. Allowing an employer to monitor electronic mail and equipment.

e. Allowing an employer to prohibit the transfer of propriety or confidential information or financial data to an employee’s personal social media account without permission.

f. Making clear that the act’s limitations do not prohibit an entity from complying with laws or regulations, including complying with a duty to screen or monitor applicants or employees established by federal law or a self-regulatory organization.

g. Providing that inadvertently receiving an individual’s social media account login information is permissible (e.g., the employer is not liable for having that information), but once the inadvertent information is received the employer may not use it to access the individual’s social media account.

h. Providing that the act does not create a duty for an entity to search or monitor a personal social media account.

8) Other Social Media Privacy Issues

There are a number of other issues relating to social media privacy—beyond the employer/school access realm—that are attracting attention in the states. These include, among others, “eraser” laws (allowing minors to request their social media content be erased), limits on juror access to social media during trials, and limits on attorney usage of social media in the voir dire process. It may also be prudent to consider any social media privacy law in the context of
possible growing electronic surveillance, increased commercial data mining, and complex terms of service frameworks.
Addendum to the
ULC Study Committee on Social Media Privacy
Issues List
April 2014

In addition to the thirteen states’ social media privacy laws addressed in the Issues List from March 2014, on April 8, 2014 Wisconsin enacted social media privacy legislation.

Wisconsin’s Act 208 contains many of the components of other states’ social media privacy laws, including, among others: non-retaliation provisions; exceptions for publicly available information, compliance with regulatory screening requirements, preventing the transfer of proprietary or confidential information, and inadvertent access; and a private cause of action provision. Wisconsin is unique, however, in that in addition to employers and schools, the law also provides for restrictions on a landlord’s access to a tenant or prospective tenant’s personal internet accounts.
14-35B-01 Registration Fee for Electric Vehicles  Colorado

Bill/Act: HB 1110

Summary: Establishes a flat, annual fee of $50 for the registration of each plug-in electric vehicle. Sixty percent of the fee goes toward road and highway maintenance. The other 40 percent funds electric vehicle infrastructure such as charging stations.


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Comment: From GreenCarReports.com (May 14, 2013)

Stories about new or proposed taxes on electric cars are generally viewed as negative, even punitive, by plug-in vehicle advocates. Now, there's one that likely shouldn't cause all that much ruckus: Colorado is about to levy a $50 annual fee on any car that plugs into the wall to recharge its battery pack. In doing so, it joins the fast-growing list of states that single out cars with plugs--or in some cases, high fuel efficiency--for new and special added taxes.

The rationale is that because these cars don't use gasoline--or at least, use less of it--their owners aren't contributing their fair share of gasoline-tax revenue to state and Federal coffers. Electric-car tax initiatives are currently in effect or under discussion in Arizona, Michigan, Oregon, Texas, Virginia, and Washington.

But what's so great about Colorado's new tax, which takes effect January 1, 2014? For one thing, it's low: just $50 a year, compared to the $100 level in many of the other states that have added the special taxes. Paying the annual fee will get the plug-in electric car owner a decal that must be attached to the upper right-hand corner of the windshield. Even better for electric-car advocates, the law specifies that only $30 of that money goes into the state treasury for the Highway Users Tax Fund. The other half, fully $20 per plug-in car per year, goes into the state's Electric Vehicle Grant Fund, which pays for public charging stations and other infrastructure. That fund, established four years ago, was never allocated a revenue source--so until the electric-car tax was implemented, its goals remained purely theoretical.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
HOUSE BILL 13-1110

BY REPRESENTATIVE(S) Fischer, Court, Duran, Fields, Ginal, Hamner, Hullinghorst, Labuda, Lebsock, Mitsch Bush, Moreno, Pabon, Primavera, Rosenthal, Singer, Williams, Young, McLachlan; also SENATOR(S) Jones, Heath, Schwartz.

CONCERNING CHARGES RELATED TO MOTOR VEHICLES THAT TRAVEL ON THE PUBLIC HIGHWAYS OF THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Liquefied petroleum gas and natural gas that are used to propel a motor vehicle on the state highways are currently subject to the state special fuel tax;

(b) Owners or operators of motor vehicles that are powered by liquefied petroleum gas and natural gas who acquire and pay for a decal are exempt from the state special fuel tax;

(c) Removal of this exemption constitutes a tax policy change; and
(d) This tax policy change does not require prior voter approval under section 20 of article X of the state constitution because it would not cause the state to exceed the state fiscal year spending limit.

(2) The general assembly further finds and declares that:

(a) Liquefied petroleum gas and natural gas have different energy contents than gasoline or other special fuels;

(b) The changes to the tax rate for liquefied petroleum gas and natural gas reflect these differences;

(c) While the tax rates annually increase over a six-year period, all of these rates are reductions from the current rate of twenty and one-half cents per gallon on liquefied petroleum gas and natural gas;

(d) The establishment of these lower rates is not a tax rate increase that requires prior voter approval under section 20 of article X of the state constitution; and

(e) The intended purpose of this rate reduction is to fairly tax liquefied petroleum gas and natural gas and to create tax parity among special fuels based on the differences in each fuel's energy content.

(3) The general assembly further finds and declares that:

(a) Plug-in electric vehicles have impacts on the public roads and highways, as do other types of vehicles;

(b) While owners of motor vehicles that are propelled by plug-in electricity pay state sales and use tax on their vehicle purchases and annual specific ownership taxes and vehicle registration fees, electricity is not taxed as a special fuel;

(c) Owners of plug-in electric vehicles have the same interest as other vehicle owners in contributing to the construction, improvement, repair, and maintenance of public roads and highways; and

(d) The purpose of a portion of the annual fee for these owners is to
provide them with a means to pay their fair share for their vehicles' impacts on the state's public roads and highways.

SECTION 2. In Colorado Revised Statutes, 8-20-102, add (3) as follows:

8-20-102. Duties of director of division of oil and public safety. (3) Prior to January 1, 2014, the director of the division of oil and public safety shall promulgate rules for natural gas setting forth standards related to inspections; specifications; shipment notification; record keeping; labeling of containers; use of meters or mechanical devices for measurement; submittal of installation plans; and minimum standards for the design, construction, location, installation, and operation of retail natural gas systems. The division shall begin enforcing the rules on July 1, 2014. The director may modify or update the rules in his or her discretion. All of the rules required by this subsection (3) must be reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials, and the rules must be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. The director shall adopt the rules in compliance with section 24-4-103, C.R.S.

SECTION 3. In Colorado Revised Statutes, 8-20-201, amend (2) as follows:

8-20-201. Definitions. As used in this part 2, unless the context otherwise requires:

(2) "Fuel products" means all gasoline, aviation gasoline, aviation turbine fuel, diesel, jet fuel, fuel oil, biodiesel, biodiesel blends, kerosene, all alcohol blended fuels, liquefied petroleum gas, gas or gaseous compounds, natural gas, including compressed natural gas and liquefied natural gas, and all other volatile, flammable, or combustible liquids, produced, compounded, and offered for sale or used for the purpose of generating heat, light, or power in internal combustion engines or fuel cells, for cleaning, or for any other similar usage.

SECTION 4. In Colorado Revised Statutes, 8-20-206.5, amend (1)
(a), (1) (d), (1) (e), (3), and (4) (b); and add (4) (c) as follows:

8-20-206.5. Environmental response surcharge - liquefied petroleum gas and natural gas inspection fund - definitions. (1) (a) Every first purchaser of odorized liquefied petroleum gas, every manufacturer of fuel products who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado, and every distributor who ships such products from any point outside of Colorado to a point within Colorado shall pay to the executive director of the department of revenue, each calendar month, either twenty-five dollars per tank truckload of fuel products delivered during the previous calendar month for sale or use in Colorado or the fee for odorized liquefied petroleum gas and natural gas as specified in paragraph (d) of this subsection (1), whichever is applicable. Such payment shall be made on forms prescribed and furnished by the executive director. The provisions of this section shall not apply to fuel that is especially prepared and sold for use in aircraft or railroad equipment or locomotives.

(d) Notwithstanding paragraph (b) of this subsection (1), the executive director of the department of revenue shall have the authority to determine and adjust a fee for odorized liquefied petroleum gas and natural gas, not to exceed ten dollars per tank truckload for liquefied petroleum gas and liquefied natural gas and per every eight thousand gallon equivalents for compressed natural gas.

(e) (I) There is hereby created the liquefied petroleum gas and natural gas inspection fund within the state treasury. Neither this section nor section 8-20.5-103 shall be construed to make the liquefied petroleum gas and natural gas inspection fund an enterprise fund. Such fund shall consist of:

(A) Liquefied petroleum gas and natural gas inspection moneys collected pursuant to this article;

(B) Civil penalties collected as a result of court actions pursuant to section 8-20-104;

(C) Any moneys appropriated to the fund by the general assembly; and
(D) Any moneys granted to the department from a federal agency or trade association for administration of the department's liquefied petroleum gas AND NATURAL GAS inspection program.

(II) The executive director of the department of revenue shall adjust the fees collected pursuant to this article so that the balance of unexpended and unencumbered moneys in the liquefied petroleum gas AND NATURAL GAS inspection fund does not exceed the amount necessary to accumulate and maintain in the liquefied petroleum gas AND NATURAL GAS inspection fund a reserve sufficient to defray administrative expenses of the division of oil and public safety for a period of two months.

(III) The moneys in the fund shall be subject to annual appropriation by the general assembly. Moneys in the fund shall only be used for costs related to:

(A) Initial and subsequent inspections of liquefied petroleum gas AND NATURAL GAS installations;

(B) Proving, including calibrating and adjusting, liquefied petroleum gas AND NATURAL GAS meters and dispensers;

(C) Abatement of fire and safety hazards at liquefied petroleum gas AND NATURAL GAS installations;

(D) Investigation of reported liquefied petroleum gas AND NATURAL GAS that requires state matching dollars;

(E) Any federal program pertaining to liquefied petroleum gas AND NATURAL GAS that requires state matching dollars;

(F) Liquefied petroleum gas AND NATURAL GAS product quality testing;

(G) Administrative costs, including costs for contract services; and

(H) Defraying the salaries and operating expenses incurred by the department of labor and employment in the administration of this article as it pertains to liquefied petroleum gas AND NATURAL GAS installations, meters, and dispensers. Such moneys shall be appropriated for such
purposes by the general assembly.

(IV) The moneys in the liquefied petroleum gas AND NATURAL GAS inspection fund and all interest earned on the moneys in the fund shall remain in such fund and shall not be credited or transferred to the general fund or any other fund at the end of any fiscal year.

(3) (a) EXCEPT AS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (3), it is the duty of every manufacturer or distributor as described in subsection (1) of this section to compute the amount of the surcharge payable on all tank truckloads sold by him THE MANUFACTURER OR DISTRIBUTOR and separately state the surcharge due on statements issued with each purchase of fuel. In the event that the manufacturer or distributor sells such fuel to a retailer or consumer or consumes such fuel, he THE MANUFACTURER OR DISTRIBUTOR shall pay to the department of revenue the surcharge imposed in subsection (1) of this section.

(b) FOR COMPRESSED NATURAL GAS, THE FUEL DISTRIBUTOR WHO REPORTS THE GALLONS FOR PURPOSES OF PAYING THE TAX SET FORTH IN ARTICLE 27 OF TITLE 39, C.R.S., SHALL PAY THE SURCHARGE IMPOSED IN SUBSECTION (1) OF THIS SECTION TO THE DEPARTMENT OF REVENUE.

(4) For the purposes of this section:

(b) "Fuel product" means gasoline, blended gasoline, gasoline sold for gasohol production, gasohol, diesel, biodiesel blends, NATURAL GAS, and special fuels, and special fuel mixes with alcohol.

(c) "TANK TRUCKLOAD" MEANS EIGHT THOUSAND GALLONS OR GALLON EQUIVALENTS.

SECTION 5. In Colorado Revised Statutes, 39-27-101, amend (7) and (11) as follows:

39-27-101. Definitions - construction. As used in this part 1, unless the context otherwise requires:

(7) (a) "Distributor" means:

(I) A gasoline or special fuel broker, and any person who sells
special fuel to another distributor, broker, or vendor, and any vendor of liquefied petroleum gases LIQUEFIED PETROLEUM GAS OR NATURAL GAS;

(II) Any person who acquires gasoline or special fuel from a supplier, importer, blender, or another distributor for the subsequent sale and distribution by tank cars, tank trucks, or both; or

(III) Any person who refines, manufactures, produces, compounds, blends, or imports special fuel or gasoline;

(IV) A PRIVATE COMMERCIAL FLEET OPERATOR THAT USES LIQUEFIED PETROLEUM GAS OR NATURAL GAS FROM A PUBLIC UTILITY, AS DEFINED IN SECTION 40-1-103 (1), C.R.S., IF:

(A) THE PUBLIC UTILITY IS NOT A DISTRIBUTOR WITH RESPECT TO THE SALE OF THE LIQUEFIED PETROLEUM GAS OR NATURAL GAS; AND

(B) THE COMMERCIAL FLEET OPERATOR HAS NOT CONTRACTED WITH ANOTHER PERSON TO BE A DISTRIBUTOR UNDER SUBPARAGRAPH (V) OF THIS PARAGRAPH (a); OR

(V) ANY PERSON WHO CONTRACTS WITH A PRIVATE COMMERCIAL FLEET OPERATOR TO BE A DISTRIBUTOR ON BEHALF OF THE OPERATOR.

(b) "Distributor" includes every person importing gasoline or special fuel by means of a pipeline or in any other manner but does not include persons importing gasoline or special fuel contained only in the fuel tank of a motor vehicle.

(c) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (7) TO THE CONTRARY, A PUBLIC UTILITY AS DEFINED IN SECTION 40-1-103 (1), C.R.S., IS ONLY A DISTRIBUTOR IF IT SELLS SPECIAL FUEL AS A VENDOR THROUGH AN ALTERNATIVE FUEL VEHICLE CHARGING OR FUELING FACILITY THAT IS UNREGULATED UNDER SECTION 40-1-103.3, C.R.S., BUT ONLY WITH RESPECT TO THOSE SALES.

(11) "Gallons" means gallons as measured on a gross gallons basis, as defined in section 8-20-201 (3), C.R.S.; EXCEPT THAT FOR PURPOSES OF COMPRESSED NATURAL GAS, GALLONS MEANS GALLONS AS MEASURED BY THE VOLUMETRIC REPORTING REQUIREMENTS THAT ARE INCLUDED IN THE
FEDERAL EXCISE TAX RETURN, FORM 720, ESTABLISHED BY THE FEDERAL INTERNAL REVENUE SERVICE, OR ANY SUCCESSOR FORM THAT IS USED FOR PAYING THE FEDERAL FUEL TAX.

SECTION 6. In Colorado Revised Statutes, 39-27-102, amend (1) (a) (II) (B) and (2) (a); and add (1) (a) (VI), (1) (a) (VII), and (1) (a) (VIII) as follows:

39-27-102. Tax imposed on gasoline and special fuel - deposits - penalties. (1) (a) (II) (B) The excise tax imposed on special fuel by subparagraph (I) of this paragraph (a) shall be twenty and one-half cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 1992. THIS SUB-SUBPARAGRAPH (B) DOES NOT APPLY TO ANY SPECIAL FUEL SPECIFIED IN SUBPARAGRAPHS (VI), (VII), AND (VIII) OF THIS PARAGRAPH (a).

(VI) The excise tax imposed on compressed natural gas by subparagraph (I) of this paragraph (a) is:

(A) Three cents per gallon or a fraction thereof for the 2014 calendar year;

(B) Six cents per gallon or a fraction thereof for the 2015 calendar year;

(C) Nine cents per gallon or a fraction thereof for the 2016 calendar year;

(D) Twelve cents per gallon or a fraction thereof for the 2017 calendar year;

(E) Fifteen cents per gallon or a fraction thereof for the 2018 calendar year; and

(F) Eighteen and three-tenths cents per gallon or a fraction thereof for calendar years beginning on and after January 1, 2019.

(VII) The excise tax imposed on liquefied natural gas by subparagraph (I) of this paragraph (a) is:
(A) THREE CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2014 CALENDAR YEAR;

(B) FIVE CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2015 CALENDAR YEAR;

(C) SEVEN CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2016 CALENDAR YEAR;

(D) EIGHT CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2017 CALENDAR YEAR;

(E) TEN CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2018 CALENDAR YEAR; AND

(F) TWELVE CENTS PER GALLON OR A FRACTION THEREOF FOR CALENDAR YEARS BEGINNING ON AND AFTER JANUARY 1, 2019.

(VIII) THE EXCISE TAX IMPOSED ON LIQUEFIED PETROLEUM GAS BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) IS:

(A) THREE CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2014 CALENDAR YEAR;

(B) FIVE CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2015 CALENDAR YEAR;

(C) SEVEN CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2016 CALENDAR YEAR;

(D) NINE CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2017 CALENDAR YEAR;

(E) ELEVEN CENTS PER GALLON OR A FRACTION THEREOF FOR THE 2018 CALENDAR YEAR; AND

(F) THIRTEEN AND ONE-HALF CENTS PER GALLON OR A FRACTION THEREOF FOR CALENDAR YEARS BEGINNING ON AND AFTER JANUARY 1, 2019.
(2) (a) Except as set forth in section 39-27-102.5 (9), every person who uses any gasoline or special fuel for propelling a motor vehicle on the public highways of this state or who is licensed to import any gasoline or special fuel into this state for use or sale in this state, upon which gasoline or special fuel a licensed distributor has not paid or is not liable to pay the tax imposed in this section, is deemed to be a distributor and is liable for and shall pay an excise tax at a rate established by paragraph (a) of subsection (1) of this section on all such gasoline or special fuel so used, or imported for use or sale, in this state. Such person shall pay such tax to the department of revenue, pursuant to section 39-27-105.3, on or before the twenty-sixth day of the calendar month following the month in which such gasoline or special fuel was used or imported and shall, at the time of payment, render to the department, on forms provided by it, an itemized statement, signed under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S., of all such gasoline or special fuel so used or imported during such preceding calendar month. When such gasoline or special fuel is delivered from a terminal in a carload lot, the quantity thereof and the amount of tax thereon shall be computed in the same manner as in the case of a distributor.

SECTION 7. In Colorado Revised Statutes, 39-27-102.5, amend (7); repeal (5), (6), and (8); and add (9) as follows:

39-27-102.5. Exemptions on tax imposed - ex-tax purchases - repeal. (5) (a) The tax imposed by section 39-27-102 (1) (a) (II) (B) shall not apply to any motor vehicle that has been registered in this state, that is powered by liquefied petroleum gas or natural gas, and for which a valid decal has been acquired as provided in this subsection (5). The owners or operators of such motor vehicles shall, in lieu of the tax imposed under section 39-27-102 (1) (a) (II) (B), pay an annual license tax fee on each such vehicle in accordance with the following schedule of motor vehicle gross weights:

<table>
<thead>
<tr>
<th>Gross Weight in Pounds</th>
<th>Annual License Tax Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>(I) 1-10,000</td>
<td>$70.00</td>
</tr>
<tr>
<td>(II) 10,001-16,000</td>
<td>100.00</td>
</tr>
<tr>
<td>(III) Over 16,000</td>
<td>125.00</td>
</tr>
</tbody>
</table>

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(b) The executive director of the department of revenue shall annually, starting January 1 of each year commencing in 1984, collect or cause to be collected from owners or operators of the motor vehicles specified in paragraph (a) of this subsection (5) the annual license tax fee. Applications for such licenses shall be supplied by the department of revenue. In the case of a motor vehicle that is purchased or converted to liquefied petroleum gas or natural gas by January 1 of any year, a license shall be purchased for a fractional period of such year, and the amount of the license tax shall be reduced by one-twelfth for each complete month that shall have elapsed since the beginning of such year.

(c) Upon payment of the tax required by this subsection (5), the executive director of the department of revenue shall issue a decal, which shall be valid for the current calendar year and shall be attached to the upper right-hand corner of the front windshield on the motor vehicle for which it was issued.

(d) The identifying decal and license tax fee paid for each motor vehicle shall be transferable upon a change of ownership of the motor vehicle. Such transfer shall be accomplished in accordance with rules promulgated by the executive director of the department of revenue.

(e) It is unlawful for any person to operate a motor vehicle required to have a liquefied petroleum gas or natural gas decal upon the highways of this state without such decal unless such motor vehicle is titled outside Colorado and all Colorado purchases are taxed pursuant to section 39-27-102 (1) (a) (II) (B) or such vehicle is otherwise exempt from the provisions of this part 1.

(f) No person shall put, or cause to be put, liquefied petroleum gas or natural gas into the fuel tank of a motor vehicle required to have a liquefied petroleum gas or natural gas decal unless the motor vehicle has such decal attached to it or written or electronic evidence that a valid decal has been acquired for the motor vehicle and such evidence has been provided to such person or such person’s employer. Sales of fuel placed in the fuel tank of a motor vehicle not displaying such decal or otherwise evidencing acquisition of a valid decal and for which the distributor is obligated to collect the tax specified by section 39-27-102 (1) (a) (H) (B) shall be recorded upon an invoice, which invoice shall include the date, the
motor vehicle license number, the number of gallons or, in the case of natural gas, the energy equivalent in gallons placed in such fuel tank, and the tax due thereon:

(g) Any person violating any provision of this subsection (5) is subject to the penalty provisions of sections 39-27-114 and 39-27-120.

(h) Motor vehicles displaying a liquefied petroleum gas or natural gas decal are exempt from the licensing and reporting requirements stated in the remainder of this part 1.

(6) (a) The department of revenue shall promulgate rules allowing for payment of the annual license tax fee, if applicable, and acquisition of the decal as set forth in subsection (5) of this section by a user directly from a vendor or distributor of liquefied petroleum gas or natural gas.

(b) Such rules shall permit each vendor or distributor who participates in the program to return decals that are not issued by the vendor or distributor and remit the applicable annual license tax fees collected by the vendor or distributor not earlier than one hundred twenty days from the time decals are supplied to the vendor or distributor by the department of revenue.

(7) Motor vehicles that are owned or operated by a nonprofit transit agency that receives public funds and that are used exclusively in performing the agency's nonprofit functions and activities shall be exempt from the provisions of subsection (5) of this section and from the special fuel tax imposed by section 39-27-102 (1) (a) (II) (B) section 39-27-102 (1) (a) upon liquefied petroleum gas and natural gas. A person who purchases special fuel for the purposes set forth in this subsection (7) may, in accordance with section 39-27-103, apply to the department of revenue for a refund of the excise tax paid thereon.

(8) The department of revenue is authorized to promulgate reasonable rules, consistent with this part 1, concerning annual license tax fees collected and decals issued pursuant to subsections (5) and (6) of this section, including, but not limited to, reporting procedures, reporting forms, and the penalties described in sections 39-27-114 and 39-27-120.

(9) COMPRESSED NATURAL GAS USED TO PROPEL A MOTOR VEHICLE
ON THE HIGHWAYS OF THIS STATE THAT IS SUPPLIED TO THE USER AT A RESIDENTIAL HOME IS EXEMPT FROM THE SPECIAL FUEL TAX IMPOSED BY THIS ARTICLE.

SECTION 8. In Colorado Revised Statutes, 39-27-103, amend (3) (a.3) as follows:

39-27-103. Refunds - penalties - checkoff. (3) (a.3) (I) Any person who purchases or uses gasoline for the propulsion of an aircraft shall be entitled to a refund by the controller if:

(A) The use of such gasoline in such aircraft is subject to the excise tax levied pursuant to section 39-27-102 (1) (a) (IV) (A); and

(B) The excise tax actually paid was the excise tax levied pursuant to section 39-27-102 (1) (a) (II) ANY PROVISION OF SECTION 39-27-102 (1) (a), EXCLUDING SECTION 39-27-102 (1) (a) (IV) (A).

(II) The amount of such refund shall be the difference between the amount actually paid pursuant to section 39-27-102 (1) (a) (II) and the amount that should have been paid pursuant to section 39-27-102 (1) (a) (IV) as certified by the department of revenue.

SECTION 9. In Colorado Revised Statutes, 39-27-105, amend (1.3) (d) as follows:

39-27-105. Collection of tax on gasoline and special fuel. (1.3) (d) Distributors may aggregate figures stated in the reports required by this part 1 for liquefied petroleum gas and natural gas for sales of such fuels to a particular class or type of individual user. Distributors of liquefied petroleum gas and natural gas shall not be required to separately report the amount of sales to individual users.

SECTION 10. In Colorado Revised Statutes, amend 39-27-107 as follows:

39-27-107. When users other than distributors must report. Except as otherwise provided in section 39-27-102 for persons that export gasoline, every person not a licensed distributor who uses any gasoline in
this state or who has in his or her possession any gasoline, other than that
contained in the ordinary fuel tank attached to a motor vehicle or aircraft,
upon which a licensed distributor has not paid or is not liable for the tax
imposed in this part 1 shall file a sworn statement with the executive
director of the department of revenue on or before the twenty-fifth
twenty-sixth day of the calendar month on such form as the executive
director prescribes and furnishes, showing the amount of gasoline so used
and held, and shall pay to the executive director the tax imposed on all such
gasoline. This section does not apply to a user who is exempt from
taxation under section 39-27-102.5 (9).

SECTION 11. In Colorado Revised Statutes, add 39-27-122 and
39-27-123 as follows:

39-27-122. Measurement - liquefied petroleum gas and natural
gas - director of division of oil and public safety - rules. Prior to
January 1, 2014, the director of the division of oil and public
safety shall promulgate reasonable rules related to the
accurate measurement of liquefied petroleum gas and natural
gas. Thereafter, the director may modify or update the rules in his
or her discretion.

39-27-123. Department of transportation - special fuels - impact
- report. (1) On or before January 1, 2017, the department of
transportation, the department of revenue, the division of oil and
public safety in the department of labor and employment, and the
Colorado energy office shall jointly prepare and submit a report
to the transportation legislation review committee created in
section 43-2-145 (1), C.R.S. The report must include:

(a) An evaluation of the effectiveness of any statutory
provision included in House Bill 13-1110, enacted in 2013;

(b) An analysis of the impact of alternative fuels for
propelling a motor vehicle on the public roads and highways of
this state and on the amount of excise taxes collected related to
those vehicles;

(c) A recommendation on whether the tax levied pursuant
to this part 1 should be collected when the special fuel is supplied
TO THE USER AT A RESIDENTIAL HOME, INCLUDING COMPRESSED NATURAL GAS THAT IS EXEMPT FROM TAXATION UNDER SECTION 39-27-102.5 (9), AND IF SO, ANY RECOMMENDATIONS FOR HOW TO COLLECT THIS TAX; AND

(d) RECOMMENDATIONS FOR A TAX SYSTEM THAT FAIRLY AND EQUITABLY TAXES ALL FUELS AND METHODS FOR PROPELLING MOTOR VEHICLES ON THE PUBLIC ROADS AND HIGHWAYS OF THIS STATE AND THAT HELPS PAY FOR THE CONSTRUCTION, IMPROVEMENT, REPAIR, AND MAINTENANCE OF THOSE PUBLIC ROADS AND HIGHWAYS.

(2) SECTION 24-1-136 (11), C.R.S., DOES NOT APPLY TO THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION.

SECTION 12. In Colorado Revised Statutes, 42-3-304, add (25) as follows:

42-3-304. Registration fees - passenger and passenger-mile taxes - clean screen fund - definitions - repeal. (25) (a) BEGINNING JANUARY 1, 2014, IN ADDITION TO ANY OTHER FEE IMPOSED BY THIS SECTION, COUNTY CLERKS AND RECORDERS SHALL ANNUALLY COLLECT A FEE OF FIFTY DOLLARS AT THE TIME OF REGISTRATION ON EVERY PLUG-IN ELECTRIC MOTOR VEHICLE. COUNTY CLERKS AND RECORDERS SHALL TRANSMIT THE FEE TO THE STATE TREASURER, WHO SHALL CREDIT THIRTY DOLLARS OF EACH FEE TO THE HIGHWAY USERS TAX FUND CREATED IN SECTION 43-4-201, C.R.S., AND TWENTY DOLLARS OF EACH FEE TO THE ELECTRIC VEHICLE GRANT FUND CREATED IN SECTION 24-38.5-103, C.R.S.

(b) THE DEPARTMENT OF REVENUE SHALL CREATE AN ELECTRIC VEHICLE DECAL, WHICH A COUNTY CLERK AND RECORDER SHALL GIVE TO EACH PERSON WHO PAYS THE FEE CHARGED UNDER PARAGRAPH (a) OF THIS SUBSECTION (25). THE DECAL MUST BE ATTACHED TO THE UPPER RIGHT-HAND CORNER OF THE FRONT WINDSHIELD ON THE MOTOR VEHICLE FOR WHICH IT WAS ISSUED. IF THERE IS A CHANGE OF VEHICLE OWNERSHIP, THE DECAL IS TRANSFERABLE TO THE NEW OWNER.

(c) AS USED IN THIS SECTION, "PLUG-IN ELECTRIC MOTOR VEHICLE" MEANS:

(I) A MOTOR VEHICLE THAT HAS RECEIVED AN ACKNOWLEDGMENT OF CERTIFICATION FROM THE FEDERAL INTERNAL REVENUE SERVICE THAT
THE VEHICLE QUALIFIES FOR THE PLUG-IN ELECTRIC DRIVE VEHICLE CREDIT SET FORTH IN 26 U.S.C. SEC. 30D, OR ANY SUCCESSOR SECTION; OR

(II) ANY MOTOR VEHICLE THAT DRAWS ELECTRICITY FROM A BATTERY THAT IS CAPABLE OF BEING CHARGED FROM AN EXTERNAL SOURCE.

SECTION 13. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado state titling and registration account in the highway users tax fund created in section 42-1-211 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of $82,822, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) $14,610 to the central department operations division for postage; and

(b) $68,212 to the information technology division for the purchase of computer center services.

(2) In addition to any other appropriation, there is hereby appropriated to the governor - lieutenant governor - state planning and budgeting, for the fiscal year beginning July 1, 2013, the sum of $68,212, or so much thereof as may be necessary, for allocation to the office of information technology, for the provision of computer center services for the department of revenue related to the implementation of this act. Said sum is from reappropriated funds received from the department of revenue out of the appropriation made in paragraph (b) of subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the highway users tax fund created in section 43-4-201 (1) (a), Colorado Revised Statutes, and appropriated pursuant to section 43-4-201 (3) (a) (V), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of $160,675, or so much thereof as may be necessary, for allocation to the taxpayer service division for computer programming services related to the implementation of this act.

(4) In addition to any other appropriation, there is hereby
appropriated, out of any moneys in the license plate cash fund created in section 42-3-301 (1) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of $10,599, or so much thereof as may be necessary, for allocation to division of motor vehicles for the purchase of decals related to the implementation of this act.

SECTION 14. Act subject to petition - effective date. Sections 2, 11, and 13 of this act take effect August 15, 2013, and the remainder of this act takes effect January 1, 2014; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be
held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED________________________________________

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO
14-35B-02 Automatic Traffic Enforcement Systems on School Buses

Bill/Act: HB 05

Status: Signed into law on March 7, 2014.

Summary: The act requires school buses operated by Wyoming school districts to be equipped with external video systems that meet standards to be adopted by the Wyoming Department of Education. The act also authorizes equipping buses with internal video systems. The act provides school districts will be reimbursed one hundred percent (100%) of the cost associated with installing the required or optional equipment. The act further appropriates five million dollars ($5,000,000.00) from the school foundation program account for immediate reimbursement for the costs associated with installation rather than requiring school districts to be reimbursed the following school year.

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Comments: From School Transportation News (March 4, 2014)

Yesterday the state Senate gave final approval to a bill that would require Wyoming school districts to equip new school buses with cameras by the 2015-16 school year to target motorists who illegally pass stopped buses. After passing on a 19-11 vote, House Bill 5 was sent to Gov. Matt Mead for his consideration.

If signed into law, the measure would appropriate up to $5 million to equip all 1,700 school buses in the state with internal and external video systems in time for the 2015-2016 school year. It is estimated that school buses stopped while loading or unloading students are passed illegally about 52,000 times annually in Wyoming. On Dec. 20, 2011, 11-year-old MaKayla Marie Strahle of Crowheart was struck and killed by a passing motorist who failed to stop for her school bus after she disembarcked and attempted to cross the road.

The Wyoming Legislature's Joint Education Committee endorsed a proposal Oct. 22, 2013 to install cameras inside and outside school buses as a means to better protect students. Proponents of video cameras contend it would help reduce incidents of motorists illegally passing stopped buses.

David Koskelowski, state director of transportation at the Wyoming Department of Education, said that about half of the state's buses already have video cameras mounted either inside the bus for onboard recording or at the stop arm to monitor motorists who illegally pass stopped school buses. He explained that equipping the remaining buses with either internal or external cameras would be a similar job as what a decent-sized school district in, say, California or Texas would be faced with.

He noted that Wyoming would become the first state to have these cameras on every bus in the fleet and added that the intent is to be vendor neutral when it comes to camera suppliers. The bill calls for 100-percent reimbursement for school districts to ensure buses purchased before July 1, 2015 and used for home-to-school transportation have video systems recording
events inside and outside of the bus. After July 1, 2015, funding for the cost of on-board and stop-arm video cameras would fall under the state's existing block funding grant.

"Our goal, if this becomes law, is to have each district work with their current camera vendor and add cameras to the current system," he told STN. "We may have to add additional ports (from a four/five to an eight), but this would be included in our reimbursement. Once all of this happens, all buses delivered in the (2015-16) school year would have to have cameras on them, when delivered and prior to being placed in service."


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT relating to school buses; requiring school buses transporting students to and from school and school activities to be equipped with specified video systems; reimbursing districts for associated costs; imposing duties; providing an appropriation; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21-3-131(b) by creating a new paragraph (x) is amended to read:

21-3-131. School bus standards; operators; vehicle operation; liability limited.

(b) Each district shall establish and maintain minimum standards for the operation of school buses, including:

(x) Effective school year 2016-2017, and each school year thereafter, all school buses transporting students to and from school and to and from student activities, as defined under W.S. 21-13-320(b)(i) and (ii), shall be equipped with an external video system and may be equipped with an internal video system. Equipment specifications shall be prescribed by rule and regulation of the department.

Section 2.

(a) Effective July 1, 2014, up to five million dollars ($5,000,000.00) is appropriated from the public school foundation program account to the department of education to reimburse school districts for one hundred percent (100%) of the costs of equipping school buses with
internal and external video systems as required under W.S. 21-3-131(b), as amended by section 1 of this act. This subsection shall apply only to those school buses purchased before July 1, 2017, and used within the district for transporting students to and from school and to and from student activities pursuant to W.S. 21-13-320(b)(i) and (ii). School districts shall apply to the department, on a form, in a manner and within time specifications prescribed by department rule and regulation, for reimbursement of equipment costs under this subsection. Any district which has received payment from the public school foundation program account under W.S. 21-13-320 for the costs of installation of video system equipment on school buses purchased prior to July 1, 2015, shall not be eligible for claiming reimbursement under this subsection for the costs of that equipment, nor shall any district receiving reimbursement for equipment costs under this subsection be eligible for payment under W.S. 21-13-320 for the installation of that equipment.

(b) Costs associated with the installation of video system equipment within school buses purchased on and after July 1, 2015, which are used to transport students to and from school and to and from student activities, shall be reimbursed in accordance with other district covered transportation costs specified under W.S. 21-13-320.

(c) The department of education shall immediately promulgate rules and regulations necessary to enable school districts to operate school buses equipped in accordance with this act not later than school year 2016-2017.

(d) Any unexpended and unobligated balance of the appropriation under subsection (a) of this section remaining on June 30, 2018, shall revert to the public school foundation program account.
Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _________

DATE APPROVED: _________

I hereby certify that this act originated in the House.

Chief Clerk
14-35B-03 Automatic Traffic Enforcement Systems on School Buses Illinois

Status: Signed into law on August 27, 2013.

Summary: Authorizes the Use of Cameras on School Buses to Photograph Traffic Violations

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Comments: Daily Chronicle (January 10, 2014).
Local school bus drivers have complained for years about people driving past school buses while they are picking up or dropping off children. ... A new law that took effect this month also allows school districts to install video cameras on buses to catch offenders. The law allows for the installation of cameras on school buses to record images of vehicles that pass the bus while it is stopped to drop off or pick up students.

In Illinois, drivers who pass a stopped school bus with the stop arm extended face a $150 fine and three-month suspension of their license for the first offense. They can be fined $500 with a one-year suspension if they commit a second offense within five years.

However, as with red-light cameras already in use in some communities, the violations captured by bus cameras would not be considered moving violations. Fines would be the same, but they would be administered as civil penalties against the registered owner of the vehicle. The school district and municipality or county administering the program would share in the proceeds from the fines.

The law requires that law enforcement officers or certified technicians review the video to determine if a violation occurred.


Disposition of Entry:
SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Sections 1-105.2, 6-306.5, 11-208, 11-208.3, and 11-612 and by adding Section 11-208.9 as follows:

(625 ILCS 5/1-105.2)
Sec. 1-105.2. Automated traffic law violation. A violation described in Section 11-208.6, 11-208.9, or 11-1201.1 of this Code.
(Source: P.A. 96-478, eff. 1-1-10.)

(625 ILCS 5/6-306.5) (from Ch. 95 1/2, par. 6-306.5)
Sec. 6-306.5. Failure to pay fine or penalty for standing, parking, compliance, automated speed enforcement system, or automated traffic law violations; suspension of driving privileges.
(a) Upon receipt of a certified report, as prescribed by subsection (c) of this Section, from any municipality or county stating that the owner of a registered vehicle: (1) has failed to pay any fine or penalty due and owing as a result of 10 or more violations of a municipality's or county's vehicular standing, parking, or compliance regulations established by
education program under this Section who provides proof of
eligibility for the federal earned income tax credit under
Section 32 of the Internal Revenue Code or the Illinois earned
income tax credit under Section 212 of the Illinois Income Tax
Act shall not be required to pay any fee for participating in a
required traffic education program.

(Source: P.A. 96-288, eff. 8-11-09; 96-478, eff. 1-1-10;
96-1000, eff. 7-2-10; 96-1016, eff. 1-1-11; 96-1386, eff.
7-29-10; 97-29, eff. 1-1-12; 97-333, eff. 8-12-11; 97-672, eff.
7-1-12.)

(625 ILCS 5/11-208.9 new)

Sec. 11-208.9. Automated traffic law enforcement system;
approaching, overtaking, and passing a school bus.

(a) As used in this Section, "automated traffic law
enforcement system" means a device with one or more motor
vehicle sensors working in conjunction with the visual signals
on a school bus, as specified in Sections 12-803 and 12-805 of
this Code, to produce recorded images of motor vehicles that
fail to stop before meeting or overtaking, from either
direction, any school bus stopped at any location for the
purpose of receiving or discharging pupils in violation of
Section 11-1414 of this Code or a similar provision of a local
ordinance.

An automated traffic law enforcement system is a system, in
a municipality or county operated by a governmental agency,
that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance and is designed to obtain a clear recorded image of the vehicle and the vehicle's license plate. The recorded image must also display the time, date, and location of the violation.

(b) As used in this Section, "recorded images" means images recorded by an automated traffic law enforcement system on:

(1) 2 or more photographs;
(2) 2 or more microphotographs;
(3) 2 or more electronic images; or
(4) a video recording showing the motor vehicle and, on at least one image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

(c) A municipality or county that produces a recorded image of a motor vehicle's violation of a provision of this Code or a local ordinance must make the recorded images of a violation accessible to the alleged violator by providing the alleged violator with a website address, accessible through the Internet.

(d) For each violation of a provision of this Code or a local ordinance recorded by an automated traffic law enforcement system, the county or municipality having jurisdiction shall issue a written notice of the violation to the registered owner of the vehicle as the alleged violator. The notice shall be delivered to the registered owner of the
vehicle, by mail, within 30 days after the Secretary of State notifies the municipality or county of the identity of the owner of the vehicle, but in no event later than 90 days after the violation.

(e) The notice required under subsection (d) shall include:

(1) the name and address of the registered owner of the vehicle;
(2) the registration number of the motor vehicle involved in the violation;
(3) the violation charged;
(4) the location where the violation occurred;
(5) the date and time of the violation;
(6) a copy of the recorded images;
(7) the amount of the civil penalty imposed and the date by which the civil penalty should be paid;
(8) a statement that recorded images are evidence of a violation of overtaking or passing a school bus stopped for the purpose of receiving or discharging pupils;
(9) a warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in a suspension of the driving privileges of the registered owner of the vehicle;
(10) a statement that the person may elect to proceed by:

(A) paying the fine; or
(B) challenging the charge in court, by mail, or by
administrative hearing; and

(11) a website address, accessible through the Internet, where the person may view the recorded images of the violation.

(f) If a person charged with a traffic violation, as a result of an automated traffic law enforcement system under this Section, does not pay the fine or successfully contest the civil penalty resulting from that violation, the Secretary of State shall suspend the driving privileges of the registered owner of the vehicle under Section 6-306.5 of this Code for failing to pay any fine or penalty due and owing as a result of a combination of 5 violations of the automated traffic law enforcement system or the automated speed enforcement system under Section 11-208.8 of this Code.

(g) Based on inspection of recorded images produced by an automated traffic law enforcement system, a notice alleging that the violation occurred shall be evidence of the facts contained in the notice and admissible in any proceeding alleging a violation under this Section.

(h) Recorded images made by an automated traffic law enforcement system are confidential and shall be made available only to the alleged violator and governmental and law enforcement agencies for purposes of adjudicating a violation of this Section, for statistical purposes, or for other governmental purposes. Any recorded image evidencing a violation of this Section, however, may be admissible in any
proceeding resulting from the issuance of the citation.

(i) The court or hearing officer may consider in defense of a violation:

(1) that the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and not under the control of or in the possession of the owner at the time of the violation;

(2) that the driver of the motor vehicle received a Uniform Traffic Citation from a police officer for a violation of Section 11-1414 of this Code within one-eighth of a mile and 15 minutes of the violation that was recorded by the system;

(3) that the visual signals required by Sections 12-803 and 12-805 of this Code were damaged, not activated, not present in violation of Sections 12-803 and 12-805, or inoperable; and

(4) any other evidence or issues provided by municipal or county ordinance.

(j) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner.

(k) Unless the driver of the motor vehicle received a
Uniform Traffic Citation from a police officer at the time of the violation, the motor vehicle owner is subject to a civil penalty not exceeding $150 for a first time violation or $500 for a second or subsequent violation, plus an additional penalty of not more than $100 for failure to pay the original penalty in a timely manner, if the motor vehicle is recorded by an automated traffic law enforcement system. A violation for which a civil penalty is imposed under this Section is not a violation of a traffic regulation governing the movement of vehicles and may not be recorded on the driving record of the owner of the vehicle, but may be recorded by the municipality or county for the purpose of determining if a person is subject to the higher fine for a second or subsequent offense.

   (l) A school bus equipped with an automated traffic law enforcement system must be posted with a sign indicating that the school bus is being monitored by an automated traffic law enforcement system.

   (m) A municipality or county that has one or more school buses equipped with an automated traffic law enforcement system must provide notice to drivers by posting a list of school districts using school buses equipped with an automated traffic law enforcement system on the municipality or county website. School districts that have one or more school buses equipped with an automated traffic law enforcement system must provide notice to drivers by posting that information on their websites.
(n) A municipality or county operating an automated traffic law enforcement system shall conduct a statistical analysis to assess the safety impact in each school district using school buses equipped with an automated traffic law enforcement system following installation of the system. The statistical analysis shall be based upon the best available crash, traffic, and other data, and shall cover a period of time before and after installation of the system sufficient to provide a statistically valid comparison of safety impact. The statistical analysis shall be consistent with professional judgment and acceptable industry practice. The statistical analysis also shall be consistent with the data required for valid comparisons of before and after conditions and shall be conducted within a reasonable period following the installation of the automated traffic law enforcement system. The statistical analysis required by this subsection shall be made available to the public and shall be published on the website of the municipality or county. If the statistical analysis for the 36-month period following installation of the system indicates that there has been an increase in the rate of accidents at the approach to school buses monitored by the system, the municipality or county shall undertake additional studies to determine the cause and severity of the accidents, and may take any action that it determines is necessary or appropriate to reduce the number or severity of the accidents involving school buses equipped with an automated traffic law
enforcement system.

(o) The compensation paid for an automated traffic law enforcement system must be based on the value of the equipment or the services provided and may not be based on the number of traffic citations issued or the revenue generated by the system.

(p) No person who is the lessor of a motor vehicle pursuant to a written lease agreement shall be liable for an automated speed or traffic law enforcement system violation involving such motor vehicle during the period of the lease; provided that upon the request of the appropriate authority received within 120 days after the violation occurred, the lessor provides within 60 days after such receipt the name and address of the lessee. The drivers license number of a lessee may be subsequently individually requested by the appropriate authority if needed for enforcement of this Section.

Upon the provision of information by the lessor pursuant to this subsection, the county or municipality may issue the violation to the lessee of the vehicle in the same manner as it would issue a violation to a registered owner of a vehicle pursuant to this Section, and the lessee may be held liable for the violation.

(q) A municipality or county shall make a certified report to the Secretary of State pursuant to Section 6-306.5 of this Code whenever a registered owner of a vehicle has failed to pay any fine or penalty due and owing as a result of a combination
of 5 offenses for automated traffic law or speed enforcement system violations.

(r) After a municipality or county enacts an ordinance providing for automated traffic law enforcement systems under this Section, each school district within that municipality or county's jurisdiction may implement an automated traffic law enforcement system under this Section. The elected school board for that district must approve the implementation of an automated traffic law enforcement system. The school district shall be responsible for entering into a contract, approved by the elected school board of that district, with vendors for the installation, maintenance, and operation of the automated traffic law enforcement system. The school district must enter into an intergovernmental agreement, approved by the elected school board of that district, with the municipality or county with jurisdiction over that school district for the administration of the automated traffic law enforcement system. The proceeds from a school district's automated traffic law enforcement system's fines shall be divided equally between the school district and the municipality or county administering the automated traffic law enforcement system.
Summary: Provides that certain persons shall not be issued or allowed to renew a driver's license without completing a driver education course, provides for the certification of course providers, permits online courses, requires the establishment of a system of electronic verification of a student's completion of the course, requires the maintenance of a list of course providers and prices on a specified website, provides that an adult course shall not require operation of a motor vehicle.

Status: Signed into law on August 5, 2013.

Comment:
From Active Insurance Agency (October 9, 2013):
Requires anyone ages 18 to 21 who did not take a driver’s education course in high school to complete an adult driver’s education course before he or she can receive a driver’s license.

Read more: http://www.activeinsurance.com/new-teen-driving-laws

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Section 6-103 and by adding Section 6-107.5 as follows:

(625 ILCS 5/6-103) (from Ch. 95 1/2, par. 6-103)
Sec. 6-103. What persons shall not be licensed as drivers or granted permits. The Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code:

1. To any person, as a driver, who is under the age of 18 years except as provided in Section 6-107, and except that an instruction permit may be issued under Section 6-107.1 to a child who is not less than 15 years of age if the child is enrolled in an approved driver education course as defined in Section 1-103 of this Code and requires an instruction permit to participate therein, except that an instruction permit may be issued under the provisions of Section 6-107.1 to a child who is 17 years and 3 months of age without the child having enrolled in an approved driver education course and except that an instruction permit may be issued to a child who is at least 15 years and 3 months of age, is enrolled in school, meets
the educational requirements of the Driver Education Act, and has passed examinations the Secretary of State in his or her discretion may prescribe;

1.5. To any person at least 18 years of age but less than 21 years of age unless the person has, in addition to any other requirements of this Code, successfully completed an adult driver education course as provided in Section 6-107.5 of this Code.

2. To any person who is under the age of 18 as an operator of a motorcycle other than a motor driven cycle unless the person has, in addition to meeting the provisions of Section 6-107 of this Code, successfully completed a motorcycle training course approved by the Illinois Department of Transportation and successfully completes the required Secretary of State's motorcycle driver's examination;

3. To any person, as a driver, whose driver's license or permit has been suspended, during the suspension, nor to any person whose driver's license or permit has been revoked, except as provided in Sections 6-205, 6-206, and 6-208;

4. To any person, as a driver, who is a user of alcohol or any other drug to a degree that renders the person incapable of safely driving a motor vehicle;

5. To any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental
or physical disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

6. To any person, as a driver, who is required by the Secretary of State to submit an alcohol and drug evaluation or take an examination provided for in this Code unless the person has successfully passed the examination and submitted any required evaluation;

7. To any person who is required under the provisions of the laws of this State to deposit security or proof of financial responsibility and who has not deposited the security or proof;

8. To any person when the Secretary of State has good cause to believe that the person by reason of physical or mental disability would not be able to safely operate a motor vehicle upon the highways, unless the person shall furnish to the Secretary of State a verified written statement, acceptable to the Secretary of State, from a competent medical specialist, a licensed physician assistant who has been delegated the performance of medical examinations by his or her supervising physician, or a licensed advanced practice nurse who has a written collaborative agreement with a collaborating physician which authorizes him or her to perform medical examinations, to the effect that the operation of a motor vehicle by the person would not be inimical to the public
9. To any person, as a driver, who is 69 years of age or older, unless the person has successfully complied with the provisions of Section 6-109;

10. To any person convicted, within 12 months of application for a license, of any of the sexual offenses enumerated in paragraph 2 of subsection (b) of Section 6-205;

11. To any person who is under the age of 21 years with a classification prohibited in paragraph (b) of Section 6-104 and to any person who is under the age of 18 years with a classification prohibited in paragraph (c) of Section 6-104;

12. To any person who has been either convicted of or adjudicated under the Juvenile Court Act of 1987 based upon a violation of the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act while that person was in actual physical control of a motor vehicle. For purposes of this Section, any person placed on probation under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, or Section 70 of the Methamphetamine Control and Community Protection Act shall not be considered convicted. Any person found guilty of this offense, while in actual physical control of a motor vehicle, shall have an entry made in the court record by
the judge that this offense did occur while the person was in actual physical control of a motor vehicle and order the clerk of the court to report the violation to the Secretary of State as such. The Secretary of State shall not issue a new license or permit for a period of one year;

13. To any person who is under the age of 18 years and who has committed the offense of operating a motor vehicle without a valid license or permit in violation of Section 6-101 or a similar out of state offense;

14. To any person who is 90 days or more delinquent in court ordered child support payments or has been adjudicated in arrears in an amount equal to 90 days' obligation or more and who has been found in contempt of court for failure to pay the support, subject to the requirements and procedures of Article VII of Chapter 7 of the Illinois Vehicle Code;

14.5. To any person certified by the Illinois Department of Healthcare and Family Services as being 90 days or more delinquent in payment of support under an order of support entered by a court or administrative body of this or any other State, subject to the requirements and procedures of Article VII of Chapter 7 of this Code regarding those certifications;

15. To any person released from a term of imprisonment for violating Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012, or a similar provision of a law
of another state relating to reckless homicide or for
violating subparagraph (F) of paragraph (1) of subsection
(d) of Section 11-501 of this Code relating to aggravated
driving under the influence of alcohol, other drug or
drugs, intoxicating compound or compounds, or any
combination thereof, if the violation was the proximate
cause of a death, within 24 months of release from a term
of imprisonment;

16. To any person who, with intent to influence any act
related to the issuance of any driver's license or permit,
by an employee of the Secretary of State's Office, or the
owner or employee of any commercial driver training school
licensed by the Secretary of State, or any other individual
authorized by the laws of this State to give driving
instructions or administer all or part of a driver's
license examination, promises or tenders to that person any
property or personal advantage which that person is not
authorized by law to accept. Any persons promising or
tendering such property or personal advantage shall be
disqualified from holding any class of driver's license or
permit for 120 consecutive days. The Secretary of State
shall establish by rule the procedures for implementing
this period of disqualification and the procedures by which
persons so disqualified may obtain administrative review
of the decision to disqualify;

17. To any person for whom the Secretary of State
cannot verify the accuracy of any information or
documentation submitted in application for a driver's
license; or

18. To any person who has been adjudicated under the
Juvenile Court Act of 1987 based upon an offense that is
determined by the court to have been committed in
furtherance of the criminal activities of an organized
gang, as provided in Section 5-710 of that Act, and that
involved the operation or use of a motor vehicle or the use
of a driver's license or permit. The person shall be denied
a license or permit for the period determined by the court.
The Secretary of State shall retain all conviction
information, if the information is required to be held
confidential under the Juvenile Court Act of 1987.
(Source: P.A. 96-607, eff. 8-24-09; 96-740, eff. 1-1-10;
96-962, eff. 7-2-10; 96-1000, eff. 7-2-10; 97-185, eff.
7-22-11; 97-1150, eff. 1-25-13.)

(625 ILCS 5/6-107.5 new)

Sec. 6-107.5. Adult Driver Education Course.

(a) The Secretary shall establish by rule the curriculum
and designate the materials to be used in an adult driver
education course. The course shall be at least 6 hours in
length and shall include instruction on traffic laws; highway
signs, signals, and markings that regulate, warn, or direct
traffic; and issues commonly associated with motor vehicle
accidents including poor decision-making, risk taking, impaired driving, distraction, speed, failure to use a safety belt, driving at night, failure to yield the right-of-way, texting while driving, using wireless communication devices, and alcohol and drug awareness. The curriculum shall not require the operation of a motor vehicle.

(b) The Secretary shall certify course providers. The requirements to be a certified course provider, the process for applying for certification, and the procedure for decertifying a course provider shall be established by rule.

(c) The Secretary may permit a course provider to offer the course online, if the Secretary is satisfied the course provider has established adequate procedures for verifying:

(1) the identity of the person taking the course online; and
(2) the person completes the entire course.

(d) The Secretary shall establish a method of electronic verification of a student's successful completion of the course.

(e) The fee charged by the course provider must bear a reasonable relationship to the cost of the course. The Secretary shall post on the Secretary of State's website a list of approved course providers, the fees charged by the providers, and contact information for each provider.

(f) In addition to any other fee charged by the course provider, the course provider shall collect a fee of $5 from
each student to offset the costs incurred by the Secretary in administering this program. The $5 shall be submitted to the Secretary within 14 days of the day on which it was collected. All such fees received by the Secretary shall be deposited in the Secretary of State Driver Services Administration Fund.

Section 99. Effective date. This Act takes effect July 1, 2014.
14-35B-05 Autocycles

Bill/Act: HB 122/Chapter 53

Summary: Defines a new class of vehicle, known as an autocycle, provides for examination of drivers, registration fees, safety, inspection, and other requirements pursuant to creating this new class of vehicle.


Comment: From *The (Culpepper) Star Exponent* (January 4, 2014)

As a Culpeper manufacturer redefines mobility with a fresh look at speed, state law will be need to be modified to accommodate a brand new type of machine. Del. Ed Scott, R-Madison, is chief patron of a bill that will define the modern class of vehicle being created by Tanom Motors.

They're calling it the autocycle. The first of its kind — the Tanom Invader — is expected to roll off the assembly line this year, selling for about $50,000. So what is it?

“Autocycle means a three-wheeled motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride and is manufactured to comply with federal safety requirements for motorcycles. Except as otherwise provided, an autocycle shall not be deemed to be a motorcycle,” reads Scott's bill, an addition to the Code of Virginia section already defining other types of vehicles like the moped, motorcycle, passenger car and pickup truck.

Scott said the definition was the result of the work of Tanom Motors and Virginia DMV staff working with similar interested parties in other states to craft a definition that could be used across the country.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
An Act to amend and reenact §§ 46.2-100, 46.2-325, 46.2-626.1, 46.2-662, 46.2-694, as it is currently effective and as it may become effective, 46.2-711, 46.2-715, 46.2-730, 46.2-910, 46.2-1011, 46.2-1012, 46.2-1014, 46.2-1057, 46.2-1067, 46.2-1068, 46.2-1092, 46.2-1157, 46.2-1167, 46.2-1500, and 46.2-1993 of the Code of Virginia, relating to a new class of vehicle known as an autocycle; licensure, fees, license plates, and safety, inspection, and other requirements.

Approved March 3, 2014

[H 122]
been modified subsequent to its manufacture to replace an internal combustion engine with an electric propulsion system. Such vehicles shall retain their original vehicle identification number, line-make, and model year. A converted electric vehicle shall not be deemed a "reconstructed vehicle" as defined in this section unless it has been materially altered from its original construction by the removal, addition, or substitution of new or used essential parts other than those required for the conversion to electric propulsion.

"Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Decal" means a device to be attached to a license plate that validates the license plate for a predetermined registration period.

"Department" means the Department of Motor Vehicles of the Commonwealth.

"Disabled parking license plate" means a license plate that displays the international symbol of access in the same size as the numbers and letters on the plate and in a color that contrasts with the background.

"Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand; (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Department of Veterans Affairs. A veteran shall be considered blind if he has a permanent impairment of both eyes to the following extent: central visual acuity of 20/200 or less in the better eye, with corrective lenses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

"Driver's license" means any license, including a commercial driver's license as defined in the Virginia Commercial Driver's License Act (§ 46.2-331 et seq.), issued under the laws of the Commonwealth authorizing the operation of a motor vehicle.

"Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 (§ 46.2-800 et seq.), an electric personal assistive mobility device shall be a vehicle when operated on a highway.

"Electric power-assisted bicycle" means a vehicle that travels on not more than three wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power and (ii) an electric motor with an input of no more than 1,000 watts that reduces the pedal effort required of the rider. For the purposes of Chapter 8 (§ 46.2-800 et seq.), an electric power-assisted bicycle shall be a vehicle when operated on a highway.

"Essential parts" means all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity of a vehicle.

"Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements, including self-propelled mowers designed and used for mowing lawns.

"Farm utility vehicle" means a vehicle that is powered by a motor and is designed for off-road use and is used as a farm, agricultural, or horticultural service vehicle, generally having four or more wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed. "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, or riding lawn mowers.

"Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all administrative regulations and policies adopted pursuant thereto.

"Financial responsibility" means the ability to respond in damages for liability thereafter incurred arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided for in § 46.2-472.

"Foreign market vehicle" means any motor vehicle originally manufactured outside the United States, which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

"Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the Commonwealth other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in the Commonwealth.

"Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as context may require.

"Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load thereon.

"Highway" means the entire width between the boundary lines of every way or place open to the use
of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the Commonwealth.

"Intersection" means (i) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection, in the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

"Lane-use control signal" means a signal face displaying indications to permit or prohibit the use of specific lanes of a roadway or to indicate the impending prohibition of such use.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of this title or local ordinances authorized by law. For the purposes of access to law-enforcement databases regarding motor vehicle registration and ownership only, this term shall include city and county commissioners of the revenue and treasurers, together with their duly designated deputies and employees, when such officials are actually engaged in the enforcement of §§ 46.2-752, 46.2-753, and 46.2-754 and local ordinances enacted thereunder.

"License plate" means a device containing letters, numerals, or a combination of both, attached to a motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the Department.

"Light" means a device for producing illumination or the illumination produced by the device.

"Low-speed vehicle" means any four-wheeled electrically-powered vehicle, except a motor vehicle or low-speed vehicle that is used exclusively for agricultural or horticultural purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500.

"Manufactured home" means a structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Moped" means every vehicle that travels on not more than three wheels in contact with the ground that (i) has a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground; (ii) has a gasoline, electric, or hybrid motor that (a) displaces 50 cubic centimeters or less or (b) has an input of 1500 watts or less; (iii) is power-driven, with or without pedals that allow propulsion by human power; and (iv) is not operated at speeds in excess of 35 miles per hour. For purposes of this title, a moped shall be a motorcycle when operated at speeds in excess of 35 miles per hour. For purposes of Chapter 8 (§ 46.2-800 et seq.), a moped shall be a vehicle while operated on a highway.

"Motor-driven cycle" means every motorcycle that has a gasoline engine that (i) displaces less than 150 cubic centimeters; (ii) has a seat less than 24 inches in height, measured from the middle of the seat perpendicular to the ground; and (iii) has no manufacturer-issued vehicle identification number.

"Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in this title. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. Except as otherwise provided, for the purposes of this title, any device herein defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a motor vehicle.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour. The term "Motorcycle" does not include any "autocycle," "electric personal assistive mobility device," "electric power-assisted bicycle," "farm tractor," "golf cart," "moped," "motorized skateboard or foot-scooter," "utility vehicle," or "wheelchair or wheelchair conveyance" as defined in this section.
"Motorized skateboard or foot-scooter" means every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters.

The term "motorized" Motorized skateboard or foot-scooter includes vehicles with or without handlebars, but does not include "electric personal assistive mobility devices."

"Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any foreign corporation that is authorized to do business in the Commonwealth by the State Corporation Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only such principal place of business or branches located within the Commonwealth shall be dealt with as residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for the purposes of Chapter 3 (§ 46.2-300 et seq.); (iii) a person, other than a nonresident student as defined in this section, who has actually resided in the Commonwealth for a period of six months, whether employed or not, or who has registered a motor vehicle, listing an address in the Commonwealth in the application for registration shall be deemed a resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

"Nonresident student" means every nonresident person who is enrolled as a full-time student in an accredited institution of learning in the Commonwealth and who is not gainfully employed.

"Off-road motorcycle" means every motorcycle designed exclusively for off-road use by an individual rider with not more than two wheels in contact with the ground. Except as otherwise provided in this chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be "motorcycles."

"Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier for compensation," and "business of transporting persons or property" mean any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck lessor" as defined in this section and do not include persons or businesses that receive compensation for delivering a product that they themselves sell or produce, where a separate charge is made for delivery of the product or the cost of delivery is included in the sale price of the product, but where the person or business does not derive all or a substantial portion of its income from the transportation of persons or property except as part of a sales transaction.

"Operator" or "driver" means every person who either (i) drives or is in actual physical control of a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a motor vehicle.

"Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the subject of an agreement for its conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent paid by the lessee includes charges for services of any nature or when the lease does not provide that title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of private carriers.

"Passenger car" means every motor vehicle other than a motorcycle or autocycle designed and used primarily for the transportation of no more than 10 persons, including the driver.

"Payment device" means any credit card as defined in 15 U.S.C. § 1602(k) or any "accepted card or other means of access" set forth in 15 U.S.C. § 1693a(1). For the purposes of this title, this definition shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

"Pickup or panel truck" means every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less.

"Private road or driveway" means every way in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Reconstructed vehicle" means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of new or used essential parts. Such vehicles, at the discretion of the Department, shall retain their original vehicle identification number, line-make, and model year. Except as otherwise provided in this title, this definition shall not include a "converted electric vehicle" as defined in this section.

"Replica vehicle" means every vehicle of a type required to be registered under this title not fully constructed by a licensed manufacturer but either constructed or assembled from components. Such components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The
kit may be made up of "major components" as defined in § 46.2-1600, a full body, or a full chassis, or a combination of these parts. The vehicle shall resemble a vehicle of distinctive name, line-make, model, or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a reconstructed or specially constructed vehicle as herein defined.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

"Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal or restoration except through reapplication after the expiration of the period of revocation.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or an unpaved area.

"Safety zone" means the area officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by plainly visible signs.

"School bus" means any motor vehicle, other than a station wagon, automobile, truck, or commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from public, private or religious schools, or for the transportation of the mentally or physically handicapped to and from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed in § 46.2-1090. A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations promulgated by the Department of Education.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheelchairs or wheel chair conveyances, joggers, and other nonmotorized users.

"Shoulder" means that part of a highway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.

"Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

"Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats.

"Special construction and forestry equipment" means any vehicle which is designed primarily for highway construction, highway maintenance, earth moving, timber harvesting or other construction or forestry work and which is not designed for the transportation of persons or property on a public highway.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as herein defined.

"Stinger-steered automobile or watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth.

"Suspend" or "suspension" means that the document or privilege suspended has been temporarily withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the end of the period of suspension.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks.

"Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as those terms are defined in this section.

"Towing and recovery operator" means a person engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Toy vehicle" means any motorized or propellant-driven device that has no manufacturer-issued vehicle identification number, that is designed or used to carry any person or persons, on any number of
wheels, bearings, glides, blades, runners, or a cushion of air. The term "Toy vehicle" does not include electric personal assistive mobility devices, electric power-assisted bicycles, mopeds, or motorcycles, nor does it include any nonmotorized or nonpropellant-driven devices such as bicycles, roller skates, or skateboards.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Traffic control device" means a sign, signal, marking, or other device used to regulate, warn, or guide traffic placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.

"Traffic infraction" means a violation of law punishable as provided in § 46.2-113, which is neither a felony nor a misdemeanor.

"Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or semitrailer that is the subject of a bona fide written lease for a term of one year or more to another person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § 46.2-2000; (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the Commissioner.

"Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by a motor, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include riding lawn mowers.

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.), bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

"Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move about as pedestrians. The term "Wheel chair or wheel chair conveyance" includes both three-wheeled and four-wheeled devices. So long as it is operated only as provided in § 46.2-677, a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle.

§ 46.2-325. Examination of applicants; waiver of Department's examination under certain circumstances; behind-the-wheel and knowledge examinations.

A. The Department shall examine every applicant for a driver's license before issuing any license to determine (i) his physical and mental qualifications and his ability to drive a motor vehicle without jeopardizing the safety of persons or property and (ii) if any facts exist which would bar the issuance of a license under §§ 46.2-311 through 46.2-316, 46.2-334, or 46.2-335. The examination, however, shall not include investigation of any facts other than those directly pertaining to the ability of the applicant to drive a motor vehicle with safety, or other than those facts declared to be prerequisite to the issuance of a license under this chapter. No applicant otherwise competent shall be required to demonstrate ability to park any motor vehicle except in an adequate parking space between horizontal markers, and not between flags or sticks simulating parked vehicles. Except as provided for in § 46.2-337, applicants for licensure to drive motor vehicles of the classifications referred to in § 46.2-328 shall submit to examinations which relate to the operation of those vehicles. The motor vehicle to be used by the applicant for the behind-the-wheel examination shall meet the safety and equipment requirements specified in Chapter 10 (§ 46.2-1000 et seq.) and possess a valid inspection sticker as required pursuant to § 46.2-1157. An autocycle shall not be used by the applicant for a behind-the-wheel examination.

Prior to taking the examination, the applicant shall either (a) present evidence that the applicant has completed a state-approved driver education class pursuant to the provisions of § 46.2-324.1 or 46.2-334 or (b) submit to the examiner a behind-the-wheel maneuvers checklist, on a form provided by the Department, that describes the vehicle maneuvers the applicant may be expected to perform while taking the behind-the-wheel examination, that has been signed by a licensed driver, certifying that the applicant has practiced the driving maneuvers contained and described therein, and that has been signed by the applicant certifying that, at all times while holding a learner's permit, the applicant has complied with the provisions of § 46.2-335 while operating a motor vehicle.
Except for applicants subject to § 46.2-312, if the Commissioner is satisfied that an applicant has demonstrated the same proficiency as required by the Department's examination through successful completion of either (1) the driver education course approved by the Department of Education or (2) a driver training course offered by a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.), he may waive those parts of the Department's examination provided for in this section that require the applicant to drive and park a motor vehicle.

B. Any person who fails the behind-the-wheel examination for a driver's license administered by the Department shall wait two days before being permitted to take another such examination. No person who fails the behind-the-wheel examination for a driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the in-vehicle component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or the Department of Education. In addition, no person who fails the driver knowledge examination for a driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the classroom component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or, for persons at least 19 years old, a course of instruction based on the Virginia Driver's Manual offered by a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) and approved by the Department or the Department of Education.

The provisions of this subsection shall not apply to persons placed under medical control by the Department pursuant to § 46.2-322.

§ 46.2-626.1. Motorcycle purchased by manufacturer for parts; documentation required for sale of parts.

For the purposes of this section, the terms "certificate of origin," "line-make," and "manufacturer," shall and "new motorcycle" have the meanings ascribed to them in § 46.2-1993.

A licensed motorcycle manufacturer shall not be required to obtain a certificate of title for a new motorcycle of a different line-make purchased by the manufacturer for the purpose of obtaining parts used in the production of another new motorcycle or an autocycle, provided such manufacturer obtains a salvage dealer license in accordance with § 46.2-1601. The manufacturer shall not be required to obtain a nonrepairable certificate for the purchased motorcycle, as required by § 46.2-1603.1, but shall stamp the words "Va. Code § 46.2-626.1: DISASSEMBLED FOR PARTS" in a minimum font size of 14 point across the face of the original manufacturer's certificate of origin. The certificate of origin shall be forwarded to the Department, which shall make a record of the disassembly of the motorcycle. The manufacturer shall retain a photocopy of the stamped certificate of origin for its records.

Any parts remaining from the purchased motorcycle and sold as parts by the manufacturer shall be accompanied by documentation of how such parts were obtained. Documentation accompanying the frame of the purchased motorcycle shall include a photocopy of the stamped manufacturer's certificate of origin and certification from the manufacturer that the original certificate of origin has been forwarded to the Department.

§ 46.2-662. Temporary exemption for new resident operating vehicle registered in another state or country.

A. A resident owner of any passenger car, pickup or panel truck, moped, autocycle, or motorcycle, other than those provided for in § 46.2-652, that has been duly registered for the current calendar year in another state or country and that at all times when operated in the Commonwealth displays the license plate or plates issued for the vehicle in the other state or country, may operate or permit the operation of the passenger car, pickup or panel truck, moped, autocycle, or motorcycle within or partly within the Commonwealth for the first 30 days of his residency in the Commonwealth without registering the passenger car, pickup or panel truck, moped, autocycle, or motorcycle or paying any fees to the Commonwealth.

B. In addition to any penalty authorized under this title, any locality may adopt an ordinance imposing a penalty of up to $250 upon the resident owner of any motor vehicle that, following the end of the 30-day period provided in subsection A, is required to be registered in Virginia but has not been so registered. The ordinance shall set forth a reasonable method for assessing and collecting the penalty, whether by civil, criminal, or administrative process, and shall identify the employees or agents of the locality who are to execute such assessment and collection.

§ 46.2-694. (Contingent expiration date) Fees for vehicles designed and used for transportation of passengers; weights used for computing fees; burden of proof.

A. The annual registration fees for motor vehicles, trailers, and semitrailers designed and used for the transportation of passengers on the highways in the Commonwealth are:

1. Thirty-three dollars for each private passenger car or motor home if the passenger car or motor home weighs 4,000 pounds or less, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

2. Thirty-eight dollars for each passenger car or motor home which weighs more than 4,000 pounds,
provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

3. Thirty cents per 100 pounds or major fraction thereof for a private motor vehicle other than a motorcycle with a normal seating capacity of more than 10 adults, including the driver, if the private motor vehicle is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire or is not operated under a lease without a chauffeur. In no case shall the fee be less than $23 if the vehicle weighs 4,000 pounds or less or $28 if the vehicle weighs more than 4,000 pounds.

4. Thirty cents per 100 pounds or major fraction thereof for a school bus. In no case shall the fee be less than $23 if the vehicle weighs 4,000 pounds or less or $28 if the vehicle weighs more than 4,000 pounds.

5. Twenty-three dollars for each trailer or semitrailer designed for use as living quarters for human beings.

6. Thirteen dollars plus $0.30 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of passengers, operating either intrastate or interstate. Interstate common carriers of interstate passengers may elect to be licensed and pay the fees prescribed in subdivision 7 of this subsection on submission to the Commissioner of a declaration of operations and equipment as he may prescribe. An additional $5 shall be charged if the motor vehicle weighs more than 4,000 pounds.

7. Thirteen dollars plus $0.70 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of interstate passengers if election is made to be licensed under this subsection. An additional $5 shall be charged if the motor vehicle weighs more than 4,000 pounds. In lieu of the foregoing fee of $0.70 per 100 pounds, a motor carrier of passengers, operating two or more vehicles both within and outside the Commonwealth and registered for insurance purposes with the Surface Transportation Board of the United States U.S. Department of Transportation, Federal Highway Administration, may apply to the Commissioner for prorated registration. Upon the filing of such application, in such form as the Commissioner may prescribe, the Commissioner shall apportion the registration fees provided in this subsection so that the total registration fees to be paid for such vehicles of such carrier shall be that proportion of the total fees, if there were no apportionment, that the total number of miles traveled by such vehicles of such carrier within the Commonwealth bears to the total number of miles traveled by such vehicles within and outside the Commonwealth. Such total mileage in each instance is the estimated total mileage to be traveled by such vehicles during the license year for which such fees are paid, subject to the adjustment in accordance with an audit to be made by representatives of the Commissioner at the end of such license year, the expense of such audit to be borne by the carrier being audited. Each vehicle passing into or through Virginia shall be registered and licensed in Virginia and the annual registration fee to be paid for each such vehicle shall not be less than $33. For the purpose of determining such apportioned registration fees, only those motor vehicles, trailers, or semitrailers operated both within and outside the Commonwealth shall be subject to inclusion in determining the apportionment provided for herein.

8. Thirteen dollars plus $0.80 per 100 pounds or major fraction thereof for each motor vehicle, trailer or semitrailer kept or used for rent or for hire or operated under a lease without a chauffeur for the transportation of passengers. An additional fee of $5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

9. Twenty-three dollars for a taxicab or other vehicle which is kept for rent or hire operated with a chauffeur for the transportation of passengers, and which operates or should operate under permits issued by the Department as required by law. An additional fee of $5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

10. Eighteen dollars for a motorcycle, with or without a sidecar. To this fee shall be added a surcharge of $3 which shall be distributed as provided in §46.2-1191.

10a. Fourteen dollars for a moped, to be paid into the state treasury and set aside as a special fund to be used to meet the expenses of the Department.

10b. Eighteen dollars for an autocycle.

11. Twenty-three dollars for a bus used exclusively for transportation to and from church school, for the purpose of religious instruction, or church, for the purpose of divine worship. If the empty weight of the vehicle exceeds 4,000 pounds, the fee shall be $28.

12. Thirteen dollars plus $0.70 per 100 pounds or major fraction thereof for other passenger-carrying vehicles.

13. An additional fee of $4.25 per year shall be charged and collected at the time of registration of each pickup or panel truck and each motor vehicle under subdivisions 1 through 12 of this subsection. All funds collected from $4 of the $4.25 fee shall be paid into the state treasury and shall be set aside as a special fund to be used only for emergency medical service purposes. The moneys in the special emergency medical services fund shall be distributed as follows:

a. Two percent shall be distributed to the State Department of Health to provide funding to the Virginia Association of Volunteer Rescue Squads to be used solely for the purpose of conducting
volunteer recruitment, retention, and training activities;

b. Thirty percent shall be distributed to the State Department of Health to support (i) emergency medical services training programs (excluding advanced life support classes); (ii) advanced life support training; (iii) recruitment and retention programs (all funds for such support shall be used to recruit and retain volunteer emergency medical services personnel only, including public awareness campaigns, technical assistance programs, and similar activities); (iv) emergency medical services system development, initiatives, and priorities based on needs identified by the State Emergency Medical Services Advisory Board; (v) local, regional, and statewide performance contracts for emergency medical services to meet the objectives stipulated in § 32.1-111.3; (vi) technology and radio communication enhancements; and (vii) improved emergency preparedness and response. Any funds set aside for distribution under this provision and remaining undistributed at the end of any fiscal year shall revert to the Rescue Squad Assistance Fund;

c. Thirty-two percent shall be distributed to the Rescue Squad Assistance Fund;

d. Ten percent shall be available to the State Department of Health's Office of Emergency Medical Services for use in emergency medical services; and

e. Twenty-six percent shall be returned by the Comptroller to the locality wherein such vehicle is registered, to provide funding for training of volunteer or salaried emergency medical service personnel of licensed, nonprofit emergency medical services agencies and for the purchase of necessary equipment and supplies for use in such locality for licensed, nonprofit emergency medical and rescue services.

All revenues generated by the remaining $0.25 of the $4.25 fee approved by the 2008 Session of the General Assembly shall be deposited into the Rescue Squad Assistance Fund and used only to pay for the costs associated with the certification and recertification training of emergency medical services personnel.

The Comptroller shall clearly designate on the warrant, check, or other means of transmitting these funds that such moneys are only to be used for purposes set forth in this subdivision. Such funds shall be in addition to any local appropriations and local governing bodies shall not use these funds to supplant local funds. Each local governing body shall report annually to the Board of Health on the use of the funds returned to it pursuant to this section. In any case in which the local governing body grants the funds to a regional emergency medical services council to be distributed to the licensed, nonprofit emergency medical and rescue services, the local governing body shall remain responsible for the proper use of the funds. If, at the end of any fiscal year, a report on the use of the funds returned to the locality pursuant to this section for that year has not been received from a local governing body, any funds due to that local governing body for the next fiscal year shall be retained until such time as the report has been submitted to the Board.

B. All motor vehicles, trailers, and semitrailers registered as provided in subsection B of § 46.2-646 shall pay a registration fee equal to one-twelfth of all fees required by subsection A of this section or § 46.2-697 for such motor vehicle, trailer, or semitrailer, computed to the nearest cent, multiplied by the number of months in the registration period for such motor vehicles, trailers, and semitrailers.

C. The manufacturer's shipping weight or scale weight shall be used for computing all fees required by this section to be based upon the weight of the vehicle.

D. The applicant for registration bears the burden of proof that the vehicle for which registration is sought is entitled by weight, design, and use to be registered at the fee tendered by the applicant to the Commissioner or to his authorized agent.

§ 46.2-694. (Contingent effective date) Fees for vehicles designed and used for transportation of passengers; weights used for computing fees; burden of proof.

A. The annual registration fees for motor vehicles, trailers, and semitrailers designed and used for the transportation of passengers on the highways in the Commonwealth are:

1. Twenty-three dollars for each private passenger car or motor home if the passenger car or motor home weighs 4,000 pounds or less, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

2. Twenty-eight dollars for each private passenger car or motor home which weighs more than 4,000 pounds, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

3. Thirty cents per 100 pounds or major fraction thereof for a private motor vehicle other than a motorcycle with a normal seating capacity of more than 10 adults, including the driver, if the private motor vehicle is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire or is not operated under a lease without a chauffeur. In no case shall the fee be less than $23 if the vehicle weighs 4,000 pounds or less or $28 if the vehicle weighs more than 4,000 pounds.

4. Thirty cents per 100 pounds or major fraction thereof for a school bus. In no case shall the fee be less than $23 if the vehicle weighs 4,000 pounds or less or $28 if the vehicle weighs more than 4,000 pounds.

5. Twenty-three dollars for each trailer or semitrailer designed for use as living quarters for human
beings.

6. Thirteen dollars plus $0.30 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of passengers, operating either intrastate or interstate. Interstate common carriers of interstate passengers may elect to be licensed and pay the fees prescribed in subdivision 7 of this subsection on submission to the Commissioner of a declaration of operations and equipment as he may prescribe. An additional $5 shall be charged if the motor vehicle weighs more than 4,000 pounds.

7. Thirteen dollars plus $0.70 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of interstate passengers if election is made to be licensed under this subsection. An additional $5 shall be charged if the motor vehicle weighs more than 4,000 pounds. In lieu of the foregoing fee of $0.70 per 100 pounds, a motor carrier of passengers, operating two or more vehicles both within and outside the Commonwealth and registered for insurance purposes with the Surface Transportation Board of the United States U.S. Department of Transportation, Federal Highway Administration, may apply to the Commissioner for prorated registration. Upon the filing of such application, in such form as the Commissioner may prescribe, the Commissioner shall apportion the registration fees provided in this subsection so that the total registration fees to be paid for such vehicles of such carrier shall be that proportion of the total fees, if there were no apportionment, that the total number of miles traveled by such vehicles of such carrier within the Commonwealth bears to the total number of miles traveled by such vehicles within and outside the Commonwealth. Such total mileage in each instance is the estimated total mileage to be traveled by such vehicles during the license year for which such fees are paid, subject to the adjustment in accordance with an audit to be made by representatives of the Commissioner at the end of such license year, the expense of such audit to be borne by the carrier being audited. Each vehicle passing into or through Virginia shall be registered and licensed in Virginia and the annual registration fee to be paid for each such vehicle shall not be less than $33. For the purpose of determining such apportioned registration fees, only those motor vehicles, trailers, or semitrailers operated both within and outside the Commonwealth shall be subject to inclusion in determining the apportionment provided for herein.

8. Thirteen dollars plus $0.80 per 100 pounds or major fraction thereof for each motor vehicle, trailer or semitrailer kept or used for rent or for hire or operated under a lease without a chauffeur for the transportation of passengers. An additional fee of $5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

9. Twenty-three dollars for a taxicab or other vehicle which is kept for rent or hire operated with a chauffeur for the transportation of passengers, and which operates or should operate under permits issued by the Department as required by law. An additional fee of $5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

10. Eighteen dollars for a motorcycle, with or without a sidecar. To this fee shall be added a surcharge of $3 which shall be distributed as provided in § 46.2-1191.
10a. Fourteen dollars for a moped, to be paid into the state treasury and set aside as a special fund to be used to meet the expenses of the Department.
10b. Eighteen dollars for an autocycle.

11. Twenty-three dollars for a bus used exclusively for transportation to and from church school, for the purpose of religious instruction, or church, for the purpose of divine worship. If the empty weight of the vehicle exceeds 4,000 pounds, the fee shall be $28.

12. Thirteen dollars plus $0.70 per 100 pounds or major fraction thereof for other passenger-carrying vehicles.

13. An additional fee of $4.25 per year shall be charged and collected at the time of registration of each pickup or panel truck and each motor vehicle under subdivisions 1 through 12 of this subsection. All funds collected from $4 of the $4.25 fee shall be paid into the state treasury and shall be set aside as a special fund to be used only for emergency medical service purposes. The moneys in the special emergency medical services fund shall be distributed as follows:

a. Two percent shall be distributed to the State Department of Health to provide funding to the Virginia Association of Volunteer Rescue Squads to be used solely for the purpose of conducting volunteer recruitment, retention and training activities;

b. Thirty percent shall be distributed to the State Department of Health to support (i) emergency medical services training programs (excluding advanced life support classes); (ii) advanced life support training; (iii) recruitment and retention programs (all funds for such support shall be used to recruit and retain volunteer emergency medical services personnel only, including public awareness campaigns, technical assistance programs, and similar activities); (iv) emergency medical services system development, initiatives, and priorities based on needs identified by the State Emergency Medical Services Advisory Board; (v) local, regional, and statewide performance contracts for emergency medical services to meet the objectives stipulated in § 32.1-111.3; (vi) technology and radio communication enhancements; and (vii) improved emergency preparedness and response. Any funds set aside for distribution under this provision and remaining undistributed at the end of any fiscal year shall revert to the Rescue Squad Assistance Fund;}
c. Thirty-two percent shall be distributed to the Rescue Squad Assistance Fund;
d. Ten percent shall be available to the State Department of Health's Office of Emergency Medical Services for use in emergency medical services; and
e. Twenty-six percent shall be returned by the Comptroller to the locality wherein such vehicle is registered, to provide funding for training of volunteer or salaried emergency medical service personnel of licensed, nonprofit emergency medical services agencies and for the purchase of necessary equipment and supplies for use in such locality for licensed, nonprofit emergency medical and rescue services.

All revenues generated by the remaining $0.25 of the $4.25 fee approved by the 2008 Session of the General Assembly shall be deposited into the Rescue Squad Assistance Fund and used only to pay for the costs associated with the certification and recertification training of emergency medical services personnel.

The Comptroller shall clearly designate on the warrant, check, or other means of transmitting these funds that such moneys are only to be used for purposes set forth in this subdivision. Such funds shall be in addition to any local appropriations and local governing bodies shall not use these funds to supplant local funds. Each local governing body shall report annually to the Board of Health on the use of the funds returned to it pursuant to this section. In any case in which the local governing body grants the funds to a regional emergency medical services council to be distributed to the licensed, nonprofit emergency medical and rescue services, the local governing body shall remain responsible for the proper use of the funds. If, at the end of any fiscal year, a report on the use of the funds returned to the locality pursuant to this section for that year has not been received from a local governing body, any funds due to that local governing body for the next fiscal year shall be retained until such time as the report has been submitted to the Board.

B. All motor vehicles, trailers, and semitrailers registered as provided in subsection B of § 46.2-646 shall pay a registration fee equal to one-twelfth of all fees required by subsection A of this section or § 46.2-697 for such motor vehicle, trailer, or semitrailer, computed to the nearest cent, multiplied by the number of months in the registration period for such motor vehicles, trailers, and semitrailers.

C. The manufacturer's shipping weight or scale weight shall be used for computing all fees required by this section to be based upon the weight of the vehicle.

D. The applicant for registration bears the burden of proof that the vehicle for which registration is sought is entitled by weight, design, and use to be registered at the fee tendered by the applicant to the Commissioner or to his authorized agent.

§ 46.2-711. Furnishing number and design of plates; displaying on vehicles required.
A. The Department shall furnish one license plate for every registered moped, motorcycle, autocycle, tractor truck, semitrailer, or trailer, and two license plates for every other registered motor vehicle, except to licensed motor vehicle dealers and persons delivering unladen vehicles who shall be furnished one license plate. The license plates for trailers, semitrailers, commercial vehicles, and trucks, other than license plates for dealers, may be of such design as to prevent removal without mutilating some part of the indicia forming a part of the license plate, when secured to the bracket.

B. The Department shall issue appropriately designated license plates for:
1. Passenger-carrying vehicles for rent or hire for the transportation of passengers for private trips;
2. Taxicabs;
3. Passenger-carrying vehicles operated by common carriers or restricted common carriers;
4. Property-carrying motor vehicles to applicants who operate as private carriers only;
5. Applicants who operate motor vehicles as carriers for rent or hire;
6. Vehicles operated by nonemergency medical transportation carriers as defined in § 46.2-2000; and
7. Trailers and semitrailers.

C. The Department shall issue appropriately designated license plates for motor vehicles held for rental as defined in § 58.1-1735.

D. The Department shall issue appropriately designated license plates for low-speed vehicles.

E. No vehicles shall be operated on the highways in the Commonwealth without displaying the license plates required by this chapter. The provisions of this subsection shall not apply to vehicles used to collect and deliver the United States mail to the extent that their rear license plates may be covered by the "CAUTION, FREQUENT STOPS, U.S. MAIL" sign when the vehicle is engaged in the collection and delivery of the United States mail.

F. Pickup or panel trucks are exempt from the provisions of subsection B with reference to displaying for-hire license plates when operated as a carrier for rent or hire. However, this exemption shall not apply to pickup or panel trucks subject to regulation under Chapter 21 (§ 46.2-2100 et seq.) of this title.

§ 46.2-715. Display of license plates.
License plates assigned to a motor vehicle, other than a moped, motorcycle, autocycle, tractor truck, trailer, or semitrailer, or to persons licensed as motor vehicle dealers or transporters of unladen vehicles, shall be attached to the front and the rear of the vehicle. The license plate assigned to a moped, motorcycle, autocycle, trailer, or semitrailer shall be attached to the rear of the vehicle. The license plate assigned to a tractor truck shall be attached to the front of the vehicle. The license plates issued to

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licensed motor vehicle dealers and to persons licensed as transporters of unladen vehicles shall consist of one plate for each set issued and shall be attached to the rear of the vehicle to which it is assigned.

§ 46.2-730. License plates for antique motor vehicles and antique trailers; fee.
A. On receipt of an application and evidence that the applicant owns or has regular use of another passenger car, autocycle, or motorcycle, the Commissioner shall issue appropriately designed license plates to owners of antique motor vehicles and antique trailers. These license plates shall be valid so long as title to the vehicle is vested in the applicant. The fee for the registration card and license plates of any of these vehicles shall be a one-time fee of $50.
B. On receipt of an application and evidence that the applicant owns or has regular use of another passenger car, autocycle, or motorcycle, the Commissioner may authorize for use on antique motor vehicles and antique trailers Virginia license plates manufactured prior to 1976 and designed for use without decals, if such license plates are embossed with or are of the same year of issue as the model year of the antique motor vehicle or antique trailer on which they are to be displayed. Original metal year tabs issued in place of license plates for years 1943 and 1952 and used with license plates issued in 1942 and 1951, respectively, also may be authorized by the Commissioner for use on antique motor vehicles and antique trailers that are of the same model year as the year the metal tab was originally issued. These license plates and metal tabs shall remain valid so long as title to the vehicle is vested in the applicant. The fee for the registration card and permission to use the license plates and metal tabs on any of these vehicles shall be a one-time fee of $50. If more than one request is made for use, as provided in this section, of license plates having the same number, the Department shall accept only the first such application.
C. Notwithstanding the provisions of §§ 46.2-711 and 46.2-715, antique motor vehicles may display single license plates if the original manufacturer's design of the antique motor vehicles allows for the use of only single license plates or if the license plate was originally issued in one of the following years and is displayed in accordance with the provisions of subsection B of this section: 1906, 1907, 1908, 1909, 1945, or 1946.
D. Antique motor vehicles and antique trailers registered with license plates issued or authorized for use under this section shall not be used for general transportation purposes, including, but not limited to, daily travel to and from the owner's place of employment, but shall only be used:
1. For participation in club activities, exhibits, tours, parades, and similar events;
2. On the highways of the Commonwealth for the purpose of testing their operation or selling the vehicle or trailer, obtaining repairs or maintenance, transportation to and from events as described in subdivision 1 of this subsection, and for occasional pleasure driving not exceeding 250 miles from the residence of the owner; and
3. To carry or transport (i) passengers in the antique motor vehicles, (ii) personal effects in the antique motor vehicles and antique trailers, or (iii) other antique motor vehicles being transported for show purposes.
The registration card issued to an antique motor vehicle or an antique trailer registered pursuant to subsections A, B, and C shall indicate such vehicle or trailer is for limited use.
E. Owners of motor vehicles and trailers applying for registration pursuant to subsections A, B and C shall submit to the Department, in the manner prescribed by the Department, certifications that such vehicles or trailers are capable of being safely operated on the highways of the Commonwealth.
Pursuant to § 46.2-1000, the Department shall suspend the registration of any vehicle or trailer registered with license plates issued under this section that the Department or the Department of State Police determines is not properly equipped or otherwise unsafe to operate. Any law-enforcement officer shall take possession of the license plates, registration card and decals, if any, of any vehicle or trailer registered with license plates issued under this section when he observes any defect in such vehicle or trailer as set forth in § 46.2-1000.
F. Antique motor vehicles and antique trailers displaying license plates issued or authorized for use pursuant to subsections B and C of this section may be used for general transportation purposes if the following conditions are met:
1. The physical condition of the vehicle's license plate or plates has been inspected and approved by the Department;
2. The license plate or plates are registered to the specific vehicle by the Department;
3. The owner of the vehicle periodically registers the vehicle with the Department and pays a registration fee for the vehicle equal to that which would be charged to obtain regular state license plates for that vehicle;
4. The vehicle passes a periodic safety inspection as provided in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of this title;
5. The vehicle displays current decals attached to the license plate, issued by the Department, indicating the valid registration period for the vehicle; and
6. When applicable, the vehicle meets the requirement of Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of this title.
If more than one request is made for use, as provided in this subsection, of license plates having the
same number, the Department shall accept only the first such application. Only vehicles titled to the person seeking to use license plates as provided in this subsection shall be eligible to use license plates as provided in this subsection.

G. Nothing in this section shall be construed as prohibiting the use of an antique motor vehicle to tow a trailer or semitrailer.

H. Any owner of an antique motor vehicle or antique trailer registered with license plates pursuant to this section who is convicted of a violation of this section shall be guilty of a Class 4 misdemeanor. Upon receiving a record of conviction of a violation of this section, the Department shall revoke and not reinstate the owner's privilege to register the vehicle operated in violation of this section with license plates issued or authorized for use pursuant to this section for a period of five years from the date of conviction.

I. Except for the one-time $50 registration fee prescribed in subsections A and B, the provisions of this section shall apply to all owners of vehicles and trailers registered with license plates issued under this section prior to July 1, 2007. Such owners shall, based on a schedule and a manner prescribed by the Department, (i) provide evidence that they own or have regular use of another passenger car or motorcycle, as required under subsections A and B, and (ii) comply with the certification provisions of subsection E. The Department shall cancel the registrations of vehicles owned by persons that, prior to January 1, 2008, do not provide the Department (i) evidence of owning or having regular use of another autocycle, passenger car, or motorcycle as required under subsections A and B, and (ii) the certification required pursuant to subsection E.

§ 46.2-910. Motorcycles and autocycles to wear helmets, etc.; certain sales prohibited; penalty.

A. Every person operating a motorcycle or autocycle shall wear a face shield, safety glasses or goggles, or have his motorcycle or autocycle equipped with safety glass or a windshield at all times while operating the vehicle, and operators and any passengers thereon shall wear protective helmets. Operators and passengers riding on motorcycles with wheels of eight inches or less in diameter or in three-wheeled motorcycles which have nonremovable roofs, windshields, and enclosed bodies shall not be required to wear protective helmets. The windshields, face shields, glasses or goggles, and protective helmets required by this section shall meet or exceed the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation. Failure to wear a face shield, safety glasses or goggles, or protective helmets shall not constitute negligence per se in any civil proceeding. The provisions of this section requiring the wearing of protective helmets shall not apply to operators of or passengers on motorcycles or autocycles being operated (i) as part of an organized parade authorized by the Department of Transportation or the locality in which the parade is being conducted and escorted, accompanied, or participated in by law-enforcement officers of the jurisdiction wherein the parade is held and (ii) at speeds of no more than fifteen 15 miles per hour.

No motorcycle or autocycle operator shall use any face shield, safety glasses, or goggles, or have his motorcycle or autocycle equipped with safety glass or a windshield, unless of a type either (i) approved by the Superintendent prior to July 1, 1996, or (ii) that meets or exceeds the standards and specifications of the Snell Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation and is marked in accordance with such standards.

B. It shall be unlawful to sell or offer for sale, for highway use in Virginia, any protective helmet that fails to meet or exceed any standard as provided in the foregoing provisions of this section. Any violation of this subsection shall constitute a Class 4 misdemeanor.

§ 46.2-1011. Headlights on motor vehicles.

Every motor vehicle other than a motorcycle, autocycle, road roller, road machinery, or tractor used on a highway shall be equipped with at least two headlights as approved by the Superintendent, at the front of and on opposite sides of the motor vehicle.

§ 46.2-1012. Headlights, auxiliary headlights, tail lights, brake lights, and illumination of license plates on motorcycles or autocycles.

Every motorcycle or autocycle shall be equipped with at least one headlight which shall be of a type that has been approved by the Superintendent and shall be capable of projecting sufficient light to the front of such motorcycle or autocycle to render discernible a person or object at a distance of 200 feet. However, the lights shall not project a glaring or dazzling light to persons approaching such motorcycles or autocycles. In addition, each motorcycle or autocycle may be equipped with not more than two auxiliary headlights of a type approved by the Superintendent.

Motorcycles or autocycles may be equipped with means of modulating the high beam of their headlights between high and low beam at a rate of 200 to 280 flashes per minute. Such headlights shall not be so modulated during periods when headlights would ordinarily be required to be lighted under § 46.2-1030.

Every motorcycle or autocycle registered in the Commonwealth and operated on the highways of the Commonwealth shall be equipped with at least one brake light of a type approved by the Superintendent. Motorcycles or autocycles may be equipped with one or more auxiliary brake lights of a
Every motorcycle or autocycle shall carry at the rear at least one or more red lights plainly visible in clear weather from a distance of 500 feet to the rear of such vehicle. Such tail lights shall be constructed and so mounted in their relation to the rear license plate as to illuminate the license plate with a white light so that the same may be read from a distance of 50 feet to the rear of such vehicle. Alternatively, a separate white light shall be so mounted as to illuminate the rear license plate from a distance of 50 feet to the rear of such vehicle. Any such tail lights or special white light shall be of a type approved by the Superintendent.

Motorcycles or autocycles may be equipped with a means of varying the brightness of the vehicle's brake light for a duration of not more than five seconds upon application of the vehicle's brakes.

§ 46.2-1014. Brake lights.

Every motor vehicle, trailer, or semitrailer, except an antique vehicle not originally equipped with a brake light, registered in the Commonwealth and operated on the highways in the Commonwealth shall be equipped with at least two brake lights of a type approved by the Superintendent. Such brake lights shall automatically exhibit a red or amber light plainly visible in clear weather from a distance of 500 feet to the rear of such vehicle when the brake is applied.

The provisions of this section shall not apply to motorcycles or autocycles equipped with brake lights as required by § 46.2-1012.

§ 46.2-1057. Windshields.

It shall be unlawful for any person to drive on a highway in the Commonwealth any motor vehicle or reconstructed motor vehicle, other than a motorcycle or autocycle, registered in the Commonwealth, which that was manufactured, assembled, or reconstructed after July 1, 1970, unless the motor vehicle is equipped with a windshield.

§ 46.2-1067. Within what distances brakes should stop vehicle.

On a dry, hard, approximately level stretch of highway free from loose material, the service braking system shall be capable of stopping a motor vehicle or combination of vehicles at all times and under all conditions of loading at a speed of twenty 20 miles per hour within the following distances:

2. Buses, trucks, and tractor trucks, forty 40 feet.
3. Motor vehicles registered or qualified to be registered as antique vehicles, when equipped with two-wheel brakes, forty-five 45 feet; four-wheel brakes, twenty-five 25 feet.
4. All combinations of vehicles, forty 40 feet.
5. Motorcycles or autocycles, thirty 30 feet.

§ 46.2-1068. Emergency or parking brakes.

Every motor vehicle and combination of vehicles, except motorcycles or autocycles, shall be equipped with emergency or parking brakes adequate to hold the vehicle or vehicles on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice, or loose material.

§ 46.2-1092. Safety lap belts or a combination of lap belts and shoulder harnesses to be installed in certain motor vehicles.

No passenger car or autocycle registered in the Commonwealth and manufactured for the year 1963 or for subsequent years shall be operated on the highways in the Commonwealth unless the front seats thereof are equipped with adult safety lap belts or a combination of lap belts and shoulder harnesses of types approved by the Superintendent.

Failure to use the safety lap belts or a combination of lap belts and shoulder harnesses after installation shall not be deemed to be negligence. Nor shall evidence of such nonuse of such devices be considered in mitigation of damages of whatever nature.

No motor vehicle registered in the Commonwealth and manufactured after January 1, 1968, shall be issued a safety inspection approval sticker if any lap belt, combination of lap belt and shoulder harness, or passive belt systems required to be installed at the time of manufacture by the federal Department of Transportation have been either removed from the motor vehicle or rendered inoperable.

No autocycle registered in the Commonwealth shall be issued a safety inspection sticker if any lap belt, combination of lap belt and shoulder harness, or passive belt systems required to be installed under this section have been either removed from the autocycle or rendered inoperable.

No passenger car, except convertibles, registered in the Commonwealth and manufactured on or after September 1, 1990, shall be operated on the highways in the Commonwealth unless the forward-facing rear outboard seats thereof are equipped with rear seat lap/shoulder belts of types required to be installed at the time of manufacture by the federal Department of Transportation.

No passenger car, including convertibles, registered in the Commonwealth and manufactured on or after September 1, 1991, shall be operated on the highways in the Commonwealth unless the forward-facing rear outboard seats thereof are equipped with rear seat lap/shoulder belts of types required to be installed at the time of manufacture by the federal Department of Transportation.

No truck, multi-purpose vehicle, or bus, except school buses and motor homes, with a gross vehicle weight rating of 10,000 pounds or less, registered in the Commonwealth and manufactured on or after
September 1, 1991, shall be operated on the highways in the Commonwealth unless the forward-facing rear outboard seats thereof are equipped with rear seat lap/shoulder belts of types required to be installed at the time of manufacture by the federal Department of Transportation.

Passenger cars, trucks, multipurpose vehicles, and buses, except school buses and motor homes, registered in the Commonwealth and manufactured on or after September 1, 1992, shall not be operated on the highways of the Commonwealth unless equipped with rear seat lap/shoulder belts of types required to be installed at the time of manufacture by the federal Department of Transportation for each forward-facing rear outboard seating position on a readily removable seat.

For the purposes of this section, forward-facing rear outboard seats are defined as those designated seating positions for passengers in outside front facing seats behind the driver and front passenger seats, except any designated seating position adjacent to a walkway that is located between the seat and the near side of the vehicle and is designed to allow access to a more rearward seating position.

The Superintendent of State Police shall include in the Official Motor Vehicle Inspection Regulations a section which identifies each classification of motor vehicle required to be equipped with any of the devices described in the foregoing provisions of this section.

Such regulations shall also include a listing of the exact devices which are required to be installed in each motor vehicle classification and the model year of each motor vehicle classification on which the standards of the federal Department of Transportation first became applicable.

§ 46.2-1157. Inspection of motor vehicles required.
A. The owner or operator of any motor vehicle, trailer, or semitrailer registered in Virginia and operated or parked on a highway within the Commonwealth shall submit his vehicle to an inspection of its mechanism and equipment by an official inspection station, designated for that purpose, in accordance with § 46.2-1158. No owner or operator shall fail to submit a motor vehicle, trailer, or semitrailer operated or parked on the highways in the Commonwealth to such inspection or fail or refuse to correct or have corrected in accordance with the requirements of this title any mechanical defects found by such inspection to exist.

B. The provisions of this section requiring safety inspections of motor vehicles shall also apply to vehicles used for fire fighting; inspections of fire fighting vehicles shall be conducted pursuant to regulations promulgated by the Superintendent of State Police, taking into consideration the special purpose of such vehicles and the conditions under which they operate.

C. Each day during which such motor vehicle, trailer, or semitrailer is operated or parked on any highway in the Commonwealth after failure to comply with this law shall constitute a separate offense.

D. Except as otherwise provided, autocycles shall be inspected as motorcycles under this article.

§ 46.2-1167. Charges for inspection and reinspection; exemption.
A. Each official safety inspection station may charge no more than:
1. Fifty-one dollars for each inspection of any (i) tractor truck, (ii) truck that has a gross vehicle weight rating of 26,000 pounds or more, or (iii) motor vehicle that is used to transport passengers and has a seating capacity of more than 15 passengers, including the driver, $0.50 of which shall be transmitted to the Department of State Police to support the Department's costs in administering the motor vehicle safety inspection program;
2. Twelve dollars for each inspection of any motorcycle, $10 of which shall be retained by the inspection station and $2 of which shall be transmitted to the Department of State Police who shall deposit the remaining $1.50 into the Motorcycle Rider Safety Training Program Fund created pursuant to § 46.2-1191; and
3. Twelve dollars for each inspection of any autocycle, $10 of which shall be retained by the inspection station and $2 of which shall be transmitted to the Department of State Police to be used to support the Department's costs in administering the motor vehicle safety inspection program; and
4. Sixteen dollars for each inspection of any other vehicle, $0.50 of which shall be transmitted to the Department of State Police to support the Department's costs in administering the motor vehicle safety inspection program.

No such charge shall be mandatory, however, and no such charge shall be made unless the station has previously contracted therefor.

B. Each official safety inspection station may charge $1 for each reinspection of a vehicle rejected by the station, as provided in § 46.2-1158, if the vehicle is submitted for reinspection within the validity period of the rejection sticker. If a rejected vehicle is not submitted to the same station within the validity period of the rejection sticker or is submitted to another official safety inspection station, an amount no greater than that permitted under subsection A may be charged for the inspection.

§ 46.2-1500. Definitions.
Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings, unless the context requires a different meaning:
"Board" means the Motor Vehicle Dealer Board.
"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor,
its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided the dealer complies with the provisions of subsection D of § 46.2-1530.

"Distributor" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and who sells or distributes new motor vehicles pursuant to a written agreement with the manufacturer, to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motor vehicles of a particular line-make of late model or used motor vehicles or a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. The term shall include "Franchise" includes any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or franchised used motor vehicle dealer" means a dealer selling used motor vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or distributor that has a franchise agreement with a manufacturer or distributor.

"Franchised motor vehicle dealer" means a dealer in new motor vehicles that has a franchise agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers to sell new motor vehicles or to sell used motor vehicles under the trademark of a manufacturer or distributor regardless of the age of the motor vehicles, trailers, or semitrailers.

"Fund" means the Motor Vehicle Dealer Board Fund.

"Independent motor vehicle dealer" means a dealer in used motor vehicles.

"Late model motor vehicle" means a motor vehicle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor.

"Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by the final manufacturer or assembler of the truck.

"Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter, it shall "motor vehicle" does not include (i) trailers and semitrailers; (ii) manufactured homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (iii) motor homes; (iv)
motorcycles; (v) autocycles; (vi) nonreparable vehicles, as defined in § 46.2-1600; (vii) salvage vehicles, as defined in § 46.2-1600; or (viii) mobile cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, or 46.2-1113, or Article 17 (§ 46.2-1122 et seq.) of Chapter 10 of this title.

"Motor vehicle dealer" or "dealer" means any person who:
1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or
2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any 12 consecutive months.

The term "motor vehicle dealer" or "dealer" does not include:
1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.
2. Public officers, their deputies, assistants, or employees, while performing their official duties.
3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.
4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.
5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.
6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.
8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.
9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.
10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.
11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.
13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.
14. The State Department of Social Services or local departments of social services.

"Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

"Motor vehicle show" means a display of motor vehicles to the general public at a location other than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or exchange during or as part of the display.

"New motor vehicle" means any vehicle that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department of Motor Vehicles of the Commonwealth or by the issuing agency of any other state and has less than 7,500 miles accumulated on its odometer.

"Original license" means a motor vehicle dealer license issued to an applicant who has never been
licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been expired for more than 30 days.

"Relevant market area" means as follows:

1. In metropolitan localities, the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less than seven miles.

2. If the population in an area within a radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the 15-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of 20 miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area of responsibility, the relevant market area shall be the greater of an area within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

Notwithstanding the foregoing provision of this section, in the case of dealers in motor vehicles with gross vehicle weight ratings of 26,000 pounds or greater, the relevant market area with respect to the dealer's franchise for all such vehicles shall be a circular area around an existing franchised dealer with a radius of 25 miles, except where the population in such circular area is less than 250,000, in which case the relevant market area shall be a circular area around an existing franchised dealer with a radius of 50 miles.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

"Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.


Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings, unless the context requires a different meaning:

"All-terrain vehicle" shall have has the meaning ascribed to it in § 46.2-100.

"Autocycle" has the meaning ascribed to it in § 46.2-100.

"Certificate of origin" means the document provided by the manufacturer of a new motorcycle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motorcycle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new motorcycles pursuant to a written agreement with the manufacturer, to franchised motorcycle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of motorcycles to motorcycle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motorcycles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motorcycles to distributors or for the sale of motorcycles to motorcycle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles motorcycles, or by a factory branch for the purpose of making or promoting the sale of its motorcycles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motorcycle" means a motorcycle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motorcycle will be resold or otherwise retransferred only to the manufacturer or distributor of the motorcycle, and which is reacquired by the manufacturer or distributor, or its agents.
"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least five years.

"Farm utility vehicle" shall have the meaning ascribed to it in § 46.2-100.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motorcycles of a particular line-make or late model or factory repurchase motorcycles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motorcycle or its manufacturer or distributor. The term shall include "Franchise" includes any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motorcycle dealer" means a dealer in late model or factory repurchase motorcycles, including a franchised new motorcycle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase motorcycles.

"Franchised motorcycle dealer" or "franchised dealer" means a dealer in new motorcycles that has a franchise agreement with a manufacturer or distributor of new motorcycles.

"Independent motorcycle dealer" means a dealer in used motorcycles.

"Late model motorcycle" means a motorcycle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motorcycle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor. For the purposes of this chapter, the "line-make" of a motorcycle manufacturer, factory branch, distributor, or distributor branch shall include includes every brand of all-terrain vehicle, autocycle, and off-road motorcycle manufactured or distributed bearing the name of the motorcycle manufacturer or distributor.

"Manufacturer" means a person engaged in the business of constructing or assembling new motorcycles.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in § 46.2-100. Except as otherwise provided in this chapter, for the purposes of this chapter, "all-terrain vehicles," "autocycles," and "off-road motorcycles" shall be are deemed to be "motorcycles."

"Motorcycle dealer" or "dealer" means any person who:
1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motorcycles, new and used motorcycles, or used motorcycles alone, whether or not the motorcycles are owned by him;
2. Is wholly or partly engaged in the business of selling new motorcycles, new and used motorcycles, or used motorcycles only, whether or not the motorcycles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale, of five or more motorcycles within any 12 consecutive months.

The term "motorcycle" "Motorcycle dealer" or "dealer" does not include:
1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.
2. Public officers, their deputies, assistants, or employees, while performing their official duties.
3. Persons other than business entities primarily engaged in the leasing or renting of motorcycles to others when selling or offering such motorcycles for sale at retail, disposing of motorcycles acquired for their own use and actually so used, when the motorcycles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.
4. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motorcycle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the motorcycle.
5. An employee of an organization arranging for the purchase or lease by the organization of motorcycles for use in the organization's business.
6. Any person who permits the operation of a motorcycle show or permits the display of motorcycles for sale by any motorcycle dealer licensed under this chapter.
7. An insurance company authorized to do business in the Commonwealth that sells or disposes of motorcycles under a contract with its insured in the regular course of business.
8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motorcycles owned by others.
9. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motorcycle dealer.

"Motorcycle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a motorcycle dealer to sell or exchange motorcycles.

"Motorcycle show" means a display of motorcycles to the general public at a location other than a dealer's location licensed under this chapter where the motorcycles are not being offered for sale or exchange during or as part of the display.

"New motorcycle" means any motorcycle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motorcycle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the motorcycle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal motorcycle safety and emission standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

"Off-road motorcycle" shall have the meaning ascribed to it in § 46.2-100.

"Original license" means a motorcycle dealer license issued to an applicant who has never been licensed as a motorcycle dealer in Virginia or whose Virginia motorcycle dealer license has been expired for more than 30 days.

"Relevant market area" means:
1. That area within a circle having a radius of 20 miles around an existing franchised dealer location, except as provided in subdivisions 2 and 3.
2. That area within a circle having a radius of 30 miles around an existing franchised dealer location if the population within that circle is less than one million but more than 750,000.
3. If the population within a circle having a radius of 30 miles around an existing franchised dealer location is less than 750,000, "relevant market area" means that area within a circle around such dealer having a radius of 40 miles.

In any case in which the franchise agreement or the manufacturer requires the franchisee to make significant retail sales or marketing efforts in geographic areas beyond the franchisee's relevant market area, then such geographic areas shall be added to the relevant market area of the dealer.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motorcycles to a buyer for his use and not for resale, in which the price of the motorcycle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motorcycle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motorcycle dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"Used motorcycle" means any motorcycle other than a new motorcycle as defined in this section.

"Wholesale auction" means an auction of motorcycles restricted to sales at wholesale.
Summary: Provides a strategic prioritization funding plan for transportation investments and local allocations.


Comment: From the Office of Governor Pat McCrory

The N.C. Department of Transportation has a new, more efficient way of funding infrastructure investments that will better connect citizens to opportunities, increase jobs, and enhance economic development after Governor Pat McCrory signed into law today the Strategic Mobility Formula, House Bill 817.

The new formula is the first step in helping to address a decline in revenue and increase in the state’s population by allowing NCDOT to more efficiently use its existing funds, which will result in more transportation projects and more jobs for North Carolina. The next steps, already underway, are to develop the 25 year plan and determine how to generate the revenue for infrastructure investment.

NCDOT will work closely with the N.C. Department of Commerce, local municipalities, and metro and regional planning organizations to identify projects that spur economic growth throughout the state through a new data-driven process.

NCDOT’s current 10-year plan includes 175 projects and creates 174,000 jobs. The new formula will fund at least 260 projects and create more than 240,000 jobs over the next 10 years.

The Strategic Mobility Formula replaces the state’s outdated Equity Formula, which was implemented in 1989 and did not provide sufficient flexibility to meet North Carolina’s current needs. The new formula takes a tiered approach to funding transportation improvements, with the statewide level receiving 40 percent of available funding ($6 billion), the regional level receiving 30 percent of available funding ($4.5 billion) and the division level also receiving 30 percent of available funding ($4.5 billion) over the next 10 years.

The new formula is scheduled to be fully implemented by July 1, 2015. Projects funded for construction before then will proceed as scheduled; projects slated after that time will be ranked and programmed according to the new formula.

Disposition of Entry:

SSL Committee Meeting: 2015 B  
( ) Include in Volume  
( ) Defer consideration:  
( ) next SSL mtg.  
( ) next SSL cycle  
( ) Reject

Comments/Note to staff:
AN ACT TO STRENGTHEN THE ECONOMY THROUGH STRATEGIC TRANSPORTATION INVESTMENTS.

The General Assembly of North Carolina enacts:

STRATEGIC TRANSPORTATION INVESTMENTS

SECTION 1.1.(a) Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 14B.
"Strategic Prioritization Funding Plan for Transportation Investments.

The following definitions apply in this Article:

(1) Statewide strategic mobility projects. – Includes only the following:
   a. Interstate highways and future interstate highways approved by the federal government.
   b. Routes on the National Highway System as of July 1, 2012, excluding intermodal connectors.
   d. Highway toll routes designated by State law or by the Department of Transportation, pursuant to its authority under State law.
   e. Highway projects listed in G.S. 136-179, as it existed on July 1, 2012, that are not authorized for construction as of July 1, 2015.
   f. Appalachian Development Highway System.
   g. Commercial service airports included in the Federal Aviation Administration's National Plan of Integrated Airport Systems (NPIAS) that provide international passenger service or 375,000 or more enplanements annually, provided that the State's annual financial participation in any single airport project included in this subdivision may not exceed five hundred thousand dollars ($500,000).
   h. Freight capacity and safety improvements to Class I freight rail corridors.

(2) Regional impact projects. – Includes only the following:
   a. Projects listed in subdivision (1) of this section, subject to the limitations noted in that subdivision.
   b. U.S. highway routes not included in subdivision (1) of this section.
   c. N.C. highway routes not included in subdivision (1) of this section.
   d. Commercial service airports included in the NPIAS that are not included in subdivision (1) of this section, provided that the State's annual financial participation in any single airport project included in this subdivision may not exceed three hundred thousand dollars ($300,000).
   e. The State-maintained ferry system, excluding passenger vessel replacement.
   f. Rail lines that span two or more counties not included in subdivision (1) of this section.
Public transportation service that spans two or more counties and that serves more than one municipality. Expenditures pursuant to this sub-subdivision shall not exceed ten percent (10%) of any distribution region allocation.

(3) Division needs projects. – Includes only the following:
   a. Projects listed in subdivision (1) or (2) of this section, subject to the limitations noted in those subsections.
   b. State highway routes not included in subdivision (1) or (2) of this section.
   c. Airports included in the NPIAS that are not included in subdivision (1) or (2) of this section, provided that the State's total annual financial participation under this sub-subdivision shall not exceed eighteen million five hundred thousand dollars ($18,500,000).
   d. Rail lines not included in subdivision (1) or (2) of this section.
   e. Public transportation service not included in subdivision (1) or (2) of this section.
   f. Multimodal terminals and stations serving passenger transit systems.
   g. Federally funded independent bicycle and pedestrian improvements.
   h. Replacement of State-maintained ferry vessels.
   i. Federally funded municipal road projects.

(4) Distribution Regions. – The following Distribution Regions apply to this Article:
   b. Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.
   c. Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.
   d. Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.
   e. Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.
   f. Distribution Region F consists of the following counties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.
   g. Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey.


(a) Funds Subject to Formula. – The following sources of funds are subject to this section:
   (1) Highway Trust Fund funds, in accordance with G.S. 136-176.
   (2) Federal aid funds.

(b) Funds Excluded From Formula. – The following funds are not subject to this section:
   (1) Federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149.
   (2) Funds received through competitive awards or discretionary grants through federal appropriations either for local governments, transportation authorities, transit authorities, or the Department.
(3) Funds received from the federal government that under federal law may only be used for Appalachian Development Highway System projects.

(4) Funds used in repayment of "GARVEE" bonds related to Phase I of the Yadkin River Veterans Memorial Bridge project.

(5) Funds committed to gap funding for toll roads funded with bonds issued pursuant to G.S. 136-176.

(6) Funds obligated for projects in the State Transportation Improvement Program that are scheduled for construction as of April 1, 2013, in State fiscal year 2012-2013, 2013-2014, or 2014-2015.

(7) Toll collections from a turnpike project under Article 6H of this Chapter and other revenue from the sale of the Authority’s bonds or notes or project loans, in accordance with G.S. 136-89.192.

(8) Toll collections from the State-maintained ferry system collected under the authority of G.S. 136-82.

(b1) Funds Excluded From Regional Impact Project Category. – Federal Surface Transportation Program-Direct Attributable funds expended on eligible projects in the Regional Impact Project category are excluded from that category.

(c) Funds With Alternate Criteria. – The following federal program activities shall be included in the applicable category of the Transportation Investment Strategy Formula set forth in subsection (d) of this section but shall not be subject to the prioritization criteria set forth in that subsection:

1. Bridge replacement.
2. Interstate maintenance.
3. Highway safety improvement.

(d) Transportation Investment Strategy Formula. – Funds subject to the Formula shall be distributed as follows:

1. Statewide Strategic Mobility Projects. – Forty percent (40%) of the funds subject to this section shall be used for Statewide Strategic Mobility Projects.
   a. Criteria. – Transportation-related quantitative criteria shall be used by the Department to rank highway projects that address cost-effective Statewide Strategic Mobility needs and promote economic and employment growth. The criteria for selection of Statewide Strategic Mobility Projects shall utilize a numeric scale of 100 points, based on consideration of the following quantitative criteria:
      1. Benefit cost.
      2. Congestion.
      4. Economic competitiveness.
      5. Freight.
      6. Multimodal.
      7. Pavement condition.
      8. Lane width.
   b. Project cap. – No more than ten percent (10%) of the funds projected to be allocated to the Statewide Strategic Mobility category over any five-year period may be assigned to any contiguous project or group of projects in the same corridor within a Highway Division or within adjoining Highway Divisions.

2. Regional Impact Projects. – Thirty percent (30%) of the funds subject to this section shall be used for Regional Impact Projects and allocated by population of Distribution Regions based on the most recent estimates certified by the Office of State Budget and Management.
   a. Criteria. – A combination of transportation-related quantitative criteria, qualitative criteria, and local input shall be used to rank Regional Impact Projects involving highways that address cost-effective needs from a region-wide perspective and promote...
economic growth. Local input is defined as the rankings identified by the Department’s Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations. The criteria utilized for selection of Regional Impact Projects shall be based thirty percent (30%) on local input and seventy percent (70%) on consideration of a numeric scale of 100 points based on the following quantitative criteria:
1. Benefit cost.
2. Congestion.
4. Freight.
5. Multimodal.
6. Pavement condition.
7. Lane width.
8. Shoulder width.
9. Accessibility and connectivity to employment centers, tourist destinations, or military installations.

(3) Division Need Projects. – Thirty percent (30%) of the funds subject to this section shall be allocated in equal share to each of the Department divisions, as defined in G.S. 136-14.1, and used for Division Need Projects.

a. Criteria. – A combination of transportation-related quantitative criteria, qualitative criteria, and local input shall be used to rank Division Need Projects involving highways that address cost-effective needs from a Division-wide perspective, provide access, and address safety-related needs of local communities. Local input is defined as the rankings identified by the Department’s Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations. The criteria utilized for selection of Division Need Projects shall be based fifty percent (50%) on local input and fifty percent (50%) on consideration of a numeric scale of 100 points based on the following quantitative criteria, except as provided in sub-subdivision b. of this subdivision:
1. Benefit cost.
2. Congestion.
4. Freight.
5. Multimodal.
6. Pavement condition.
7. Lane width.
8. Shoulder width.
9. Accessibility and connectivity to employment centers, tourist destinations, or military installations.

b. Alternate criteria. – Funding from the following programs shall be included in the computation of each of the Department division equal shares but shall be subject to alternate quantitative criteria:
1. Federal Surface Transportation Program-Direct Attributable funds expended on eligible projects in the Division Need Projects category.
2. Federal Transportation Alternatives funds appropriated to the State.
3. Federal Railway-Highway Crossings Program funds appropriated to the State.
4. Projects requested from the Department in support of a time-critical job creation opportunity, when the opportunity would be classified as transformational under the Job Development Investment Grant program established pursuant to G.S. 143B-437.52, provided that the total State investment in each fiscal year for all projects funded under this
sub-subdivision shall not exceed ten million dollars ($10,000,000) in the aggregate or two million dollars ($2,000,000) per project.

5. Federal funds for municipal road projects.

c. Bicycle and pedestrian limitation. – The Department shall not provide financial support for independent bicycle and pedestrian improvement projects, except for federal funds administered by the Department for that purpose. This sub-subdivision shall not apply to funds allocated to a municipality pursuant to G.S. 136-41.1 that are committed by the municipality as matching funds for federal funds administered by the Department and used for bicycle and pedestrian improvement projects. This limitation shall not apply to funds authorized for projects in the State Transportation Improvement Program that are scheduled for construction as of October 1, 2013, in State fiscal year 2012-2013, 2013-2014, or 2014-2015.

(4) Criteria for nonhighway projects. – Nonhighway projects subject to this subsection shall be evaluated through a separate prioritization process established by the Department that complies with all of the following:

a. The criteria used for selection of projects for a particular transportation mode shall be based on a minimum of four quantitative criteria.

b. Local input shall include rankings of projects identified by the Department’s Transportation Division Engineers, Metropolitan Planning Organizations, and Rural Transportation Planning Organizations.

c. The criteria shall be based on a scale not to exceed 100 points that includes no bonus points or other alterations favoring any particular mode of transportation.

(e) Authorized Formula Variance. – The Department may vary from the Formula set forth in this section if it complies with the following:

(1) Limitation on variance. – The Department, in obligating funds in accordance with this section, shall ensure that the percentage amount obligated to Statewide Strategic Mobility Projects, Regional Impact Projects, and Division Need Projects does not vary by more than five percent (5%) over any five-year period from the percentage required to be allocated to each of those categories by this section. Funds obligated among distribution regions or divisions pursuant to this section may vary up to ten percent (10%) over any five-year period.

(2) Calculation of variance. – Each year the Secretary shall calculate the amount of Regional Impact and Division Need funds allocated in that year to each division and region, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. In the first variance calculation under this subdivision following the end of fiscal year 2015-2016, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. In the first variance calculation under this subdivision following the end of fiscal year 2016-2017, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous two fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2017-2018, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous three fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2018-2019, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous four fiscal years. The new target amounts shall be used to fulfill the requirements of subdivision
(f) Incentives for Local Funding and Highway Tolling. – The Department may revise highway project selection ratings based on local government funding initiatives and capital construction funding directly attributable to highway toll revenue. Projects authorized for construction after November 1, 2013, and contained in the 10-year Department of Transportation work program are eligible for a bonus allocation under this subsection.

(1) Definitions. – The following definitions apply in this subsection:

a. Bonus allocation. – The allocation obtained as a result of local government funding participation or highway tolling.

b. Local funding participation. – Non-State or nonfederal funds committed by local officials to leverage the commitment of State or federal transportation funds towards construction.

(2) Funds obtained from local government funding participation. – Upon authorization to construct a project with funds obtained by local government funding participation, the Department shall make available for allocation as set forth in subdivision (4) of this section an amount equal to one-half of the local funding commitment for other eligible highway projects that serve the local entity or entities that provided the local funding.

(3) Funds obtained through highway tolling. – Upon authorization to construct a project with funding from toll revenue, the Department shall make available for allocation an amount equal to one-half of the project construction cost derived from toll revenue bonds. The amount made available for allocation to other eligible highway projects shall not exceed two hundred million dollars ($200,000,000) of the capital construction funding directly attributable to the highway toll revenues committed in the Investment Grade Traffic and Revenue Study, for a project for which funds have been committed on or before July 1, 2015. The amount made available for allocation to other eligible highway projects shall not exceed one hundred million dollars ($100,000,000) of the capital construction funding directly attributable to the highway toll revenues committed in the Investment Grade Traffic and Revenue Study, for a project for which funds are committed after July 1, 2015. If the toll project is located in one or more Metropolitan Planning Organization or Rural Transportation Planning Organization boundaries, based on the boundaries in existence at the time of letting of the project construction contract, the bonus allocation shall be distributed proportionately to lane miles of new capacity within the Organization’s boundaries. The Organization shall apply the bonus allocation only within those counties in which the toll project is located.

(4) Use of bonus allocation. – The Metropolitan Planning Organization, Rural Transportation Planning Organization, or the local government may choose to apply its bonus allocation in one of the three categories or in a combination of the three categories as provided in this subdivision:

a. Statewide Strategic Mobility Projects category. – The bonus allocation shall apply over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.

b. Regional Impact Projects category. – The bonus allocation is capped at ten percent (10%) of the regional allocation, or allocation to multiple regions, made over a five-year period and shall be applied over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.

c. Division Needs Projects category. – The bonus allocation is capped at ten percent (10%) of the division allocation, or allocation to multiple divisions, made over a five-year period and shall be applied over the five-year period in the State Transportation Improvement Program in the cycle following the contractual obligation.
(g) Reporting. – The Department shall publish on its Web site, in a link to the "Strategic Transportation Investments" Web site linked directly from the Department's home page, the following information in an accessible format as promptly as possible:

1. The quantitative criteria used in each highway and nonhighway project scoring, including the methodology used to define each criteria, the criteria presented to the Board of Transportation for approval, and any adjustments made to finalize the criteria.

2. The quantitative and qualitative criteria in each highway or nonhighway project scoring that is used in each region or division to finalize the local input score and shall include distinctions between Metropolitan Planning Organization and Rural Transportation Planning Organization scoring and methodologies.

3. Notification of changes to the methodologies used to calculate quantitative criteria.

4. The final quantitative formulas, including the number of points assigned to each criteria, used in each highway and nonhighway project scoring used to obtain project rankings in the Statewide, Regional, and Division categories. If the Department approves different formulas or point assignments regionally or by division, the final scoring for each area shall be noted.

5. The project scorings associated with the release of the draft and final State Transportation Improvement Program.

SECTION 1.1.(b) Effective July 1, 2019, G.S. 136-189.11(e)(2), as enacted by subsection (a) of this section, reads as rewritten:

"(e) Authorized Formula Variance. – The Department may vary from the Formula set forth in this section if it complies with the following:

(2) Calculation of Variance. – Each year, the Secretary shall calculate the amount of Regional Impact and Division Need funds allocated in that year to each division, division and region, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. In the first variance calculation under this subdivision following the end of fiscal year 2015-16, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. In the first variance calculation under this subdivision following the end of fiscal year 2016-17, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous two fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2017-18, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous three fiscal years. In the first variance calculation under this subdivision following the end of fiscal year 2018-19, the target amounts obtained according to the Formula set forth in this section shall be adjusted to account for any differences between allocations and obligations reported for the previous four fiscal years. The new target amounts shall be used to fulfill the requirements of subdivision (1) of this subsection for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by Distribution Region or Division, as applicable."

SECTION 1.2. Strategic Prioritization Process Reporting. – The Department shall issue a draft revision to the State Transportation Improvement Program required by G.S. 143B-350(f)(4) no later than January 1, 2015. The Board of Transportation shall approve the revised State Transportation Improvement Program no later than July 1, 2015.

SECONDARY ROADS CHANGES

SECTION 2.1. G.S. 20-85 reads as rewritten:

"§ 20-85. Schedule of fees.

..."
(a) One dollar ($1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources. An additional fifty cents (50¢) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited as follows:

1. The first four hundred thousand dollars ($400,000) collected shall be credited to the Reserve for Visitor Centers in the Highway Fund.
2. Any additional funds collected shall be credited to the Highway Trust Fund and, notwithstanding G.S. 136-176(b), shall be allocated and used for urban loop projects.

(a2) From the fees collected under subdivisions (a)(1) through (a)(9) of this section, the Department shall annually credit the sum of four hundred thousand dollars ($400,000) to the Reserve for Visitor Centers in the Highway Fund.

(b) Except as otherwise provided in subsection (a1) subsections (a1) and (a2) of this section, the fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars ($15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.

SECTION 2.2.(a) G.S. 136-44.2 reads as rewritten:
"§ 136-44.2. Budget and appropriations.
(a) The Director of the Budget shall include in the "Current Operations Appropriations Act" an enumeration of the purposes or objects of the proposed expenditures for each of the construction and maintenance, construction, maintenance, and improvement programs for that budget period for the State primary, secondary, State parks road systems, and other transportation systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall also include State-maintained, nonhighway modes of transportation as well as transportation.

(b) All construction and maintenance, construction, maintenance, and improvement programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal-aid construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

(c) Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

(d) The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

(e) The "Current Operations Appropriations Act" shall also contain the proposed appropriations of State funds for use in each county for construction, maintenance, and improvement of secondary roads, to be allocated in
according to G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the
construction and maintenance, maintenance, and improvement of secondary roads in the county for which they are allocated pursuant to G.S. 136-44.5 and 136-44.6.

"§ 136-44.2. Budget and appropriations."

(a) The Director of the Budget shall include in the "Current Operations Appropriations Act" an enumeration of the purposes or objects of the proposed expenditures for each of the construction, maintenance, and improvement programs for that budget period for the State primary, secondary, State parks road systems, and other transportation systems. The State primary system shall include all portions of the State highway system located both inside and outside municipal corporate limits that are designated by N.C., U.S. or Interstate numbers. The State secondary system shall include all of the State highway system located both inside and outside municipal corporate limits that is not a part of the State primary system. The State parks system shall include all State parks roads and parking lots that are not also part of the State highway system. The transportation systems shall also include State-maintained, nonhighway modes of transportation.

(b) All construction, maintenance, and improvement programs for which appropriations are requested shall be enumerated separately in the budget. Programs that are entirely State funded shall be listed separately from those programs involving the use of federal-aid funds. Proposed appropriations of State matching funds for each of the federal construction programs shall be enumerated separately as well as the federal-aid funds anticipated for each program in order that the total construction requirements for each program may be provided for in the budget. Also, proposed State matching funds for the highway planning and research program shall be included separately along with the anticipated federal-aid funds for that purpose.

(c) Other program categories for which appropriations are requested, such as, but not limited to, maintenance, channelization and traffic control, bridge maintenance, public service and access road construction, transportation projects and systems, and ferry operations shall be enumerated in the budget.

(d) The Department of Transportation shall have all powers necessary to comply fully with provisions of present and future federal-aid acts. For purposes of this section, "federally eligible construction project" means any construction project except secondary road projects developed pursuant to G.S. 136-44.7 and 136-44.8. G.S. 136-44.8 eligible for federal funds under any federal-aid act, whether or not federal funds are actually available.

(e) The "Current Operations Appropriations Act" shall also contain the proposed appropriations of State funds for use in each county for construction, maintenance, and improvement of secondary roads, to be allocated in accordance with G.S. 136-44.5 and 136-44.6. State funds appropriated for secondary roads shall not be transferred nor used except for the primary, secondary, and urban primary and secondary road systems are made, based upon the same proportion as is appropriated to each system.

(g) The Department of Transportation may provide for costs incurred or accrued for traffic control measures to be taken by the Department at major events which involve a high degree of traffic concentration on State highways, and which cannot be funded from regular budgeted items. This authorization applies only to events which are expected to generate 30,000 vehicles or more per day. The Department of Transportation shall provide for this funding by allocating and reserving up to one hundred thousand dollars ($100,000) before any other allocations from the appropriations for State maintenance for primary, secondary, and urban primary and secondary road systems are made, based upon the same proportion as is appropriated to each system.

"§ 136-44.2A. Secondary road improvement construction program."

There shall be annually allocated from the Highway Fund to the Department of Transportation for secondary road improvement construction programs developed pursuant to G.S. 136-44.7 and 136-44.8, a sum provided by law equal to that allocation made from the
Highway Fund under G.S. 136-41.1(a). In addition, as provided in G.S. 136-176(b)(4) and G.S. 20-85(b), revenue is annually allocated from the Highway Trust Fund for secondary road construction. Of the funds allocated from the Highway Fund, the sum of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated among the counties in accordance with G.S. 136-44.5(b). All funds allocated from the Highway Fund for secondary road improvements in excess of that amount shall be allocated among the counties in accordance with G.S. 136-44.5(c). All funds allocated from the Highway Trust Fund for secondary road improvement programs shall be allocated in accordance with G.S. 136-182."

SECTION 2.3.(b) Effective July 1, 2014, G.S. 136-44.2A is repealed.

SECTION 2.4. G.S. 136-44.2C is repealed.

SECTION 2.5. Article 2A of Chapter 136 is amended by adding a new section to read:

"§ 136-44.2D. Secondary unpaved road paving program.
(a) The Department of Transportation shall expend funds allocated to the paving of unpaved secondary roads for the paving of unpaved secondary roads based on a statewide prioritization. The Department shall pave the eligible unpaved secondary roads that receive the highest priority ranking within this statewide prioritization. Nothing in this subsection shall be interpreted to require the Department to pave any unpaved secondary roads that do not meet secondary road system addition standards as set forth in G.S. 136-44.10 and G.S. 136-102.6. The Highway Trust Fund shall not be used to fund the paving of unpaved secondary roads."

SECTION 2.6.(a) G.S. 136-44.5 reads as rewritten:

"§ 136-44.5. Secondary roads; mileage study; allocation of funds.
(a) Before July 1, in each calendar year, the Department of Transportation shall make a study of all State-maintained unpaved and paved secondary roads in the State. The study shall determine:

(1) The number of miles of unpaved State-maintained roads in each county eligible for paving and the total number of miles that are ineligible;
(2) The total number of miles of unpaved State-maintained roads in the State eligible for paving and the total number of miles that are ineligible; and
(3) The total number of paved State-maintained roads in each county, and the total number of miles of paved State-maintained roads in the State.

In this subsection, (i) ineligible unpaved mileage is defined as the number of miles of unpaved roads that have unavailable rights-of-way or for which environmental permits cannot be approved to allow for paving, and (ii) eligible unpaved mileage is defined as the number of miles of unpaved roads that have not been previously approved for paving by any funding source or has the potential to be programmed for paving when rights-of-way or environmental permits are secured. Except for federal-aid programs, the Department shall allocate all secondary road improvement funds on the basis of a formula using the study figures.

(b) The first sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated as follows: Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of paved and unpaved State maintained secondary roads in the county divided by the total number of miles of paved and unpaved State maintained secondary roads in the State, excluding those unpaved secondary roads that have been determined to be eligible for paving as defined in subsection (a) of this section. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be-The amounts appropriated by law for secondary road construction, excluding unpaved secondary road funds, shall be allocated among counties based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.

(e) Funds allocated for secondary road construction in excess of sixty-eight million six hundred seventy thousand dollars ($68,670,000) shall be allocated to each county based on the percentage proportion that the number of miles in the county of State-maintained unpaved secondary roads bears to the total number of miles in the State of State-maintained unpaved secondary roads. In a county that has roads with eligible miles, these funds shall only be used for paving unpaved secondary road miles in that county. In a county where there are no roads eligible to be paved as defined in subsection (a) of this section, the funds may be used for improvements on the paved and unpaved secondary roads in that county. Beginning in fiscal year 2010-2011, allocations pursuant to this subsection shall be based on the total number of secondary miles in a county in proportion to the total State-maintained secondary road mileage.
(d) Copies of the Department study of unpaved and paved State maintained secondary roads and copies of the individual county allocations shall be made available to newspapers having general circulation in each county."

SECTION 2.6.(b) Effective July 1, 2014, G.S. 136-44.5 is repealed.
SECTION 2.6.(c) G.S. 136-44.6 reads as rewritten:

"§ 136-44.6. Uniformly applicable formula for the allocation of secondary roads maintenance and improvement funds.

The Department of Transportation shall develop a uniformly applicable formula for the allocation of secondary roads maintenance and improvement funds for use in each county. The formula shall take into consideration the number of paved and unpaved miles of state-maintained secondary roads in each county and such other factors as experience may dictate. This section shall not apply to projects to pave unpaved roads under G.S. 136-44.2D."

SECTION 2.6.(d) Secondary Road Funding. – The sum of fifteen million dollars ($15,000,000) in nonrecurring funds for the 2013-2014 fiscal year is allocated from the Highway Fund for the secondary road construction program under G.S. 136-44.2A, as enacted by Section 2.3 of this act, and the sum of twelve million dollars ($12,000,000) in recurring funds for the 2013-2014 fiscal year is allocated from the Highway Fund for the paving of unpaved roads pursuant to G.S. 136-44.2D, as enacted by Section 2.5 of this act.

SECTION 2.7. G.S. 136-44.7 reads as rewritten:

"§ 136-44.7. Secondary roads; annual work program right-of-way acquisition.

(a) The Department of Transportation shall be responsible for developing criteria for improvements and maintenance of secondary roads. The criteria shall be adopted by the Board of Transportation before it shall become effective. The Department of Transportation shall be responsible for developing annual work programs for both construction and maintenance of secondary roads in each county in accordance with criteria developed. It shall reflect the long-range and immediate goals of the Department of Transportation. Projects on the annual construction program for each county shall be rated according to their priority based upon the secondary road criteria and standards which shall be uniform throughout the State. Tentative construction projects and estimated funding shall also be listed in accordance to priority. The annual construction program shall be adopted by the Board of Transportation before it shall become effective.

(b) When a secondary road in a county is listed in the first 10 secondary roads to be paved during a year on a priority list issued by the Department of Transportation under this section, the secondary road cannot be removed from the top 10 of that list or any subsequent list until it is paved. All secondary roads in a county shall be paved, insofar as possible, in the priority order of the list. When a secondary road in the top 10 of that list is removed from the list because it has been paved, the next secondary road on the priority list shall be moved up to the top 10 of that list and shall remain there until it is paved.

(c) When it is necessary for the Department of Transportation to acquire a right-of-way in accordance with (a) and (b) of this section in order to pave a secondary road or undertake a maintenance project, the Department shall negotiate the acquisition of the right-of-way for a period of up to six months. At the end of that period, if one or more property owners have not dedicated the necessary right-of-way and at least seventy-five percent (75%) of the property owners adjacent to the project and the owners of the majority of the road frontage adjacent to the project have dedicated the necessary property for the right-of-way and have provided funds required by Department rule to the Department to cover the costs of condemning the remaining property, the Department shall initiate condemnation proceedings pursuant to Article 9 of this Chapter to acquire the remaining property necessary for the project.

(d) The Division Engineer is authorized to reduce the width of a right-of-way to less than 60 feet to pave an unpaved secondary road with the allocated funds, provided that in all circumstances the safety of the public is not compromised and the minimum accepted design practice is satisfied."

SECTION 2.8.(a) G.S. 136-44.8 reads as rewritten:

"§ 136-44.8. Submission of secondary roads construction and unpaved roads paving programs to the Boards of County Commissioners.

(a) The Department of Transportation shall post in the county courthouse a county map showing tentative secondary road paving projects rated according to the priority of each project in accordance with the criteria and standards adopted by the Board of Transportation. The map shall be posted at least two weeks prior to the public meeting of the county commissioners at
which the Department of Transportation representatives are to meet and discuss the proposed secondary road construction program for the county as provided in subsection (c).

(a1) Representatives of the Department of Transportation shall provide to the board of county commissioners in each county the proposed secondary road construction program and, if applicable to that county, a list of roads proposed for the annual paving program approved by the Board of Transportation. If a paving priority list is presented, it shall include the priority rating of each secondary road paving project included in the proposed paving program according to the criteria and standards adopted by the Board of Transportation.

(b) The Department of Transportation shall provide a notice to the public of the public meeting of the board of county commissioners at which the annual secondary road construction program for the county proposed by the Department is to be presented to the board and other citizens of the county as provided in subsection (c). The notice shall be published in a newspaper published in the county or having a general circulation in the county once a week for two succeeding weeks prior to the meeting. The notice shall also advise that a county map is posted in the courthouse showing tentative secondary road paving projects rated according to the priority of each project.

(c) Representatives of the Department of Transportation shall meet with the board of county commissioners at a regular or special public meeting of the board of county commissioners for each county and present to and discuss with the board of county commissioners and other citizens present, the proposed secondary road construction program for the county. The presentation and discussion shall specifically include the priority rating of each tentative secondary road paving project included in the proposed construction program, according to the criteria and standards adopted by the Board of Transportation.

At the same meeting after the presentation and discussion of the annual secondary road construction program for the county or at a later meeting, the board of county commissioners may (i) concur in the construction program as proposed, or (ii) take no action, or (iii) make recommendations for deviations in the proposed construction program, except as to paving projects and the priority of paving projects for which the board in order to make recommendations for deviations, must vote to consider the matter at a later public meeting as provided in subsection (d).

(d) The board of county commissioners may recommend deviations in the paving projects and the priority of paving projects included in the proposed secondary road construction program only at a public meeting after notice to the public that the board will consider making recommendations for deviations in paving projects and the priority of paving projects included in the proposed annual secondary road construction program. Notice of the public meeting shall be published by the board of county commissioners in a newspaper published in the county or having a general circulation in the county. After discussion by the members of the board of county commissioners and comments and information presented by other citizens of the county, the board of county commissioners may recommend deviations in the paving projects and in the paving priority of secondary road projects included in the proposed secondary road construction program. Any recommendation made by the board of county commissioners for a deviation in the paving projects or in the priority for paving projects in the proposed secondary road construction program shall state the specific reason for each such deviation recommended.

(e) The Board of Transportation shall adopt the annual secondary construction program for each county after having given the board of county commissioners of each county an opportunity to review the proposed construction program and to make recommendations as provided in this section. The Board of Transportation shall consider such recommendations insofar as they are compatible with its general plans, standards, criteria and available funds, but having due regard to development plans of the county and to the maintenance and improvement needs of all existing roads in the county. However, no consideration shall be given to any recommendation by the board of county commissioners for a deviation in the paving projects or in the priority for paving secondary road projects in the proposed construction program that is not made in accordance with subsection (d).

(f) The secondary road construction program and unpaved roads paving programs adopted by the Board of Transportation shall be followed by the Department of Transportation unless changes are approved by the Board of Transportation and notice of any changes is given to the board of county commissioners. The Department of Transportation shall post a copy of the adopted program, including a map showing the secondary road paving projects rated
according to the approved priority of each project, at the courthouse, within 10 days of its adoption by the Board of Transportation. The board of county commissioners may petition the Board of Transportation for review of any changes to which it does not consent and the determination of the Board of Transportation shall be final. Upon request, the most recent secondary road construction and unpaved roads paving programs adopted shall be submitted to any member of the General Assembly. The Department of Transportation shall make the annual construction program for each county available to the newspapers having a general circulation in the county."

SECTION 2.8.(b) Effective July 1, 2014, G.S. 136-44.8, as rewritten by subsection (a) of this section, reads as rewritten:

"§ 136-44.8. Submission of unpaved secondary roads construction and unpaved roads paving programs to the Boards of County Commissioners.

(a) Representatives—In each county having unpaved roads programmed for paving, representatives of the Department of Transportation shall annually provide to the board of county commissioners in each county those counties the proposed secondary road construction program and, if applicable to that county, a list of roads proposed for the annual paving program approved by the Board of Transportation. If a paving priority list is presented, it shall include the priority rating of each secondary road paving project included in the proposed paving program according to the criteria and standards adopted by the Board of Transportation.

(e) The Board of Transportation shall adopt the annual secondary construction program for each county after having given the board of county commissioners of each county an opportunity to review the proposed construction program and to make recommendations as provided in this section. The Board of Transportation shall consider such recommendations insofar as they are compatible with its general plans, standards, criteria and available funds, but having due regard to development plans of the county and to the maintenance and improvement needs of all existing roads in the county.

(f) The secondary road construction and unpaved secondary roads paving programs adopted by the Board of Transportation shall be followed by the Department of Transportation unless changes are approved by the Board of Transportation and notice of any changes is given to the board of county commissioners. Upon request, the most recent unpaved secondary road construction and unpaved roads paving programs adopted shall be submitted to any member of the General Assembly. The Department of Transportation shall make the annual construction program for each affected county available to the newspapers having a general circulation in the county."

SECTION 2.9. G.S. 136-182 is repealed.

STATE AID TO MUNICIPALITIES/POWELL BILL CHANGES

SECTION 3.1. G.S. 136-41.1 reads as rewritten:

"§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is annually appropriated out of the State Highway Fund a sum equal to ten and four-tenths percent (10.4%) of the net amount after refunds that was produced during the fiscal year by a one and three fourths cents (1 3/4¢) tax on each gallon of motor fuel taxed. The tax imposed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. One-half of the amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. The second one-half of the amount appropriated shall be allocated in cash on or before January 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible
municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 and January 1 of each year as provided in this section. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

"..."

**SECTION 3.2.** G.S. 136-181 is repealed.

**SECTION 3.3.** G.S. 136-41.3 reads as rewritten:

"§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

(a) **Uses of Funds.** – The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways, bikeways, greenways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.

(b) **Records and Annual Statement.** – Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall file a statement under oath with the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed.
Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

(c) Excess Accumulation of Funds Prohibited. – No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Except as otherwise provided in this section, any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year. Notwithstanding the other provisions of this section, the Department shall adopt a policy to allow small municipalities to apply to the Department to be allowed to accumulate up to the sum of the past 20 allocations if a municipality's allocations are so small that the sum of the past 10 allocations would not be sufficient to accomplish the purposes of this section.

(d) Contracts for Maintenance and Construction. – In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on non-system streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality’s allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.
Permitted Offsets to Funding. – The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

1. Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,
2. The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,
3. For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and
4. For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible.

SECTION 3.4. G.S. 136-41.4 reads as rewritten:

"§ 136-41.4. Municipal use of allocated funds; election.
(a) A municipality that qualifies for an allocation of funds pursuant to G.S. 136-41.1 shall have the following options:
(1) to accept all or a portion of funds allocated to the municipality, under that section, for the repair, maintenance, construction, reconstruction, widening or improving of the municipality's streets or highways authorized by G.S. 136-41.3(a);
(2) Use some or all of its allocation to match federal funds administered by the Department for independent bicycle and pedestrian improvement projects within the municipality's limits, or within the area of any metropolitan planning organization or rural transportation planning organization;
(3) or the municipality may elect to have some or all of the allocation reprogrammed for any Transportation Improvement Project currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural transportation planning organization.

(b) If a municipality chooses to have its allocation reprogrammed, the minimum amount that may be reprogrammed is an amount equal to that amount necessary to complete one full phase of the project selected by the municipality or an amount that, when added to the amount already programmed for the Transportation Improvement Project selected, would permit the completion of at least one full phase of the project. The restriction set forth in this subsection shall not apply to any bicycle or pedestrian projects."

SECTION 3.5. DOT Municipal Lane Mile Study. – The Department of Transportation shall collect lane mile data from each municipality eligible to receive funds under this section no later than December 1, 2013. The Department shall report to the Joint Legislative Transportation Oversight Committee no later than March 1, 2014, on at least three options to shift the distribution formula to include lane mile data. The report shall include advantages and disadvantages, fiscal impacts to each municipality, and any other technical considerations in making such a change. The Joint Legislative Transportation Oversight Committee and the Fiscal Research Division shall include in its recommendations to the 2014 Session of the 2013 General Assembly a new distribution formula, if the Committee finds that a new formula is beneficial and practical.

CONFORMING CHANGES

SECTION 4.1. G.S. 105-187.9 reads as rewritten:

"§ 105-187.9. Disposition of tax proceeds.

(b) (Repealed effective July 1, 2013) General Fund Transfer. In each fiscal year, the State Treasurer shall transfer the amounts provided below from the taxes deposited in the Trust Fund to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by..."
transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue.

(1) The sum of twenty-six million dollars ($26,000,000).

(2) In addition to the amount transferred under subdivision (1) of this subsection, the sum of one million seven hundred thousand dollars ($1,700,000) shall be transferred in the 2001-2002 fiscal year. The amount distributed under this subdivision shall increase in the 2002-2003 fiscal year to the sum of two million four hundred thousand dollars ($2,400,000). In each fiscal year thereafter, the sum transferred under this subdivision shall be the amount distributed in the previous fiscal year plus or minus a percentage of this sum equal to the percentage by which tax collections under this Article increased or decreased for the most recent 12-month period for which data are available.

(c) (Effective July 1, 2013) Mobility Fund Transfer. In each fiscal year, the State Treasurer shall transfer fifty-eight million dollars ($58,000,000) from the taxes deposited in the Trust Fund to the Mobility Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue."

SECTION 4.2. G.S. 136-18 reads as rewritten:


The said Department of Transportation is vested with the following powers:

... (12a) The Department of Transportation shall have such powers as are necessary to establish, administer, and receive federal funds for a transportation infrastructure banking program as authorized by the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, as amended, and the National Highway System Designation Act of 1995, Pub. L. 104-59, as amended. The Department of Transportation is authorized to apply for, receive, administer, and comply with all conditions and requirements related to federal financial assistance necessary to fund the infrastructure banking program. The infrastructure banking program established by the Department of Transportation may utilize federal and available State funds for the purpose of providing loans or other financial assistance to governmental units, including toll authorities, to finance the costs of transportation projects authorized by the above federal aid acts. Such loans or other financial assistance shall be subject to repayment and conditioned upon the establishment of such security and the payment of such fees and interest rates as the Department of Transportation may deem necessary. The Department of Transportation is authorized to apply a municipality’s share of funds allocated under G.S. 136-41.1 or G.S. 136-44.20 as necessary to ensure repayment of funds advanced under the infrastructure banking program. The Department of Transportation shall establish jointly, with the State Treasurer, a separate infrastructure banking account with necessary fiscal controls and accounting procedures. Funds credited to this account shall not revert, and interest and other investment income shall accrue to the account and may be used to provide loans and other financial assistance as provided under this subdivision. The Department of Transportation may establish such rules and policies as are necessary to establish and administer the infrastructure banking program. The infrastructure banking program authorized under this subdivision shall not modify the regional distribution formula for the distribution of funds established by G.S. 136-17.2A-G.S. 136-189.11. Governmental units may apply for loans and execute debt instruments payable to the State in order to obtain loans or other financial assistance provided for in this subdivision. The Department of Transportation shall require that applicants shall pledge as security for such obligations revenues derived from operation of the benefited facilities or systems, other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of such governmental units shall
not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this subdivision. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor. The Local Government Commission shall review and approve proposed loans to applicants pursuant to this subdivision under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. Loans authorized by this subdivision shall be outstanding debt for the purpose of Article 10, Chapter 159 of the General Statutes.

SECTION 4.3.  G.S. 136-17.2A is repealed.
SECTION 4.4.  G.S. 136-44.50(a) reads as rewritten:

"(a) A transportation corridor official map may be adopted or amended by any of the following:

1. The governing board of any local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.

2. The Board of Transportation, or the governing board of any county, for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

3. Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any portion of the existing or proposed State highway system, or for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

4. The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.

5. The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179, Department projects R-3300 and U-4751.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners."

SECTION 4.5.  G.S. 136-66.3 reads as rewritten:

"§ 136-66.3.  Local government participation in improvements to the State transportation system.

(c1) No TIP Disadvantage for Participation. If a county or municipality participates in a State transportation system improvement project, as authorized by this section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government’s participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(c2) Distribution of State Funds Made Available by County or Municipal Participation. Any State or federal funds allocated to a project that are made available by county or municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A be subject to G.S. 136-189.11.

(c3) Limitation on Agreements. The Department shall not enter into any agreement with a county or municipality to provide additional total funding for highway construction in
the county or municipality in exchange for county or municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(e1) Reimbursement Procedure. – Upon request of the county or municipality, the Department of Transportation shall allow the local government a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs necessary for the project. The Department of Transportation shall not charge a local government any interest during the initial three years.

SECTION 4.6. G.S. 136-89.192 reads as rewritten:


Only those funds applied to a Turnpike Project from the State Highway Fund, State Highway Trust Fund, or federal-aid funds that might otherwise be used for other roadway projects within the State, and are otherwise already subject to the distribution formula under G.S. 136-17.2A, G.S. 136-189.11 shall be included in the distribution formula.

Other revenue from the sale of the Authority’s bonds or notes, project loans, or toll collections shall not be included in the distribution formula."

SECTION 4.7. G.S. 136-175 reads as rewritten:

"§ 136-175. Definitions.

The following definitions apply in this Article:

(1) Intrastate System. The network of major, multilane arterial highways composed of those routes, segments, or corridors listed in G.S. 136-178, and any other route added by the Department of Transportation under G.S. 136-178.

(2) Transportation Improvement Program. The schedule of major transportation improvement projects required by G.S. 143B-350(f)(4).

(3) Trust Fund. The North Carolina Highway Trust Fund."

SECTION 4.8. G.S. 136-176 reads as rewritten:


(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.

(2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.

(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.

(4) Repealed by Session Laws 2001-424, s. 27.1.

(5) Interest and income earned by the Fund.

(a1) The Department shall use two hundred twenty million dollars ($220,000,000) in fiscal year 2001-2002, two hundred twelve million dollars ($212,000,000) in fiscal year 2002-2003, and two hundred fifty million dollars ($250,000,000) in fiscal year 2003-2004 of the cash balance of the Highway Trust Fund for the following purposes:

(1) For primary route pavement preservation. — One hundred seventy million dollars ($170,000,000) in fiscal year 2001-2002, and one hundred fifty million dollars ($150,000,000) in each of the fiscal years 2002-2003 and 2003-2004. Up to ten percent (10%) of the amount for each of the fiscal years 2001-2002, 2002-2003, and 2003-2004 is available in that fiscal year, at the discretion of the Secretary of Transportation, for:

a. Highway improvement projects that further economic growth and development in small urban and rural areas, that are in the Transportation Improvement Program, and that are individually approved by the Board of Transportation; or
b. Highway improvements that further economic development in the State and that are individually approved by the Board of Transportation.

(2) For preliminary engineering costs not included in the current year Transportation Improvement Program. Fifteen million dollars
($15,000,000) in each of the fiscal years 2001-2002, 2002-2003, and 2003-2004. If any funds allocated by this subdivision, in the cash balance of the Highway Trust Fund, remain unspent on June 30, 2008, the Department may transfer within the Department up to twenty-nine million dollars ($29,000,000) of available funds to contract for freight transportation system improvements for the Global TransPark.


(4) For public transportation twenty million dollars ($20,000,000) in fiscal year 2001-2002, twenty-five million dollars ($25,000,000) in fiscal year 2002-2003, and seventy-five million dollars ($75,000,000) in fiscal year 2003-2004.

(5) For small urban construction projects.—Seven million dollars ($7,000,000) in fiscal year 2002-2003.

Funds authorized for use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a2) Repealed by Session Laws 2002-126, s. 26.4(b), effective July 1, 2002.

(a3) The Department may obligate three hundred million dollars ($300,000,000) in fiscal year 2003-2004 and four hundred million dollars ($400,000,000) in fiscal year 2004-2005 of the cash balance of the Highway Trust Fund for the following purposes:

(1) Six hundred thirty million dollars ($630,000,000) for highway system preservation, modernization, and maintenance, including projects to enhance safety, reduce congestion, improve traffic flow, reduce accidents, upgrade pavement widths and shoulders, extend pavement life, improve pavement smoothness, and rehabilitate or replace deficient bridges; and for economic development transportation projects recommended by local officials and approved by the Board of Transportation.

(2) Seventy million dollars ($70,000,000) for regional public transit systems, rural and urban public transportation system facilities, regional transportation and air quality initiatives, rail system track improvements and equipment, and other ferry, bicycle, and pedestrian improvements. For any project or program listed in this subdivision for which the Department receives federal funds, use of funds pursuant to this subdivision shall be limited to matching those funds.

Funds authorized for obligation and use by the Department pursuant to this subsection shall remain available to the Department until expended.

(a4) Project selection pursuant to subsection (a3) of this section shall be based on identified and documented need. Funds expended pursuant to subdivision (1) of subsection (a3) of this section shall be distributed in accordance with the distribution formula in G.S. 136-17.2A. No funds shall be expended pursuant to subsection (a3)(1) of this section on any project that does not meet Department of Transportation standards for road design, materials, construction, and traffic flow.

(a5) The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before September 1, 2003, on its intended use of funds pursuant to subsection (a3) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2004, on its actual current and intended future use of funds pursuant to subsection (a3) of this section. The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for the purposes listed in subsection (a3) of this section will not adversely affect the delivery schedule of any Highway Trust Fund projects. If the Department cannot certify that the full amounts authorized in subsection (a3) of this section are available, then the Department may determine the amount that can be used without adversely affecting the delivery schedule and may proportionately apply that amount to the purposes set forth in subsection (a3) of this section.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and eight-tenths percent (4.8%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, sum, in the amount appropriated by law,
may be used each fiscal year by the Department for expenses to administer the Trust Fund. Operation and project development costs of the North Carolina Turnpike Authority are eligible administrative expenses under this subsection. Any funds allocated to the Authority pursuant to this subsection shall be repaid by the Authority from its toll revenue as soon as possible, subject to any restrictions included in the agreements entered into by the Authority in connection with the issuance of the Authority’s revenue bonds. Beginning one year after the Authority begins collecting tolls on a completed Turnpike Project, interest shall accrue on any unpaid balance owed to the Highway Trust Fund at a rate equal to the State Treasurer’s average annual yield on its investment of Highway Trust Fund funds pursuant to G.S. 147-6.1. Interest earned on the unpaid balance shall be deposited in the Highway Trust Fund upon repayment. The sum up to the amount anticipated to be necessary to meet the State matching funds requirements to receive federal-aid highway trust funds for the next fiscal year may be set aside for that purpose. The rest of the funds in the Trust Fund shall be allocated and used as follows specified in G.S. 136-189.11.

(1) Sixty one and ninety five hundredths percent (61.95%) to plan, design, and construct projects on segments or corridors of the Intrastate System as described in G.S. 136-178 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.

(2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.

(3) Six and one half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one half percent (6.5%) for secondary road construction as provided in G.S. 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection, this section in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due.

(b1) The Secretary may authorize the transfer of funds allocated under subdivisions (1) through (4) of subsection (b) of this section to other projects that are ready to be let and were to be funded from allocations to those subdivisions. The Secretary shall ensure that any funds transferred pursuant to this subsection are repaid promptly and in any event in no more than four years. The Secretary shall certify, prior to making any transfer pursuant to this subsection, that the transfer will not affect the delivery schedule of Highway Trust Fund projects in the current Transportation Improvement Program. No transfers shall be allowed that do not conform to the applicable provisions of the equity formula for distribution of funds, G.S. 136-172A. If the Secretary authorizes a transfer pursuant to this subsection, the Secretary shall report that decision to the next regularly scheduled meetings of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, and to the Fiscal Research Division.

(b2) **(Effective July 1, 2013)** There is annually appropriated to the North Carolina Turnpike Authority from the Highway Trust Fund the sum of one hundred twelve million dollars ($112,000,000), forty-nine million dollars ($49,000,000). Of the amount allocated by this subsection, twenty-five million dollars ($25,000,000) shall be used to pay debt service or related financing costs and expenses on revenue bonds or notes issued for the construction of the Triangle Expressway, and twenty-four million dollars ($24,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Monroe Connector/Bypass, twenty-eight million dollars ($28,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Mid Currituck Bridge, and thirty-five million dollars ($35,000,000) shall be used to pay debt service or related financing expenses on revenue bonds or notes issued for the construction of the Garden Parkway-Monroe Connector/Bypass. The amounts appropriated to the Authority pursuant to this subsection shall be used by the Authority to pay debt service or related financing costs and expenses on revenue bonds or notes issued by the Authority to
finance the costs of one or more Turnpike Projects, to refund such bonds or notes, or to fund debt service reserves, operating reserves, and similar reserves in connection therewith. The appropriations established by this subsection constitute an agreement by the State to pay the funds appropriated hereby to the Authority within the meaning of G.S. 159-81(4). Notwithstanding the foregoing, it is the intention of the General Assembly that the enactment of this provision and the issuance of bonds or notes by the Authority in reliance thereon shall not in any manner constitute a pledge of the faith and credit and taxing power of the State, and nothing contained herein shall prohibit the General Assembly from amending the appropriations made in this subsection at any time to decrease or eliminate the amount annually appropriated to the Authority. Funds transferred from the Highway Trust Fund to the Authority pursuant to this subsection are not subject to the equity formula in G.S. 136-17.2A, G.S. 136-189.11.

(e) If funds are received under 23 U.S.C. Chapter 1, Federal Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143C-6-11 only for the two bienniums following the year in which the contract is let.

(e) **(Effective July 1, 2013)** Subject to G.S. 136-17.2A and other funding distribution formulas, funds allocated under subdivisions (1), (3), and (4) of subsection (b) of this section may also be used for fixed guideway projects, including providing matching funds for federal grants for fixed guideway projects.

**SECTION 4.9.** The following statutes are repealed:

1. G.S. 136-177.
2. G.S. 136-177.1.
9. G.S. 136-188.

**TURNPIKE AUTHORITY CHANGES**

**SECTION 5.1.** G.S. 136-89.183(a)(2) reads as rewritten:

"§ 136-89.183. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

... 

(2) To study, plan, develop, and undertake preliminary design work on up to eight—nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:

a. Triangle Expressway, including segments also known as N.C. 540, Triangle Parkway, and the Western Wake Freeway in Wake and Durham Counties, and Southeast Extension in Wake and Johnston Counties, except that no portion of the Southeast Extension shall be located north of an existing protected corridor established by the Department of Transportation circa 1995, except in the area of Interstate 40 East—Counties. The described segments constitute three projects.

b. Gaston East-West Connector, also known as the Garden Parkway.

c. Monroe Connector/Bypass.

d. Cape Fear Skyway."
e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, pursuant to G.S. 136-89.183A.

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction. Subdivision requires prior consultation with the Joint Legislative Commission on Governmental Operations pursuant to G.S. 120-76.1 no less than 180 days prior to initiating the process required by Article 7 of Chapter 159 of the General Statutes.

A. With the exception of the four projects set forth in sub-divisions a. and c. of this subdivision, the Turnpike Project projects selected for construction by the Turnpike Authority, prior to the letting of a contract for the project, shall meet the following conditions: (i) two of the projects must be ranked in the top 35 based on total score on the Department-produced list entitled "Mobility Fund Project Scores" dated June 6, 2012, and, in addition, may be subject to G.S. 136-18(39a); (ii) of the projects not ranked as provided in (i), one may be subject to G.S. 136-18(39a); (iii) the projects shall be included in any applicable locally adopted comprehensive transportation plans; (iv) the projects shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project; and (v) toll projects must be approved by all affected Metropolitan Planning Organizations and Rural Transportation Planning Organizations for tolling.

SECTION 5.2. G.S. 136-18 reads as rewritten:


The said Department of Transportation is vested with the following powers:

... (39a) a. The Department of Transportation or Turnpike Authority, as applicable, may enter into a partnership agreement up to three agreements with a private entity as provided under subdivision (39) of this section for which the provisions of this section apply. The pilot project allowed under this subdivision must be one that is a candidate for funding under the Mobility Fund, that is planned for construction through a public-private partnership, and for which a Request for Qualifications has been issued by the Department no later than June 30, 2012.

b. A private entity or its contractors must provide performance and payment security in the form and in the amount determined by the Department of Transportation. The form of the performance and payment security may consist of bonds, letters of credit, parent guaranties, or other instruments acceptable to the Department of Transportation.

c. Notwithstanding the provisions of G.S. 143B-426.40A, an agreement entered into under this subdivision may allow the private entity to assign, transfer, sell, hypothecate, and otherwise convey some or all of its right, title, and interest in and to such agreement, and any rights and remedies thereunder, to a lender, bondholder, or any other party. However, in no event shall any such assignment create additional debt or debt-like obligations of the State of North Carolina, the Department, or any other agency, authority, commission, or similar subdivision of the State to any lender, bondholder, entity purchasing a participation in the right to receive the payment, trustee, trust, or any other party providing financing or funding of projects described in this section. The foregoing shall not preclude the Department from making any payments due and owing pursuant to an agreement entered into under this section.

d. The Department of Transportation may fix, revise, charge, and collect tolls and fees to the same extent allowed under Article 6H of Chapter 136 of the General Statutes. Statutes shall apply to the
Department of Transportation and to projects undertaken by the Department of Transportation under subdivision (39) of this section. The Department may assign its authority under that Article to fix, revise, charge, retain, enforce, and collect tolls and fees to the private entity.

e. Any contract under this subdivision or under Article 6H of this Chapter for the development, construction, maintenance, or operation of a project shall provide for revenue sharing, if applicable, between the private party and the Department, and revenues derived from such project may be used as set forth in G.S. 136-89.188(a), notwithstanding the provisions of G.S. 136-89.188(d). Excess toll revenues from a Turnpike project shall be used for the funding or financing of transportation projects within the corridor where the Turnpike Project is located. For purposes of this subdivision, the term "excess toll revenues" means those toll revenues derived from a Turnpike Project that are not otherwise used or allocated to the Authority or a private entity pursuant to this subdivision, notwithstanding the provisions of G.S. 136-89.188(d). For purposes of this subdivision, the term "corridor" means (i) the right-of-way limits of the Turnpike Project and any facilities related to the Turnpike Project or any facility or improvement necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of a Turnpike Project; (ii) the right-of-way limits of any subsequent improvements, additions, or extension to the Turnpike Project and facilities related to the Turnpike projects, including any improvements necessary for the use, design, construction, operation, maintenance, repair, rehabilitation, reconstruction, or financing of those subsequent improvements, additions, or extensions to the Turnpike Project; and (iii) roads used for ingress or egress to the toll facility or roads that intersect with the toll facility, whether by ramps or separated grade facility, and located within one mile in any direction.

f. Agreements entered into under this subdivision shall comply with the following additional provisions:
   1. The Department shall solicit proposals for agreements.
   2. Agreement shall be limited to no more than 50 years from the date of the beginning of operations on the toll facility.
   3. Notwithstanding the provisions of G.S. 136-89.183(a)(5), all initial tolls or fees to be charged by a private entity shall be reviewed by the Turnpike Authority Board. Prior to setting toll rates, either a set rate or a minimum and maximum rate set by the private entity, the private entity shall hold a public hearing on the toll rates, including an explanation of the toll setting methodology, in accordance with guidelines for the hearing developed by the Department. After tolls go into effect, the private entity shall report to the Turnpike Authority Board 30 days prior to any increase in toll rates or change in the toll setting methodology by the private entity from the previous toll rates or toll setting methodology last reported to the Turnpike Authority Board.
   4. Financial advisors and attorneys retained by the Department on contract to work on projects pursuant to this subsection shall be subject to State law governing conflicts of interest.
   5. 60 days prior to the signing of a concession agreement subject to this subdivision, the Department shall report to the Joint Legislative Transportation Oversight Committee on the following for the presumptive concessionaire:
      I. Project description.
      II. Number of years that tolls will be in place.
III. Name and location of firms and parent companies, if applicable, including firm responsibility and stake, and assessment of audited financial statements.

IV. Analysis of firm selection criteria.

V. Name of any firm or individual under contract to provide counsel or financial analysis to the Department or Authority. The Department shall disclose payments to these contractors related to completing the agreement under this subdivision.

VI. Demonstrated ability of the project team to deliver the project, by evidence of the project team’s prior experience in delivering a project on schedule and budget, and disclosure of any unfavorable outcomes on prior projects.

VII. Detailed description of method of finance, including sources of funds, State contribution amounts, including schedule of availability payments and terms of debt payments.

VIII. Information on assignment of risk shared or assigned to State and private partner.

IX. Information on the feasibility of finance as obtained in traffic and revenue studies.

6. The Turnpike Authority annual report under G.S. 136-89.193 shall include reporting on all revenue collections associated with projects subject to this subdivision under the Turnpike Authority.

7. The Department shall develop standards for entering into comprehensive agreements with private entities under the authority of this subdivision and report those standards to the Joint Legislative Transportation Oversight Committee on or before October 1, 2013.

... For the purposes of financing an agreement under subdivision (39a) of this section, the Department of Transportation may act as a conduit issuer for private activity bonds to the extent the bonds do not constitute a debt obligation of the State. The issuance of private activity bonds under this subdivision and any related actions shall be governed by The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, with G.S. 159-88 satisfied by adherence to the requirements of subdivisions (39) and subdivision (39a) of this section."

SECTION 5.3. G.S. 136-89.183(a)(5) reads as rewritten:

"§ 136-89.183. Powers of the Authority.
(a) The Authority shall have all of the powers necessary to execute the provisions of this Article, including the following:

... (5) To fix, revise, charge, retain, enforce, and collect tolls and fees for the use of the Turnpike Projects. Prior to the effective date of any toll or fee for use of a Turnpike Facility, the Authority shall submit a description of the proposed toll or fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations for review.

..."

SECTION 5.4. G.S. 136-89.188 reads as rewritten:

"§ 136-89.188. Use of revenues.
(a) Revenues derived from Turnpike Projects authorized under this Article shall be used only for the following:

(1) Authority administration costs.
(2) Turnpike Project development, right-of-way acquisition, design, construction, operation, and maintenance, rehabilitation, and replacement and
(3) Debt service on the Authority's revenue bonds or related purposes such as the establishment of debt service reserve funds.
(4) Debt service, debt service reserve funds, and other financing costs related to any of the following:
   a. A financing undertaken by a private entity under a partnership agreement with the entity for a Turnpike Project.
   b. Private activity bonds issued under law related to a Turnpike Project.
   c. Any federal or State loan, line of credit, or loan guarantee relating to a Turnpike Project.
(5) A return on investment of any private entity under a partnership agreement with the entity for a Turnpike Project.
(6) Any other uses granted to a private entity under a partnership agreement with the entity for a Turnpike Project.

(b) The Authority may use up to one hundred percent (100%) of the revenue derived from a Turnpike Project for debt service on the Authority's revenue bonds or for a combination of debt service and operation and maintenance expenses of the Turnpike Projects.
(c) The Authority shall use not more than five percent (5%) of total revenue derived from all Turnpike Projects for Authority administration costs.
(d) Notwithstanding the provisions of subsections (a) and (b) of this section, toll revenues generated from a converted segment of the State highway system previously planned for operation as a nontoll facility shall only be used for the funding or financing of the right of way acquisition, construction, expansion, operations, maintenance, and Authority administration costs associated with the converted segment or a contiguous toll facility.

SECTION 5.5. Part 1 of Article 6H of Chapter 136 of the General Statutes is amended by adding a new section to read:

§ 136-89.199. Designation of high-occupancy toll and managed lanes.
Notwithstanding any other provision of this Article, the Authority may designate one or more lanes of any highway, or portion thereof, within the State, including lanes that may previously have been designated as HOV lanes under G.S. 20-146.2, as high-occupancy toll (HOT) or other type of managed lanes; provided, however, that such designation shall not reduce the number of existing general purpose lanes. In making such designations, the Authority shall specify the high-occupancy requirement or other conditions for use of such lanes, which may include restricting vehicle types, access controls, or the payment of tolls for vehicles that do not meet the high-occupancy requirements or conditions for use.

SECTION 5.6. Part 2 of Article 6H of Chapter 136 of the General Statutes reads as rewritten:

"Part 2. Collection of Tolls on Turnpike Projects.

§ 136-89.212. Payment of toll required for use of Turnpike project.
(a) A motor vehicle that is driven on a Turnpike project is subject to a toll imposed by the Authority for the use of the project. If the toll is an open road toll, the person who is the registered owner of the motor vehicle is liable for payment of the toll unless the registered owner establishes that the motor vehicle was in the care, custody, and control of another person when it was driven on the Turnpike project.
(b) A person establishes that a motor vehicle was in the care, custody, and control of another person when it was driven on a Turnpike project by submitting to the Authority a sworn affidavit stating one of the following:
   (1) The name and address of the person who had the care, custody, and control of the motor vehicle when it was driven. If the motor vehicle was leased or rented under a long-term lease or rental, as defined in G.S. 105-187.1, the affidavit must be supported by a copy of the lease or rental agreement or other written evidence of the agreement.
   (2) The motor vehicle was stolen. The affidavit must be supported by an insurance or police report concerning the theft or other written evidence of the theft.
(3) The person transferred the motor vehicle to another person by sale or otherwise before it was driven on the Turnpike project. The affidavit must be supported by insurance information, a copy of the certificate of title, or other evidence of the transfer.

(c) If a person establishes that a motor vehicle was in the care, custody, and control of another person under subsection (b) of this section, the other person shall be liable for the payment of the toll, and the Authority may send a bill to collect and enforce the toll in accordance with this Article; provided, however, that such other person may contest such toll in accordance with this Article.

§ 136-89.213. Administration of tolls and requirements for open road tolls.

(a) Administration. – The Authority is responsible for collecting tolls on Turnpike projects. In exercising its authority under G.S. 136-89.183 to perform or procure services required by the Authority, the Authority may contract with one or more providers to perform part or all of the collection functions and may enter into agreements to exchange information, including confidential information under subsection (a1) of this section, that identifies motor vehicles and their owners with one or more of the following entities: the Division of Motor Vehicles of the Department of Transportation, another state, another toll operator, or a collection-related organization, or a private entity that has entered into a partnership agreement with the Authority pursuant to G.S. 136-89.183(a)(17). Further, the Authority may assign its authority to fix, revise, charge, retain, enforce, and collect tolls and fees under this Article to a private entity that has entered into a partnership agreement with the Authority pursuant to G.S. 136-89.183(a)(17).

(b) Open Road Tolls. – If a Turnpike project uses an open road tolling system, the Authority must operate a facility that is in the immediate vicinity of the Turnpike project and that accepts or provide an alternate means to accept cash payment of the toll and must place signs on the Turnpike project that give drivers the following information:

1. Notice that the driver is approaching a highway for which a toll is required. Signs providing this information must be placed before the toll is incurred.
2. The methods by which the toll may be paid.
3. Directions. If applicable, directions to the nearby facility that accepts cash payment of the toll.


(a) Bill. – If a motor vehicle travels on a Turnpike project that uses an open road tolling system and a toll for traveling on the project is not paid prior to travel or at the time of travel, the Authority must send a bill by first-class mail to the registered owner of the motor vehicle or the person who had care, custody, and control of the vehicle as established under G.S. 136-89.212(b) for the amount of the unpaid toll. The Authority must send the bill within 90 days after the travel occurs, or within 90 days of receipt of a sworn affidavit submitted under G.S. 136-89.212(b) identifying the person who had care, custody, and control of the motor vehicle. If a bill is not sent within the required time, the Authority waives collection of the toll. The Authority must establish a billing period for unpaid open road tolls that is no shorter than 15 days. A bill for a billing period must include all unpaid tolls incurred by the same person during the billing period.

(b) Information on Bill. – A bill sent under this section must include all of the following information:

1. The name and address of the registered owner of the motor vehicle that traveled on the Turnpike project or of the person identified under G.S. 136-89.212(b).
2. The date the travel occurred, the approximate time the travel occurred, and each segment of the Turnpike project on which the travel occurred.
3. An image of the registration plate of the motor vehicle, if the Authority captured an electronic image of the motor vehicle when it traveled on the Turnpike project.
4. The amount of the toll due and an explanation of how payment may be made.
5. The date by which the toll must be paid to avoid the imposition of a processing fee under G.S. 136-89.215 and the amount of the processing fee.
A statement that a vehicle owner who has unpaid tolls is subject to a civil penalty and may not renew the vehicle's registration until the tolls and civil penalties are paid.

A clear and concise explanation of how to contest liability for the toll.

If applicable, a copy of the affidavit submitted under G.S. 136-89.212(b) identifying the person with care, custody, and control of the motor vehicle.

§ 136-89.215. Required action upon receiving bill for open road toll and processing fee for unpaid toll.

(a) Action Required. – A person who receives a bill from the Authority for an unpaid open road toll must take one of the following actions within 30 days of the date of the bill:

1. Pay the bill.
2. Send a written request to the Authority for a review of the toll.

(b) Fee. – If a person does not take one of the actions required under subsection (a) of this section within the required time, the Authority may add a processing fee to the amount the person owes. The processing fee may not exceed six dollars ($6.00). A person may not be charged more than forty-eight dollars ($48.00) in processing fees in a 12-month period.

The Authority must set the processing fee at an amount that does not exceed the costs of collecting the unpaid toll, identifying the owner of a motor vehicle that is subject to an unpaid toll and billing the owner for the unpaid toll. The fee is a receipt of the Authority and must be applied to these costs.

SECTION 5.7. DOT/Southeast Extension-Triangle Expressway. – The Department of Transportation shall strive to expedite the federal environmental impact statement process to define the route for the Southeast Extension of the Triangle Expressway Turnpike Project by promptly garnering input from local officials and other stakeholders, accelerating any required State studies, promptly submitting permit applications to the federal government, working closely with the federal government during the permitting process, and taking any other appropriate actions to accelerate the environmental permitting process.

SECTION 5.8. Monitoring. – As part of its oversight of the Department of Transportation, the Joint Legislative Transportation Oversight Committee shall closely monitor the progress of the Southeast Extension of the Triangle Expressway Turnpike Project.

TRANSITION STUDY AND REPORTING REQUIREMENTS

SECTION 6.1. Formula Implementation Report. – The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division no later than August 15, 2013, on the Department's recommended formulas that will be used in the prioritization process to rank highway and nonhighway projects. The Department of Transportation's Prioritization Office shall develop the prioritization processes and formulas for all modes of transportation. The report will include a statement on the process used by the Department to develop the formulas, include a listing of external partners consulted during this process, and include feedback from its 3.0 workgroup partners on the Department's proposed recommendations. The Department shall not finalize the formula without consulting with the Joint Legislative Transportation Oversight Committee. The Joint Legislative Transportation Oversight Committee has 30 days after the report is received to meet and consult on the Department's recommendations. If no meeting occurs within 30 days after the report is received, the consultation requirement will be met. If consultation occurs and a majority of members serving on the Committee request changes to the Department's recommended formulas for highway and nonhighway modes, the Department shall review the requests and provide to the Committee its response to the requested changes no later than October 1, 2013. A final report on the highway and intermodal formulas shall be submitted to the Joint Legislative Transportation Oversight Committee by January 1, 2014.

SECTION 6.2. State Transportation Improvement Program Transition Report. – The Department of Transportation shall submit transition reports to members of the Joint Legislative Transportation Oversight Committee, House of Representatives Appropriations Subcommittee on Transportation and the Senate Appropriations Committee on Department of Transportation, and the Fiscal Research Division on March 1, 2014, and November 1, 2014. The reports shall include information on the Department's transition to Strategic Prioritization, overview changes to the State Transportation Improvement Program (STIP) and other internal and external processes that feed into the STIP, and offer statutory and policy recommendations.
or items for consideration to the General Assembly that will enhance the prioritization process. The March 1, 2014, report shall also include an analysis of the distribution of tax and fee revenues between the Highway Fund and Highway Trust Fund and an analysis to determine if maintenance, construction, operations, administration, and capital expenditures are properly budgeted within the two funds and existing revenues are most effectively distributed between the two funds.

**EFFECTIVE DATE**

**SECTION 7.1.(a)** Except as provided herein, this act becomes effective July 1, 2013.

**SECTION 7.1.(b)** This act is effective only if the General Assembly appropriates funds in the Current Operations and Capital Improvements Appropriations Act of 2013 to implement this act.

In the General Assembly read three times and ratified this the 19th day of June, 2013.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 11:20 a.m. this 26th day of June, 2013
Summary: Allows the State Department of Transportation, State Turnpike Authority, and South Jersey Transportation Authority to enter into sponsorship agreements with private entities to exchange monetary compensation and accept products or services from the private entity to be used for the maintenance and upkeep of a rest area or service area in return for acknowledgement advertising signs to promote commercial products and highway related services.

Status: Signed into law August 9, 2013.

Comment: From The Press of Atlantic City (February 17, 2013)
Over the years, New Jersey's three toll roads have turned to billboards, corporate sponsorships and other creative ways to generate more revenue without hitting motorists with another fare increase.

The state Legislature is looking to wring more money out of the Atlantic City Expressway, Garden State Parkway and New Jersey Turnpike by tapping their rest stops and service plazas for transportation funding.

A bill making its way through the Statehouse directs the toll roads to develop plans for more commercial, business or retail ventures at the rest areas. They have 12 months to submit their ideas to the governor and Legislature once the bill becomes final.

Lawmakers see the rest stops as a potentially lucrative source of transportation funding - one that would allow them to raise cash without imposing a tax increase or jacking up tolls.

"It's incumbent upon us to seek creative ways to boost revenue without burdening taxpayers," Assemblyman Craig Coughlin, D-Middlesex, one of the primary sponsors of the bill, said in a statement. "Our current transportation infrastructure demands that we think outside the box to find new revenue sources to help meet our long-term needs."

New Jersey is not alone in exploring highway rest stops and service plazas as a potential funding source. Louisiana and Massachusetts are among states looking to overcome scarce transportation funding by monetizing rest stops through advertising deals, corporate sponsorships or service contracts. Louisiana is studying a sponsorship campaign for roads, bridges, ferries, buildings and even the vests worn by state transportation workers, according to media reports.

Concession deals - in which private companies operate the rest stops and give the toll roads a share of the revenue - have long been in existence on New Jersey highways. But now the Legislature wants the toll roads to do more.
Coughlin and Wisniewski said they proposed their bill in response to a 2010 report by the New Jersey Privatization Task Force, which indicated there are "numerous revenue-generating opportunities" for the toll roads to study.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
CHAPTER 130  
(CORRECTED COPY) 

AN ACT concerning highway-related sponsorship programs and supplementing Title 27 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.27:7-44.18 Definitions.

1. As used in sections 1 through 3 of P.L.2013, c.130 (C.27:7-44.18 through C.27:7-44.20):

   “Acknowledgement sign” means a sign that is intended to inform the traveling public that a highway-related service, product, or monetary contribution has been sponsored by a person, firm, or entity and which meets all design and placement guidelines for acknowledgement signs as established pursuant to the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways and all sign design principles provided in the federal Standard Highway Signs and Markings Book.

   “Advertising sign” means a sign that is intended to promote commercial products or services through the use of slogans and information and informs the public on where to obtain the products or services.

   “Department” means the Department of Transportation.

   “Highway” means any street or roadway that is open to public travel and includes, but is not limited to, the street or roadway, shoulders, and sidewalks; the airspace above and below the street or roadway; areas for drainage, utilities, landscaping, berms, and fencing; and rest areas and service areas.

   “Sponsorship agreement” means an agreement or contract between the department and a person, firm, or entity to be acknowledged for a highway-related service, product, or monetary contribution provided.

   “Sponsorship program” means a program administered by the department, that complies with pertinent federal laws, rules, regulations, and orders, and allows a person, firm, or entity to sponsor department operational activities or other highway-related services or programs through the provision of a highway-related service, product, or monetary contribution.

C.27:7-44.19 Establishment of sponsorship program.

2. a. There is established in the department a sponsorship program to allow for private sponsorship of department operational activities or other highway-related services or programs.

   b. The department shall adopt a policy on sponsorship agreements that is applicable to all highways within the State as is required by pertinent federal laws, rules, regulations, or orders to administer the program established pursuant to this section. The policy shall:

      (1) include language requiring the department to terminate a sponsorship agreement if it determines the sponsorship agreement or acknowledgement sign present a safety concern, interferes with the free and safe flow of traffic, or is not in the public interest;

      (2) describe the sponsors and sponsorship agreements that are acceptable and consistent with applicable State and federal laws;

      (3) require that any monetary contribution received through the program be used solely for highway purposes;

      (4) include a requirement that a person, firm, or entity shall comply with the State’s “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) to be eligible to participate in the program; and
(5) be approved by the Federal Highway Administration’s New Jersey Division Office.

c. Under the sponsorship program established pursuant to this section, the department may enter into a sponsorship agreement with a person, firm, or entity to receive a highway-related service, product, or monetary contribution in exchange for acknowledging the person, firm, or entity on an acknowledgement sign. A sponsorship agreement concerning any portion of the interstate highway system shall be subject to approval by the Federal Highway Administration.

d. Nothing in this section shall permit the use of or erection of any advertising sign as part of a sponsorship program authorized pursuant to P.L.2013, c.130 (C.27:7-44.18 et al.).

C.27:7-44.20 Rules or regulations.

3. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules or regulations necessary to effectuate the purposes of sections 1 and 2 of P.L.2013, c.130 (C.27:7-44.18 and C.27:7-44.19).


   “Acknowledgement sign” means a sign that is intended to inform the traveling public that a highway-related service, product, or monetary contribution has been sponsored by a person, firm, or entity and which meets all design and placement guidelines for acknowledgement signs as established pursuant to the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways and all sign design principles provided in the federal Standard Highway Signs and Markings Book.

   “Advertising sign” means a sign that is intended to promote commercial products or services through the use of slogans and information and informs the public on where to obtain the products or services.

   “Authority” means the New Jersey Turnpike Authority established pursuant to P.L.1948, c.454 (C.27:23-1 et seq.).

   “Highway” means the Garden State Parkway and the New Jersey Turnpike; their shoulders and sidewalks; the airspace above and below the Garden State Parkway and New Jersey Turnpike; areas for drainage, utilities, landscaping, berms, and fencing along the Garden State Parkway and New Jersey Turnpike; and any highway project as defined in section 4 of P.L.1948, c.454 (C.27:23-4).

   “Sponsorship agreement” means an agreement or contract between the authority and a person, firm, or entity to be acknowledged for a highway-related service, product, or monetary contribution provided.

   “Sponsorship program” means a program administered by the authority, that complies with pertinent federal laws, rules, regulations, and orders, and allows a person, firm, or entity to sponsor authority operational activities or other highway-related services or programs through the provision of a highway-related service, product, or monetary contribution.

C.27:23-56 Establishment of sponsorship program.

5. a. There is established in the authority a sponsorship program to allow for private sponsorship of authority operational activities or other highway-related services or programs.

   b. The authority shall adopt a policy on sponsorship agreements consistent with pertinent federal laws, rules, regulations, and orders to administer the program established pursuant to this section. The policy shall:
P.L.2013, CHAPTER 130

(1) include language requiring the authority to terminate a sponsorship agreement if it determines the sponsorship agreement or acknowledgement sign present a safety concern, interferes with the free and safe flow of traffic, or is not in the public interest;
(2) describe the sponsors and sponsorship agreements that are acceptable and consistent with applicable State and federal laws;
(3) require that any monetary contribution received through the program be used solely for highway purposes;
(4) include a requirement that a person, firm, or entity shall comply with the State’s "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) to be eligible to participate in the program; and
(5) be approved by the Federal Highway Administration’s New Jersey Division Office.

c. Under the sponsorship program established pursuant to this section, the authority may enter into a sponsorship agreement with a person, firm, or entity to receive a highway-related service, product, or monetary contribution in exchange for acknowledging the person, firm, or entity on an acknowledgement sign. A sponsorship agreement concerning any portion of the interstate highway system shall be subject to approval by the Federal Highway Administration.
d. Nothing in this section shall permit the use of or erection of any advertising sign as part of a sponsorship program authorized pursuant to P.L.2013, c.130 (C.27:7-44.18 et al.).

C.27:23-57 Rules or regulations.


"Acknowledgement sign" means a sign that is intended to inform the traveling public that a highway-related service, product, or monetary contribution has been sponsored by a person, firm, or entity and which meets all design and placement guidelines for acknowledgement signs as established pursuant to the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways and all sign design principles provided in the federal Standard Highway Signs and Markings Book.

"Advertising sign" means a sign that is intended to promote commercial products or services through the use of slogans and information and informs the public on where to obtain the products or services.

"Authority" means the South Jersey Transportation Authority established pursuant to P.L.1991, c.252 (C.27:25A-1 et seq.).

"Highway" means the Atlantic City Expressway; its shoulders and sidewalks; the airspace above and below the Expressway; areas for drainage, utilities, landscaping, berms, and fencing along the Expressway; and any expressway project as defined in section 3 of P.L.1991, c.252 (C.27:25A-3).

"Sponsorship agreement" means an agreement or contract between the authority and a person, firm, or entity to be acknowledged for a highway-related service, product, or monetary contribution provided.

"Sponsorship program" means a program administered by the authority, that complies with pertinent federal laws, rules, regulations, and orders, and allows a person, firm, or entity
to sponsor authority operational activities or other highway-related services or programs through the provision of a highway-related service, product, or monetary contribution.


8. a. There is established in the authority a sponsorship program to allow for private sponsorship of authority operational activities or other highway-related services or programs.

b. The authority shall adopt a policy on sponsorship agreements consistent with pertinent federal laws, rules, regulations, and orders to administer the program established pursuant to this section. The policy shall:

(1) include language requiring the authority to terminate a sponsorship agreement if it determines the sponsorship agreement or acknowledgement sign present a safety concern, interferes with the free and safe flow of traffic, or is not in the public interest;

(2) describe the sponsors and sponsorship agreements that are acceptable and consistent with applicable State and federal laws;

(3) require that any monetary contribution received through the program be used solely for highway purposes;

(4) include a requirement that a person, firm, or entity shall comply with the State’s "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) to be eligible to participate in the program; and

(5) be approved by the Federal Highway Administration’s New Jersey Division Office.

c. Under the sponsorship program established pursuant to this section, the authority may enter into a sponsorship agreement with a person, firm, or entity to receive a highway-related service, product, or monetary contribution in exchange for acknowledging the person, firm, or entity on an acknowledgement sign. A sponsorship agreement concerning any portion of the interstate highway system shall be subject to approval by the Federal Highway Administration.

d. Nothing in this section shall permit the use of or erection of any advertising sign as part of a sponsorship program authorized pursuant to P.L.2013, c.130 (C.27:7-44.18 et al.).


10. The provisions of P.L.2013, c.130 (C.27:7-44.18 et al.) shall not apply to any contract entered into prior to the effective date of P.L.2013, c.130 (C.27:7-44.18 et al.).

11. This act shall take effect on the first day of the 18th month next following the date of enactment except the Commissioner of Transportation, the New Jersey Turnpike Authority, and the South Jersey Transportation Authority may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved August 9, 2013.
Summary: The bill amends and clarifies laws regarding bicycle operation and equipment and motor vehicle interaction with bicyclists. The bill states that whenever it is necessary for the driver of a motor vehicle to cross a bicycle lane adjacent to the driver's lane of travel to make a turn, the driver shall first signal the movement, then drive the motor vehicle into the bicycle lane prior to making the turn, and shall make the turn, but only after it is safe to do so. The driver shall then make the turn consistent with any traffic markers, buttons, or signs, yielding the right-of-way to any vehicles or bicycles approaching so close thereto as to constitute an immediate hazard. The bill also clarifies that a bicyclist operating on the shoulder of a roadway or in a bicycle lane is exempt from the requirement to ride as close as practicable to the right-hand curb or edge of the roadway. The bill clarifies that a bicycle equipped with lamps that are visible from a distance of at least 500 feet from both the front and the rear is deemed to fully comply with the lighting requirements for a bicycle. The bill also clarifies that a bicycle equipped with a direct or fixed gear that can make the rear wheel skid on dry, level, clean pavement shall be deemed to fully comply with the brake equipment requirements for a bicycle.

Status: Signed into law May 24, 2013.

Comment: From *The Star Tribune* (August 27, 2013)
The state Senate passed a bill this week that prohibits cars from using bike lanes to pass other vehicles, requires drivers to use a turn signal when crossing a bike lane to turn, and prohibits them from parking in a bike lane unless permitted by signs. …

Bicycles “need to be treated like any other vehicle that is using our roads,” (Senate Transportation Committee Chair Scott) Dibble (DFL-Minneapolis) said. “More and more folks are biking on our streets. That’s desirable.”

Sen. Kari Dziedzic, DFL-Minneapolis, said the measures are needed because rider safety is a growing concern as more people travel by bicycle.

Read more: [http://www.startribune.com/politics/statelocal/204957031.html](http://www.startribune.com/politics/statelocal/204957031.html)

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
A bill for an act

relating to transportation; amending various provisions related to transportation and public safety policies, including highway signs, trunk highway routes, state-aid systems, motor vehicle registration and license plates, record retention, motor vehicle dealers, pupil transportation, bicycles, motor vehicle weight and equipment, disability parking, drivers’ licenses and senior identification cards, federal law conformity, agency organization, commercial vehicle regulations, railroads, land conveyance, transit and transit planning, operations, and accessibility; amending Minnesota Statutes 2012, sections 160.21, subdivision 6; 160.80, subdivisions 1, 1a, 2; 161.04, subdivision 5; 161.115, subdivision 11; 161.1231, subdivision 8; 161.44, by adding a subdivision; 162.02, subdivision 3a; 162.09, subdivision 3a; 162.13, subdivision 2; 168.017, subdivisions 2, 3; 168.053, subdivision 1; 168.123, subdivision 2; 168.183, subdivision 1; 168.187, subdivision 17; 168.27, subdivisions 10, 11, by adding a subdivision; 168A.153, subdivisions 1, 2, 3, by adding a subdivision; 168B.15; 169.011, subdivision 71; 169.18, subdivisions 4, 7; 169.19, subdivision 1; 169.222, subdivisions 2, 4, 6, 7; 169.34, subdivision 1; 169.346, subdivision 2, by adding a subdivision; 169.443, subdivision 9; 169.447, subdivision 2; 169.454, subdivision 12; 169.68; 169.824, subdivision 2; 171.01, subdivision 49b; 171.07, subdivisions 3a, 4; 174.02, by adding a subdivision; 174.03, subdivision 1d; 174.24, subdivision 5a; 174.632; 174.636; 219.17; 219.18; 219.20; 221.0314, subdivisions 2, 3a, 9a; 398A.04, by adding a subdivision;

Laws 2009, chapter 59, article 3, section 4, subdivision 9, as amended; proposing coding for new law in Minnesota Statutes, chapters 171; 174; repealing Minnesota Statutes 2012, sections 168.094; 174.24, subdivision 5; Minnesota Rules, parts 8820.3300, subpart 2; 8835.0330, subpart 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2012, section 160.21, subdivision 6, is amended to read:

Subd. 6. Uncompleted subdivisions. (a) A road authority, including a statutory or home rule charter city, may remove snow from unopened or private roads in uncompleted subdivisions containing five or more lots, upon adoption of an annual resolution finding that the subdivision developer, due to general insolvency or pending foreclosure, is unable to maintain the roads and that public safety may be jeopardized if the access of school

Section 1. 1
(c) A "type A school bus" is a van conversion or bus constructed utilizing a cutaway front section vehicle with a left-side driver's door. This definition includes two classifications: type A-I, with a gross vehicle weight rating (GVWR) less than or equal to 14,500 pounds; and type A-II, with a GVWR greater than 14,500 pounds and less than or equal to 21,500 pounds.

(d) A "type B school bus" is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: type B-I, with a GVWR less than or equal to 10,000 pounds; and type B-II, with a GVWR greater than 10,000 pounds.

(e) A "type C school bus" is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. A "type C school bus" also includes a cutaway truck chassis or truck chassis with cab, with or without a left side door, and with a GVWR greater than 21,500 pounds.

(f) A "type D school bus" is constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

(g) A "multifunction school activity bus" is a school bus that meets the definition of a multifunction school activity bus in Code of Federal Regulations, title 49, section 571.3. A vehicle that meets the definition of a type III vehicle is not a multifunction school activity bus.

(h) A "type III vehicle" is restricted to passenger cars, station wagons, vans, vehicles and buses having a maximum manufacturer's rated seating capacity of ten or fewer people, including the driver, and a gross vehicle weight rating of 10,000 pounds or less. A "type III vehicle" must not be outwardly equipped and identified as a type A, B, C, or D school bus or type A, B, C, or D Head Start bus. A van or bus converted to a seating capacity of ten or fewer and placed in service on or after August 1, 1999, must have been originally manufactured to comply with the passenger safety standards.

(i) In this subdivision, "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle.

Sec. 28. Minnesota Statutes 2012, section 169.18, subdivision 4, is amended to read:

Subd. 4. **Passing on the right.** The driver of a vehicle may overtake and pass upon the right of another vehicle only upon the following conditions:

(1) when the vehicle overtaken is making or about to make a left turn;

(2) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
(3) upon a one-way street, or upon any roadway on which traffic is restricted to one
direction of movement, where the roadway is free from obstructions and of sufficient
width for two or more lines of moving vehicles;

(4) when the driver of a vehicle may overtake and pass another vehicle upon the
right only under conditions permitting such movement in safety. In no event shall such
movement be made by driving in a bicycle lane or onto the shoulder, whether paved or
unpaved, or off the pavement or main-traveled portion of the roadway.

Sec. 29. Minnesota Statutes 2012, section 169.18, subdivision 7, is amended to read:

Subd. 7. Laned highway. When any roadway has been divided into two or more
clearly marked lanes for traffic, the following rules, in addition to all others consistent
herewith, shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane
and shall not be moved from such lane until the driver has first ascertained that such
movement can be made with safety.

(b) Upon a roadway which is not a one-way roadway and which is divided into three
lanes, a vehicle shall not be driven in the center lane except when overtaking and passing
another vehicle where the roadway is clearly visible and such center lane is clear of traffic
within a safe distance, or in preparation for a left turn or where such center lane is at the
time allocated exclusively to traffic moving in the direction the vehicle is proceeding, and
is signposted to give notice of such allocation. The left lane of a three-lane roadway which
is not a one-way roadway shall not be used for overtaking and passing another vehicle.

(c) Official signs may be erected directing slow-moving traffic to use a designated
lane or allocating specified lanes to traffic moving in the same direction, and drivers of
vehicles shall obey the directions of every such sign.

(d) Whenever a bicycle lane has been established on a roadway, any person
operating a motor vehicle on such roadway shall not drive in the bicycle lane except to
perform parking maneuvers in order to park where parking is permitted, to enter or leave
the highway, or to prepare for a turn as provided in section 169.19, subdivision 1.

Sec. 30. Minnesota Statutes 2012, section 169.19, subdivision 1, is amended to read:

Subdivision 1. Turning at intersection. The driver of a vehicle intending to turn
at an intersection shall do so as follows:

(a) Both the approach for a right turn and a right turn shall be made as close as
practicable to the right-hand curb or edge of the roadway.
20.1 (b) Approach for a left turn on other than one-way roadways shall be made in that portion of the right half of the roadway nearest the centerline thereof, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

20.2 (c) Approach for a left turn from a two-way roadway into a one-way roadway shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection.

20.3 (d) A left turn from a one-way roadway into a two-way roadway shall be made from the left-hand lane and by passing to the right of the centerline of the roadway being entered upon leaving the intersection.

20.4 (e) Where both streets or roadways are one way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

20.5 (f) Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

20.6 (g) Whenever it is necessary for the driver of a motor vehicle to cross a bicycle lane adjacent to the driver's lane of travel to make a turn, the driver shall first signal the movement, then drive the motor vehicle into the bicycle lane prior to making the turn, and shall make the turn, but only after it is safe to do so. The driver shall then make the turn consistent with any traffic markers, buttons, or signs, yielding the right-of-way to any vehicles or bicycles approaching so close thereto as to constitute an immediate hazard.

Sec. 31. Minnesota Statutes 2012, section 169.222, subdivision 2, is amended to read:

Subd. 2. Manner and number riding. No bicycle, including a tandem bicycle, cargo or utility bicycle, or trailer, shall be used to carry more persons at one time than the number for which it is designed and equipped, except (1) on a baby seat attached to the bicycle, provided that the baby seat is equipped with a harness to hold the child securely in the seat and that protection is provided against the child's feet hitting the spokes of the wheel or (2) in a seat attached to the bicycle operator an adult rider may carry a child in a seat designed for carrying children that is securely attached to the bicycle.

Sec. 32. Minnesota Statutes 2012, section 169.222, subdivision 4, is amended to read:
Subd. 4. **Riding rules.** (a) Every person operating a bicycle upon a roadway shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. when overtaking and passing another vehicle proceeding in the same direction;
2. when preparing for a left turn at an intersection or into a private road or driveway;
3. when reasonably necessary to avoid conditions, including fixed or moving objects, vehicles, pedestrians, animals, surface hazards, or narrow width lanes, that make it unsafe to continue along the right-hand curb or edge;
4. when operating on the shoulder of a roadway or in a bicycle lane.

(b) If a bicycle is traveling on a shoulder of a roadway, the bicycle shall travel in the same direction as adjacent vehicular traffic.

(c) Persons riding bicycles upon a roadway or shoulder shall not ride more than two abreast and shall not impede the normal and reasonable movement of traffic and, on a laned roadway, shall ride within a single lane.

(d) A person operating a bicycle upon a sidewalk, or across a roadway or shoulder on a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal when necessary before overtaking and passing any pedestrian. No person shall ride a bicycle upon a sidewalk within a business district unless permitted by local authorities.

Local authorities may prohibit the operation of bicycles on any sidewalk or crosswalk under their jurisdiction.

(e) An individual operating a bicycle or other vehicle on a bikeway shall leave a safe distance when overtaking a bicycle or individual proceeding in the same direction on the bikeway, and shall maintain clearance until safely past the overtaken bicycle or individual.

(f) A person lawfully operating a bicycle on a sidewalk, or across a roadway or shoulder on a crosswalk, shall have all the rights and duties applicable to a pedestrian under the same circumstances.

(g) A person may operate an electric-assisted bicycle on the shoulder of a roadway, on a bikeway, or on a bicycle trail if not otherwise prohibited under section 85.015, subdivision 1d; 85.018, subdivision 2, paragraph (d); or 160.263, subdivision 2, paragraph (b), as applicable.

Sec. 33. Minnesota Statutes 2012, section 169.222, subdivision 6, is amended to read:

Subd. 6. **Bicycle equipment.** (a) No person shall operate a bicycle at nighttime unless the bicycle or its operator is equipped with (1) a lamp which emits a white light visible from a distance of at least 500 feet to the front; and (2) a red reflector of a type approved by the Department of Public Safety which is visible from all distances from 100
feet to 600 feet to the rear when directly in front of lawful lower beams of headlamps on a motor vehicle. A bicycle equipped with lamps that are visible from a distance of at least 500 feet from both the front and the rear is deemed to fully comply with this paragraph.

(b) No person may operate a bicycle at any time when there is not sufficient light to render persons and vehicles on the highway clearly discernible at a distance of 500 feet ahead unless the bicycle or its operator is equipped with reflective surfaces that shall be visible during the hours of darkness from 600 feet when viewed in front of lawful lower beams of headlamps on a motor vehicle. The reflective surfaces shall include reflective materials on each side of each pedal to indicate their presence from the front or the rear and with a minimum of 20 square inches of reflective material on each side of the bicycle or its operator. Any bicycle equipped with side reflectors as required by regulations for new bicycles prescribed by the United States Consumer Product Safety Commission shall be considered to meet the requirements for side reflectorization contained in this subdivision.

(c) A bicycle may be equipped with a front lamp that emits a white flashing signal, or a rear lamp that emits a red flashing signal, or both.

(d) A bicycle may be equipped with tires having studs, spikes, or other protuberances designed to increase traction.

(e) No person shall operate a bicycle unless it is equipped with a brake or front and rear brakes which will enable the operator to make the wheel skid on dry, level, clean pavement. A bicycle equipped with a direct or fixed gear that can make the rear wheel skid on dry, level, clean pavement shall be deemed to fully comply with this paragraph.

(f) A bicycle may be equipped with a horn or bell designed to alert motor vehicles, other bicycles, and pedestrians of the bicycle's presence.

(g) No person shall operate upon a highway any two-wheeled bicycle equipped with handlebars so raised that the operator must elevate the hands above the level of the shoulders in order to grasp the normal steering grip area.

(h) No person shall operate upon a highway any bicycle which is of such a size as to prevent the operator from stopping the bicycle, supporting it with at least one foot on the highway surface and restarting in a safe manner.

Sec. 34. Minnesota Statutes 2012, section 169.222, subdivision 7, is amended to read:

Subd. 7. Sale with reflectors and other equipment. (a) No person shall sell or offer for sale any new bicycle unless it is equipped with reflectors and other equipment as required by subdivision 6, paragraphs (b) and (e) and by applicable regulations for new bicycles prescribed by the United States Consumer Product Safety Commission.
(b) Notwithstanding paragraph (a), a new bicycle may be sold or offered for sale without pedals if the bicycle otherwise meets the requirements of paragraph (a).

Sec. 35. Minnesota Statutes 2012, section 169.34, subdivision 1, is amended to read:

Subdivision 1. Prohibitions. (a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

(1) on a sidewalk;

(2) in front of a public or private driveway;

(3) within an intersection;

(4) within ten feet of a fire hydrant;

(5) on a crosswalk;

(6) within 20 feet of a crosswalk at an intersection;

(7) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(8) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(9) within 50 feet of the nearest rail of a railroad crossing;

(10) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(11) alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic;

(12) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(13) upon any bridge or other elevated structure upon a highway or within a highway tunnel, except as otherwise provided by ordinance;

(14) within a bicycle lane, except when posted signs permit parking; or

(15) at any place where official signs prohibit stopping.

(b) No person shall move a vehicle not owned by such person into any prohibited area or away from a curb such distance as is unlawful.

(c) No person shall, for camping purposes, leave or park a travel trailer on or within the limits of any highway or on any highway right-of-way, except where signs are erected designating the place as a campsite.
24.1  (d) No person shall stop or park a vehicle on a street or highway when directed or
ordered to proceed by any peace officer invested by law with authority to direct, control,
or regulate traffic.

24.4  Sec. 36. Minnesota Statutes 2012, section 169.346, is amended by adding a subdivision
to read:

24.6  Subd. 1a. Disability parking when designated spaces occupied or unavailable.

24.7  In the event the designated disability parking spaces are either occupied or unavailable,

24.8  a vehicle bearing a valid disability parking certificate issued under section 169.345 or

24.9  license plates for physically disabled persons under section 168.021 may park at an angle

24.10 and occupy two standard parking spaces.

24.11 Sec. 37. Minnesota Statutes 2012, section 169.346, subdivision 2, is amended to read:

24.12 Subd. 2. Disability parking space signs. (a) Parking spaces reserved for physically

24.13 disabled persons must be designated and identified by the posting of signs incorporating

24.14 the international symbol of access in white on blue and indicating that violators are subject

24.15 to a fine of up to $200. These parking spaces are reserved for disabled persons with motor

24.16 vehicles displaying the required certificate, plates, permit valid for 30 days, or insignia.

24.17 (b) For purposes of this subdivision, a parking space that is clearly identified as

24.18 reserved for physically disabled persons by a permanently posted sign that does not

24.19 meet all design standards, is considered designated and reserved for physically disabled

24.20 persons. A sign posted for the purpose of this section must be visible from inside a motor

24.21 vehicle parked in the space, be kept clear of snow or other obstructions which block its

24.22 visibility, and be nonmovable or only movable by authorized persons.

24.23 Sec. 38. Minnesota Statutes 2012, section 169.443, subdivision 9, is amended to read:

24.24 Subd. 9. Personal cellular phone call prohibition. (a) As used in this subdivision,

24.25 "school bus" has the meaning given in section 169.011, subdivision 71. In addition, the

24.26 term includes type III vehicles as defined in section 169.011, subdivision 71, when driven

24.27 by employees or agents of school districts.

24.28 (b) A school bus driver may not operate a school bus while communicating over, or

24.29 otherwise operating, a cellular phone for personal reasons, whether handheld or hands

24.30 free, when the vehicle is in motion or a part of traffic.

24.31 Sec. 39. Minnesota Statutes 2012, section 169.447, subdivision 2, is amended to read:
Subd. 2. Driver seat belt. School buses and Head Start buses must be equipped
with driver seat belts and seat belt assemblies of the type described in section 169.685,
subdivision 3. School bus drivers and Head Start bus drivers must use these seat belts. A
properly adjusted and fastened seat belt, including both the shoulder and lap belt when the
vehicle is so equipped, shall be worn by the driver.

Sec. 40. Minnesota Statutes 2012, section 169.454, subdivision 12, is amended to read:
Subd. 12. Option. Passenger cars and station wagons Type III vehicles may carry
fire extinguisher, first aid kit, and warning triangles in the trunk or trunk area of the vehicle,
if a label in the driver and front passenger area clearly indicates the location of these items.

Sec. 41. Minnesota Statutes 2012, section 169.68, is amended to read:

169.68 HORN, SIREN.

(a) Every motor vehicle when operated upon a highway must be equipped with
a horn in good working order and capable of emitting sound audible under normal
conditions from a distance of not less than 200 feet. However, the horn or other warning
device must not emit an unreasonably loud or harsh sound or a whistle. The driver of a
motor vehicle shall, when reasonably necessary to insure safe operation, give audible
warning with the horn, but shall not otherwise use the horn when upon a highway.

(b) A vehicle must not be equipped with, and a person shall not use upon a vehicle,
any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible, but not required, for any commercial vehicle to be equipped
with a theft alarm signal device, so arranged that it cannot be used by the driver as an
ordinary warning signal.

(d) All authorized emergency vehicles must be equipped with a siren capable of
emitting sound audible under normal conditions from a distance of not less than 500 feet
and of a type conforming to the federal certification standards for sirens, as determined by
the General Services Administration. However, the siren must not be used except when the
vehicle is operated in response to an emergency call or in the immediate pursuit of an actual
or suspected violator of the law, in which latter events the driver of the vehicle shall sound
the siren when necessary to warn pedestrians and other drivers of the vehicle's approach.

(e) It is permissible, but not required, for a bicycle to be equipped with a horn or bell
designed to alert motor vehicles, other bicycles, and pedestrians of the bicycle's presence.

Sec. 42. Minnesota Statutes 2012, section 169.824, subdivision 2, is amended to read:
Use of Handheld Devices by Motorists

Bill/Act: HB 1247/Public Act 098-0506

Summary: Expands the prohibition on driving while using an electronic communication device to include uses beyond composing, sending, or reading an electronic message, expands the exceptions to include the use of hands-free devices, two-way radios, and electronic devices capable of performing multiple functions as long as these devices are not used for a prohibited purpose; establishes a graduated fine scale for repeat offenses.

Status: Signed into law August 16, 2013.

Comment: From WLS-TV Eyewitness News (December 20, 2013)
The use of hand-held cell phone devices behind the wheel will be prohibited. Bluetooth headsets, earpieces and voice-activated commands are permitted. The only exemptions from this law apply to law enforcement officers or first responders; drivers reporting emergencies and drivers using electronic devices while parked on the shoulder of a roadway. Violations can cost up to $75 for a first offense, $100 for a second offense, $125 for a third offense and $150 for a fourth or subsequent offense. However, the ban does not include operation of a GPS or navigation system.

Read more: http://abclocal.go.com/wls/story?id=9367514

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
( ) next SSL mtg.
( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Section 12-610.2 as follows:

(625 ILCS 5/12-610.2)
Sec. 12-610.2. Electronic communication devices.
(a) As used in this Section:
"Electronic communication device" means an electronic device, including but not limited to a hand-held wireless telephone, hand-held personal digital assistant, or a portable or mobile computer while being used for the purpose of composing, reading, or sending an electronic message, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.
"Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. "Electronic message" includes, but is not limited to electronic mail, a text message, an instant message, a digital photograph, a video, or a command or request to access an Internet site.

(b) A person may not operate a motor vehicle on a roadway
while using an electronic communication device to compose, send, or read an electronic message.

(c) A second or subsequent violation of this Section is an offense against traffic regulations governing the movement of vehicles. A person who violates this Section shall be fined a maximum of $75 for a first offense, $100 for a second offense, $125 for a third offense, and $150 for a fourth or subsequent offense.

(d) This Section does not apply to:

(1) a law enforcement officer or operator of an emergency vehicle while performing his or her official duties;

(2) a driver using an electronic communication device for the sole purpose of reporting an emergency situation and continued communication with emergency personnel during the emergency situation;

(3) a driver using an electronic communication device in hands-free or voice-operated mode, which may include the use of a headset;

(4) a driver of a commercial motor vehicle reading a message displayed on a permanently installed communication device designed for a commercial motor vehicle with a screen that does not exceed 10 inches tall by 10 inches wide in size;

(5) a driver using an electronic communication device while parked on the shoulder of a roadway; or
(6) a driver using an electronic communication device when the vehicle is stopped due to normal traffic being obstructed and the driver has the motor vehicle transmission in neutral or park;

(7) a driver using two-way or citizens band radio services;

(8) a driver using two-way mobile radio transmitters or receivers for licensees of the Federal Communications Commission in the amateur radio service;

(9) a driver using an electronic communication device by pressing a single button to initiate or terminate a voice communication; or

(10) a driver using an electronic communication device capable of performing multiple functions, other than a hand-held wireless telephone or hand-held personal digital assistant (for example, a fleet management system, dispatching device, citizens band radio, or music player) for a purpose that is not otherwise prohibited by this Section.

(Source: P.A. 96-130, eff. 1-1-10; 96-1000, eff. 7-2-10; 97-828, eff. 7-20-12.)
Bill/Act: **HB 1087**

Summary: Passage of the bill made South Dakota the first state in the nation to enact a law explicitly authorizing school employees to carry guns on the job. School districts are given the authority to allow a school employee, a hired security officer or a volunteer to serve as a “sentinel” who can carry a firearm in the school. The school district must receive the permission of its local law enforcement agency before carrying out the program. Under the established sentinel program, all selected individuals must undergo training similar to what law enforcement officers receive.

Status: Signed into law in March 2013.

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Comment: Supporters believe the measure is critical because of the rural character of the state with many schools several miles away from emergency responders. The legislation was opposed by several education groups and superintendents that questioned its need, with some suggesting that a better alternative would be providing resources to districts so they could hire law enforcement or resource officers.

From a March 2013 article in the *Rapid City Journal*:

Despite opposition from the education community, the school sentinel bill was signed into law Friday by South Dakota Gov. Dennis Daugaard.

The bill gives school boards the authority to allow armed personnel in school buildings.

The House had previously approved the plan, but the Senate added requirements that said school boards must discuss the program in open meetings and decisions to adopt the sentinel programs can be referred to public vote.

Rep. Scott Craig, R-Rapid City, said the Senate amendments strengthened the legislation.

“IT is now a better bill and I ask you to support it again,” he said.

Educators interviewed earlier this week remained unconvinced the legislation is needed.

Don Kirkegaard, superintendent of the Meade School District, said he has never been in favor of the bill and would have preferred a summer study session on school safety.

"We should be looking at the big picture and that may be part of the big picture, but it's not something I'm going to promote," he said. Kirkegaard said a study session would have allowed educators to explore everything from facility designs to fire safety, all of which play a key role in safety. Such a session would have brought together "all of the players" for a more comprehensive safety plan, he said.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT

ENTITLED, An Act to provide for the creation of school sentinel programs and for the training of school sentinels.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Any school board may create, establish, and supervise the arming of school employees, hired security personnel, or volunteers in such manner and according to such protocols as the board may believe to be most likely to secure or enhance the deterrence of physical threat and defense of the school, its students, its staff, and members of the public on the school premises against violent attack. Those so authorized shall be referred to as school sentinels.

Section 2. Before any school board may implement any school sentinel program pursuant to section 1 of this Act, or effect any material changes in the personnel or protocols of the school sentinel program, the school board shall obtain the approval of the law enforcement official who has jurisdiction over the school premises. Any material changes in the school sentinel program's personnel or protocols shall be reported to all law enforcement agencies with jurisdiction over the school premises forthwith.

Section 3. Any person who acts as a school sentinel, pursuant to section 1 of this Act, shall first successfully complete a school sentinel training course as defined by the Law Enforcement Officers Standards Commission pursuant to subdivision 23-3-35(16).

Section 4. No school board, in implementing the provisions of section 1 of this Act, may arm any individual teacher or other school employee without the latter's free, willing, and voluntary consent. No individual teacher or other school employee may be censured, criticized, or discriminated against for unwillingness or refusal to carry firearms pursuant to this Act.

Section 5. No provision of § 13-32-7 or any other provisions of state statute is effective to restrict or limit the provisions of this Act. However, nothing in this Act authorizes any person to carry a
concealed weapon without a valid permit.

Section 6. The failure or refusal of any school board to implement a school sentinel program does not constitute a cause of action against the board, the school district, or any of its employees.

Section 7. That § 23-3-35 be amended to read as follows:

23-3-35. In addition to powers conferred upon the Law Enforcement Officers Standards Commission elsewhere in this chapter, the commission may:

(1) Promulgate rules for the administration of §§ 23-3-26 to 23-3-47, inclusive, including the authority to require the submission of reports and information by law enforcement agencies within this state;

(2) Establish minimum educational and training standards for admission to employment as a law enforcement officer:
   (a) In permanent positions; and
   (b) In temporary or probationary status;

(3) Certify persons as being qualified under the provisions of §§ 23-3-26 to 23-3-47, inclusive, to be law enforcement officers, and by rule to establish criteria and procedure for the revocation or suspension of the certification of officers who have been convicted of a felony or misdemeanor involving moral turpitude, have intentionally falsified any application or document to achieve certification, or have been discharged from employment for cause, or have engaged in conduct unbecoming of a law enforcement officer;

(4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for schools operated by or for the state or any political subdivisions of the state for the specific purpose of training recruits or other law enforcement officers;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other
governmental agencies, and with universities, colleges, junior colleges, and other
institutions concerning the development of law enforcement training schools and
programs or courses of instruction;

(6) Approve institutions and facilities for school operation by or for the state or any political
subdivision of the state for the specific purpose of training law enforcement officers and
recruits;

(7) Make or encourage studies of any aspect of police administration;

(8) Conduct and stimulate research by public and private agencies which is designed to
improve police administration and law enforcement;

(9) Make recommendations concerning any matter within its purview pursuant to §§ 23-3-26
to 23-3-47, inclusive;

(10) Make such evaluations as may be necessary to determine if governmental units are
complying with the provisions of §§ 23-3-26 to 23-3-47, inclusive;

(11) Adopt and amend bylaws, consistent with law, for its internal management and control;

(12) Enter into contracts or do such things as may be necessary and incidental to the
administration of its authority pursuant to §§ 23-3-26 to 23-3-47, inclusive;

(13) License and regulate the activities of private or law enforcement polygraph and computer
voice stress analyzer examiners;

(14) Certify canine teams; and

(15) Establish minimum educational and training standards for newly selected county coroners
and advanced training standards for incumbent county coroners;

(16) Establish minimum educational and training standards for school sentinels authorized in
section 1 of this Act.

Section 8. That § 13-32-7 be amended to read as follows:
13-32-7. Any person, other than a law enforcement officer or school sentinel acting pursuant to section 1 of this Act, who intentionally carries, has in his possession, stores, keeps, leaves, places, or puts into the possession of another person, any firearm, or air gun, whether or not the firearm or air gun is designed, adapted, used, or intended primarily for imitative or noisemaking purposes, or any dangerous weapon, on or in any elementary or secondary school premises, vehicle, or building or any premises, vehicle, or building used or leased for elementary or secondary school functions, whether or not any person is endangered by such actions, is guilty of a Class 1 misdemeanor. This section does not apply to starting guns while in use at athletic events, firearms, or air guns at firing ranges, gun shows, and supervised schools or sessions for training in the use of firearms. This section does not apply to the ceremonial presence of unloaded weapons at color guard ceremonies.

Section 9. A decision by a school board to implement a school sentinel program pursuant to section 1 of this Act may be referred to a vote of the qualified voters of the school district by the filing of a petition signed by five percent of the registered voters in the school district, based upon the total number of registered voters at the last preceding general election. The board shall allow sufficient time for the referendum process authorized in this section.

Section 10. A petition to refer a school board decision pursuant to section 9 of this Act may be filed with the business manager of the school district within twenty days after its publication. The filing of the petition shall require the submission of the decision to a vote of the qualified voters of the school district for its rejection or approval.

Section 11. The petition shall contain the school board decision regarding the school sentinel program and the date of its passage.

Section 12. Voters signing a referendum petition under section 9 of this Act shall comply with the same requirements provided for counties under § 7-18A-11, and the petition shall be verified in the same manner as provided for counties in § 7-18A-12.
Section 13. The election shall be held with the regular school district election.

Section 14. The business manager of the school district shall have the entire referred decision published once a week for two successive weeks immediately preceding the election. The publication shall include a notice stating the date of election.

Section 15. The business manager of the school district shall have ballots printed for the vote upon the referred school board decision and have them distributed as other official ballots are distributed. Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the state's attorney. All questions to be voted upon at the same election may be submitted upon the same ballot.

Section 16. No referred school board decision regarding the school sentinel program becomes operative unless approved by a majority of the votes cast for or against the same. If approved, the decision shall take effect upon completion of the canvass of the election returns relating to the school sentinel program.

Section 17. No law enforcement officer or county sheriff, nor the Law Enforcement Officers Standards Commission, Division of Criminal Investigation, Office of Attorney General, the State of South Dakota, nor any agents, employees, or members thereof, is liable for any injury caused by, related to, or resulting from:

(1) The implementation of the school sentinel program established by this Act;

(2) The adoption, promulgation, administration, or implementation of educational and training standards for school sentinels;

(3) The training provided by the Law Enforcement Officers Standards Commission, the Division of Criminal Investigation, the Office of Attorney General, or the state;

(4) The approvals required by the county sheriff under this Act; or
(5) The performance, administration, or implementation of any services or programs that assist a school district in carrying out its duties under this Act.

Section 18. Nothing in this Act shall be deemed to waive the sovereign immunity of the public entities of the State of South Dakota or of their employees.
An Act to provide for the creation of school sentinel programs and for the training of school sentinels.

I certify that the attached Act originated in the

HOUSE as Bill No. 1087

____________________________
Chief Clerk

____________________________
Speaker of the House

Attest:

____________________________
Chief Clerk

Received at this Executive Office
this _____ day of ______________, 20___ at __________ M.

By _________________________
for the Governor

The attached Act is hereby approved this _____ day of
______________, A.D., 20___

____________________________
Governor

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed ____________, 20__
at _________ o'clock ___ M.

____________________________
Secretary of the Senate

____________________________
Secretary of State

By _________________________
Asst. Secretary of State

House Bill No. 1087
File No. ______
Chapter No. ______
17-35B-01 Armed Personnel in Schools          Kansas
Bill/Act: HB 2052  (Section beginning on page 2)

Status: Signed into law on August 16, 2013.

Summary: Among other things, permits school districts, post-secondary educational institutions, public medical care facilities, public adult care homes, community mental health centers, and indigent health care clinics to allow a licensed employee to concealed carry a handgun if the employee meets the entity’s general policy requirements and if the entity does not have a personnel policy prohibiting employees from concealed carry of a handgun.

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Comments: From the Kansas City Star (April 17, 2013)
Kansas will allow public schools and colleges to arm employees with concealed guns and loosen restrictions on carrying concealed weapons into public buildings, starting in July.

The new law says that state agencies, local governments, state universities and state colleges couldn't prevent people with state permits from bringing concealed guns into their buildings after 2017. The law allows local school boards, university presidents and college boards to designate individual employees who can carry concealed weapons in their buildings, whatever their policies for the general public.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Senate Substitute for HOUSE BILL No. 2052

AN ACT concerning firearms; dealing with the personal and family protection act; amending K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 and repealing the existing sections; also repealing K.S.A. 2012 Supp. 45-221j and 45-221k.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.
(b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:
(1) The firearm is discharged in the lawful defense of one's person, another person or one's property;
(2) the firearm is discharged at a private or public shooting range;
(3) the firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;
(4) the firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
(5) the firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department;
(6) the firearm is discharged using blanks; or
(7) the firearm is discharged in lawful self-defense or defense of another person against an animal attack.
(c) A violation of subsection (a) shall be a class B nonperson misdemeanor.

New Sec. 2. (a) The carrying of a concealed handgun as authorized by the personal and family protection act shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.
(b) Any state or municipal building which contains both public access entrances and restricted access entrances shall provide adequate security measures at the public access entrances in order to prohibit the carrying of any weapons into such building.
(c) No state agency or municipality shall prohibit an employee who is licensed to carry a concealed handgun under the provisions of the personal and family protection act from carrying such concealed handgun at the employee's work place unless the building has adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.
(d) It shall not be a violation of the personal and family protection act for a person to carry a concealed handgun into a state or municipal building so long as that person is licensed to carry a concealed handgun under the provisions of the personal and family protection act and has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto.
(e) A state agency or municipality which provides adequate security measures in a state or municipal building and which conspicuously posts signage in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building, as authorized by the personal and family protection act, such state agency or municipality shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.
(f) A state agency or municipality which does not provide adequate security measures in a state or municipal building and which conspicuously posts signage in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building, as authorized by the personal and family protection act, such state agency or municipality shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.
(g) Nothing in this act shall limit the ability of a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of a handgun or other firearm concealed or unconcealed by any person into any secure area of a building located on such premises, except those areas
of such building outside of a secure area and readily accessible to the public shall be subject to the provisions of subsection (b).

(h) Nothing in this section shall limit the ability of the chief judge of each judicial district to prohibit the carrying of a concealed handgun by any person into courtrooms or ancillary courtrooms within the district provided that other means of security are employed such as armed law enforcement or armed security officers.

(i) The governing body or the chief administrative officer, if no governing body exists, of a state or municipal building, may exempt the building from this section until January 1, 2014, by notifying the Kansas attorney general and the law enforcement agency of the local jurisdiction by letter of such exemption. Thereafter, such governing body or chief administrative officer may exempt a state or municipal building for a period of only four years by adopting a resolution, or drafting a letter, listing the legal description of such building, listing the reasons for such exemption, and including the following statement: “A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act.” A copy of the security plan for the building shall be maintained on file and shall be made available, upon request, to the Kansas attorney general and the law enforcement agency of local jurisdiction. Notice of this exemption, together with the resolution adopted or the letter drafted, shall be sent to the Kansas attorney general and to the law enforcement agency of local jurisdiction. The security plan shall not be subject to disclosure under the Kansas open records act.

(j) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may exempt any building of such institution from this section for a period of four years only by stating the reasons for such exemption and sending notice of such exemption to the Kansas attorney general:

(1) A state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;
(2) a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;
(3) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;
(4) an indigent health care clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto; or
(5) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto, including any buildings located on the grounds of such institution and any buildings leased by such institution.

(k) The provisions of this section shall not apply to any building located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.

(l) For purposes of this section:

(1) “Adequate security measures” means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.

(2) The terms “municipality” and “municipal” are interchangeable and have the same meaning as the term “municipality” is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.

(3) “Restricted access entrance” means an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel.

(4) “State” means the same as the term is defined in K.S.A. 75-6102, and amendments thereto.

(5) (A) “State or municipal building” means a building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for
profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.

(B) On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the term “state and municipal building” shall not include the state capitol.


(m) This section shall be a part of and supplemental to the personal and family protection act.

New Sec. 3. (a) A license issued under K.S.A. 75-7c01 et seq., and amendments thereto, shall authorize the licensee to carry a concealed handgun in the state capitol in accordance with the provisions of K.S.A. 75-7c01 et seq., and amendments thereto.

(b) The provisions of this section shall take effect and be in force from and after July 1, 2014, unless the legislative coordinating council determines that on July 1, 2014, the state capitol does have adequate security measures, as that term is defined in section 2, and amendments thereto, to ensure that no weapons are permitted to be carried into the state capitol. Such determination shall be made on or after June 1, 2014, but no later than July 1, 2014.

(c) This section shall be a part of and supplemental to the personal and family protection act.

Sec. 4. K.S.A. 2012 Supp. 21-6302 is hereby amended to read as follows: 21-6302. (a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) concealed on one’s person, a dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) on one’s person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) any pistol, revolver or other firearm concealed on one’s person except when on the person’s land or in the person’s abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically.

(b) Criminal carrying of a weapon as defined in:

(1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and

(2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(4) shall not apply to:
(1) Watchmen, while actually engaged in the performance of the duties of their employment;
(2) licensed hunters or fishermen, while engaged in hunting or fishing;
(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;
(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;
(5) the state fire marshal, the state fire marshal’s deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;
(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;
(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto;
(8) any person carrying a concealed handgun as authorized by K.S.A. 2012 Supp. 75-7c01 through 75-7c17, and amendments thereto.
(e) Subsection (a)(5) shall not apply to:
(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee’s name by the transferor;
(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or
(3) any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.
(f) Subsection (a)(1) shall not apply to any ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife.
(g) It shall not be a violation of this section if a person violates the provisions of K.S.A. 2012 Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state.
(h) As used in this section, “throwing star” means the same as prescribed by K.S.A. 2012 Supp. 21-6301, and amendments thereto.
Sec. 5. K.S.A. 2012 Supp. 21-6309 is hereby amended to read as follows: 21-6309. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm on the grounds in any of the following places:
(1) Within any building located within the capitol complex;
(2) within the governor’s residence;
(3) on the grounds of or in any building on the grounds of the governor's residence;
(4) within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or
(5) within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of this section is a class A misdemeanor.

(c) This section shall not apply to:
(1) A commissioned law enforcement officer;
(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;
(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or
(4) a member of the military of this state or the United States engaged in the performance of duties—
5. a person with a license issued pursuant to or recognized under K.S.A. 2012 Supp. 75-7c01 et seq. and amendments thereto, except in buildings posted in accordance with K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and in the areas specified in subsections (a)(2) and (a)(3).

(d) It is not a violation of this section for the:
(1) Governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building on the grounds of the governor's residence;
(2) United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 2012 Supp. 75-7c19, and amendments thereto;
(3) law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a firearm.

(e) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:
(1) Facilities
Buildings have adequate security measures to ensure that no weapons are permitted to be carried into such facility/building;
(2) facilities have adequate measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options;
(3) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and
(4) facilities/buildings have a sign conspicuously posted at each entryway into such facility/building stating that the provisions of subsection (d)(2) do not apply to such facility/building.

(f) As used in this section:
(1) ‘‘Adequate security measures’’ means the use of electronic equipment and personnel to detect and restrict the carrying of any weapon into the facility, including, but not limited to, metal detectors, metal detector wands, or any other equipment used for similar purposes;
the same meaning as the term is defined in section 2, and amendments thereto;

(2) “possession” means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) “capitol complex” means the same as in K.S.A. 75-4514, and amendments thereto.

(g) For the purposes of subsections (a)(1), (a)(4) and (a)(5), “building” and “courthouse” shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

Sec. 6. K.S.A. 2012 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.
If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition or disposal of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:
   (A) The information which the agency maintains on computer facilities; and
   (B) the form in which the information can be made available using existing computer programs.

(17) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(18) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:
   (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
   (B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:
   (A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
   (B) distributed to a majority of a quorum of any body which has au-
authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim’s family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business’ or industry’s interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.
(36) Information which would reveal the precise location of an ar-
cheological site.
(37) Any financial data or traffic information from a railroad company,
to a public agency, concerning the sale, lease or rehabilitation of the
railroad’s property in Kansas.
(38) Risk-based capital reports, risk-based capital plans and corrective
orders including the working papers and the results of any analysis filed
with the commissioner of insurance in accordance with K.S.A. 40-2c20
and 40-2d20, and amendments thereto.
(39) Memoranda and related materials required to be used to support
the annual actuarial opinions submitted pursuant to subsection (b) of
K.S.A. 40-409, and amendments thereto.
(40) Disclosure reports filed with the commissioner of insurance un-
der subsection (a) of K.S.A. 40-2,156, and amendments thereto.
(41) All financial analysis ratios and examination synopses concerning
insurance companies that are submitted to the commissioner by the na-
tional association of insurance commissioners’ insurance regulatory infor-
mation system.
(42) Any records the disclosure of which is restricted or prohibited
by a tribal-state gaming compact.
(43) Market research, market plans, business plans and the terms and
conditions of managed care or other third-party contracts, developed or
entered into by the university of Kansas medical center in the operation
and management of the university hospital which the chancellor of the
university of Kansas or the chancellor’s designee determines would give
an unfair advantage to competitors of the university of Kansas medical
center.
(44) The amount of franchise tax paid to the secretary of revenue or
the secretary of state by domestic corporations, foreign corporations, do-
meric limited liability companies, foreign limited liability companies, do-
meric limited partnership, foreign limited partnership, domestic limited
liability partnerships and foreign limited liability partnerships.
(45) Records, other than criminal investigation records, the disclo-
sure of which would pose a substantial likelihood of revealing security
measures that protect: (A) Systems, facilities or equipment used in the
production, transmission or distribution of energy, water or communi-
cations services; (B) transportation and sewer or wastewater treatment
systems, facilities or equipment; or (C) private property or persons, if the
records are submitted to the agency. For purposes of this paragraph,
security means measures that protect against criminal acts intended to
intimidate or coerce the civilian population, influence government policy
by intimidation or coercion or to affect the operation of government by
disruption of public services, mass destruction, assassination or kidnap-
ing. Security measures include, but are not limited to, intelligence in-
formation, tactical plans, resource deployment and vulnerability assess-
ments.
(46) Any information or material received by the register of deeds of
a county from military discharge papers, DD Form 214. Such papers shall
be disclosed: To the military dischargee; to such dischargee’s immediate
family members and lineal descendants; to such dischargee’s heirs, agents
or assignees; to the licensed funeral director who has custody of the body
of the deceased dischargee; when required by a department or agency of
the federal or state government or a political subdivision thereof; when
the form is required to perfect the claim of military service or honorable
discharge or a claim of a dependent of the dischargee; and upon the
written approval of the commissioner of veterans affairs, to a person con-
ducting research.
(47) Information that would reveal the location of a shelter or a safe-
house or similar place where persons are provided protection from abuse
or the name, address, location or other contact information of alleged
victims of stalking, domestic violence or sexual assault.
(48) Policy information provided by an insurance carrier in accord-
ance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto.
This exemption shall not be construed to preclude access to an individual
employer’s record for the purpose of verification of insurance coverage
or to the department of labor for their business purposes.
(49) An individual’s e-mail address, cell phone number and other con-
tact information which has been given to the public agency for the pur-
pose of public agency notifications or communications which are widely
distributed to the public.

(50) Information provided by providers to the local collection point
administrator or to the 911 coordinating council pursuant to the Kansas
911 act, and amendments thereto, upon request of the party submitting
such records.

(51) Records of a public agency which identify the home address or
home ownership of a law enforcement officer as defined in K.S.A. 2012
Supp. 21-5111, and amendments thereto, parole officer, probation offi-
cer, court services officer or community correctional services officer: The
agency head of such law enforcement office, parole office, probation of-

fice, court services office or community correctional services office or
such individual officer shall file with the custodian of such record a re-
quest to have such officer’s identifying information removed from public
access. Within seven days of receipt of such requests, the public agency
shall remove such officer’s identifying information from such public ac-

cess.

(52) Records of a public agency which identify the home address or
home ownership of a federal judge, a justice of the supreme court, a judge
of the United States attorney for the district of Kansas, an assistant United States
attorney, the attorney general, an assistant attorney general, a district
attorney or county attorney or an assistant district attorney or assistant
county attorney. Such person or such person’s employer shall file with
the custodian of such record a request to have such person’s identifying
information removed from public access. Within seven days of receipt of
such requests, the public agency shall remove such person’s identifying
information from such public access.

(53) Records of a public agency that would disclose the name, home
address, zip code, e-mail address, phone number or cell phone number or
other contact information for any person licensed to carry concealed
handguns or of any person who enrolled in or completed any weapons
training in order to be licensed or has made application for such license
under the personal and family protection act, K.S.A. 2012 Supp. 75-7c01
et seq., and amendments thereto.

(b) Except to the extent disclosure is otherwise required by law or as
appropriate during the course of an administrative proceeding or on ap-
pearance from agency action, a public agency or officer shall not disclose fi-
nancial information of a taxpayer which may be required or requested by
a county appraiser or the director of property valuation to assist in the
determination of the value of the taxpayer’s property for ad valorem tax-
ation purposes; or any financial information of a personal nature required
or requested by a public agency or officer, including a name, job descrip-
tion or title revealing the salary or other compensation of officers, em-

employees or applicants for employment with a firm, corporation or agency,
except a public agency. Nothing contained herein shall be construed to
prohibit the publication of statistics, so classified as to prevent identifi-
cation of particular reports or returns and the items thereof.

(c) As used in this section, the term “cited or identified” shall not
include a request to an employee of a public agency that a document be
prepared.

(d) If a public record contains material which is not subject to dis-
closure pursuant to this act, the public agency shall separate or delete
such material and make available to the requester that material in the
public record which is subject to disclosure pursuant to this act. If a public
record is not subject to disclosure because it pertains to an identifiable
individual, the public agency shall delete the identifying portions of the
record and make available to the requester any remaining portions which
are subject to disclosure pursuant to this act, unless the request is for a
record pertaining to a specific individual or to such a limited group of
individuals that the individuals’ identities are reasonably ascertainable, the
public agency shall not be required to disclose those portions of the record
which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt
from public disclosure statistical information not descriptive of any iden-
tifiable person.

(f) Notwithstanding the provisions of subsection (a), any public rec-

ord which has been in existence more than 70 years shall be open for
inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 7. K.S.A. 2012 Supp. 75-7c05 is hereby amended to read as follows: 75-7c05. (a) The application for a license pursuant to this act shall be completed, under oath, on a form prescribed by the attorney general and shall only include:

(1) (A) Subject to the provisions of subsection (a)(1)(B), the name, address, social security number, Kansas driver’s license number or Kansas nondriver’s license identification number, place and date of birth, a photocopy of the applicant’s driver’s license or nondriver’s identification card and a photocopy of the applicant’s certificate of training course completion; (B) in the case of an applicant who presents proof that such person is on active duty with any branch of the armed forces of the United States, or is the dependent of such a person, and who does not possess a Kansas driver’s license or Kansas nondriver’s license identification, the number of such license or identification shall not be required;

(2) a statement that the applicant is in compliance with criteria contained within K.S.A. 2012 Supp. 75-7c04, and amendments thereto;

(3) a statement that the applicant has been furnished a copy of this act and is knowledgeable of its provisions;

(4) a conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under K.S.A. 2012 Supp. 21-5903, and amendments thereto; and

(5) a statement that the applicant desires a concealed handgun license as a means of lawful self-defense.

(b) The applicant shall submit to the sheriff of the county where the applicant resides, during any normal business hours:

(1) A completed application described in subsection (a);

(2) except as provided by subsection (g), a nonrefundable license fee of $132.50, if the applicant has not previously been issued a statewide license or if the applicant’s license has permanently expired, which fee shall be in the form of two cashier’s checks, personal checks or money orders of $32.50 payable to the sheriff of the county where the applicant resides and $100 payable to the attorney general;

(3) a photocopy of a certificate or an affidavit or document as described in subsection (b) of K.S.A. 2012 Supp. 75-7c04, and amendments thereto, or if applicable, of a license to carry a firearm as described in subsection (d) of K.S.A. 2012 Supp. 75-7c03, and amendments thereto; and

(4) a full frontal view photograph of the applicant taken within the preceding 30 days.

(c) (1) The sheriff, upon receipt of the items listed in subsection (b) of this section, shall provide for the full set of fingerprints of the applicant to be taken and forwarded to the attorney general for purposes of a criminal history records check as provided by subsection (d). In addition, the sheriff shall forward to the attorney general a copy of the application and the portion of the original license fee which is payable to the attorney general. The cost of taking such fingerprints shall be included in the portion of the fee retained by the sheriff. Notwithstanding anything in this section to the contrary, an applicant shall not be required to submit fingerprints for a renewal application under K.S.A. 2012 Supp. 75-7c08, and amendments thereto.

(2) The sheriff of the applicant’s county of residence or the chief law enforcement officer of any law enforcement agency, at the sheriff’s or chief law enforcement officer’s discretion, may participate in the process by submitting a voluntary report to the attorney general containing readily discoverable information, corroborated through public records, which, when combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. Any such voluntary reporting shall
be made within 45 days after the date the sheriff receives the application. Any sheriff or chief law enforcement officer submitting a voluntary report shall not incur any civil or criminal liability as the result of the good faith submission of such report.

(3) All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff’s office which shall be used solely for the purpose of administering this act.

(d) Each applicant shall be subject to a state and national criminal history records check which conforms to applicable federal standards, including an inquiry of the national instant criminal background check system for the purpose of verifying the identity of the applicant and whether the applicant has been convicted of any crime or has been the subject of any restraining order or any mental health related finding that would disqualify the applicant from holding a license under this act. The attorney general is authorized to use the information obtained from the state or national criminal history record check to determine the applicant’s eligibility for such license.

(e) Within 90 days after the date of receipt of the items listed in subsection (b), the attorney general shall:

(1) Issue the license and certify the issuance to the department of revenue; or

(2) deny the application based solely on: (A) The report submitted by the sheriff or other chief law enforcement officer under subsection (c)(2) for good cause shown therein; or (B) the ground that the applicant is disqualified under the criteria listed in K.S.A. 2012 Supp. 75-7c04, and amendments thereto. If the attorney general denies the application, the attorney general shall notify the applicant in writing, stating the ground for denial and informing the applicant the opportunity for a hearing pursuant to the Kansas administrative procedure act.

(f) Each person issued a license shall pay to the department of revenue a fee for the cost of the license which shall be in amounts equal to the fee required pursuant to K.S.A. 8-243 and 8-246, and amendments thereto, for replacement of a driver’s license.

(g)(1) A person who is a retired law enforcement officer, as defined in K.S.A. 2012 Supp. 21-5111, and amendments thereto, shall be: (A) Required to pay an original license fee of $75, which fee shall be in the form of two cashier checks or money orders, $25 payable to the sheriff of the county where the applicant resides, and $50 payable to the attorney general, as provided in subsection (b)(2), to be forwarded by the sheriff to the attorney general; (B) exempt from the required completion of a handgun safety and training course if such person was certified by the Kansas commission on peace officer’s standards and training, or similar body from another jurisdiction, not more than eight years prior to submission of the application; (C) required to pay the license renewal fee; (D) required to pay to the department of revenue the fees required by subsection (f); and (E) required to comply with the criminal history records check requirement of this section.

(h) Proof of retirement as a law enforcement officer shall be required and provided to the attorney general in the form of a letter from the agency head, or their designee, of the officer’s retiring agency that attests to the officer having retired in good standing from that agency as a law enforcement officer for reasons other than mental instability and that the officer has a nonforfeitable right to benefits under a retirement plan of the agency.

(h) A person who is a corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons, as defined by K.S.A. 75-5202, and amendments thereto, shall be: (1) Required to pay an original license fee as provided in subsection (b)(2); (2) exempt from the required completion of a handgun safety and training course if such person was issued a certificate of firearms training by the department of corrections or the federal bureau of prisons or similar body not more than one year prior to submission of the application; (3) required to pay the license renewal fee; (4) required to pay to the department of revenue the fees required by subsection (f); and (5) required to comply with the criminal history records check requirement of this section.

Sec. 8. K.S.A. 2012 Supp. 75-7c06 is hereby amended to read as follows: 75-7c06. (a) The attorney general shall be the official custodian of
all records relating to licenses issued pursuant to the personal and family protection act.

(b) Except as provided by subsections (c) and (d), records relating to persons issued licenses pursuant to this act, persons applying for licenses pursuant to this act or persons who have had a license denied pursuant to this act shall be confidential and shall not be disclosed which enables identification of any such person pursuant to the Kansas open records act. Any disclosure of a record in violation of this subsection is a class A misdemeanor.

(c) Records of a person whose license has been suspended or revoked pursuant to this act shall be subject to public inspection in accordance with the open records act.

(d) The attorney general shall maintain an automated listing of license holders and pertinent information, and such information shall be available at all times to all law enforcement agencies in this state, other states and the District of Columbia when requested for a legitimate law enforcement purpose.

(e) Within 30 days after the changing of a permanent address, or within 30 days after the discovery that a license has been lost or destroyed, the licensee shall notify the attorney general of such change, loss or destruction. The attorney general, upon notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may order a licensee to pay a fine of not more than $100, or may suspend the licensee's license for not more than 180 days, for failure to notify the attorney general pursuant to the provisions of this subsection.

(f) In the event that a concealed handgun license is lost or destroyed, the license shall be automatically invalid, and the person to whom the license was issued, upon payment of $15 to the attorney general, may obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the attorney general that such license has been lost or destroyed.

Sec. 9. K.S.A. 2012 Supp. 75-7c10 is hereby amended to read as follows: 75-7c10. Subject to the provisions of section 2, and amendments thereto:

(a) Provided that the premises are building is conspicuously posted in accordance with rules and regulations adopted by the attorney general as premises building where carrying a concealed handgun is prohibited, no license issued pursuant to or recognized by this act shall authorize the licensee to carry a concealed handgun into the building of:

(1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;

(2) Any police, sheriff or highway patrol station;

(3) Any detention facility, prison or jail;

(4) Any courthouse, except that nothing in this section would preclude a judge from carrying a concealed handgun or determining who may carry a concealed handgun in the judge's courtroom;

(5) Any polling place on the day an election is held;

(6) Any state office;

(7) Any facility hosting a professional athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;

(8) Any facility hosting an athletic event not related to or involving firearms;

(9) Any drinking establishment as defined by K.S.A. 41-2601, and amendments thereto;

(10) Any elementary or secondary school, attendance center, administrative office, services center or other facility;

(11) Any community college, college or university;

(12) Any child exchange and visitation center provided for in K.S.A. 75-7c01 et seq., and amendments thereto;

(13) Any community mental health center organized pursuant to K.S.A. 59-3001 et seq., and amendments thereto, any mental health clinic organized pursuant to K.S.A. 65-241 et seq., and amendments thereto, any psychiatric hospital licensed under K.S.A. 75-3075, and amendments thereto, or a state psychiatric hospital, or following a closed state hospital, or a community mental health facility, or a state hospital or a federal mental health facility;

(14) Any public library operated by the state;
(15) any day care home or group day care home, as defined in Kansas administrative regulation 28-1-1115, or any preschool or childcare center, as defined in Kansas administrative regulation 28-1-420, or
(16) any place of worship.

(b) Nothing in this act shall be construed to prevent:
(1) Any public or private employer from restricting or prohibiting by personnel policies persons licensed under this act from carrying a concealed handgun while on the premises of the employer’s business or while engaged in the duties of the person’s employment by the employer, except that no employer may prohibit possession of a handgun in a private means of conveyance, even if parked on the employer’s premises; or
(2) any private business or city, county or political subdivision from restricting or prohibiting persons licensed or recognized under this act from carrying a concealed handgun within a building or buildings of such entity, provided that the premises is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f), as premises where carrying a concealed handgun is prohibited.

(c) (1) It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the premises are posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f). Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of:
(A) Not more than $50 for the first offense; or
(B) not more than $100 for the second offense. Any third or subsequent offense is a class B misdemeanor.

Any private entity which provides adequate security measures in a private building and which conspicuously posts signage in accordance with this section prohibiting the carrying of a concealed handgun in such building as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(2) Any private entity which does not provide adequate security measures in a private building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(3) Nothing in this act shall be deemed to increase the liability of any private entity where liability would have existed under the personal and family protection act prior to the effective date of this act.

(d) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may permit any employee, who is licensed to carry a concealed handgun as authorized by the provisions of K.S.A. 75-7c01 et seq., and amendments thereto, to carry a concealed handgun in any building of such institution, if the employee meets such institution’s own policy requirements regardless of whether such building is conspicuously posted in accordance with the provisions of this section:
(1) A unified school district;
(2) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto;
(3) a state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;
(4) a state or municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;
(5) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;
(6) a mental health clinic, as defined by K.S.A. 2012 Supp. 65-7402, and amendments thereto.

(e) (1) It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (h). Any person who violates this section shall not be subject to a criminal penalty but may be subject to denial to such premises or removal from such premises.

(2) Notwithstanding the provisions of subsection (a) or (b), it is not
a violation of this section for the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person who is not in compliance with K.S.A. 2012 Supp. 75-7c19, and amendments thereto.

(3) Notwithstanding the provisions of subsection (a) or (b), it is not a violation of this section for a law enforcement officer from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. §§ 926B and 926C, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district.

(f) On and after July 1, 2014, provided that the provisions of section 3, and amendments thereto, are in full force and effect, the provisions of this section shall not apply to the carrying of a concealed handgun in the state capitol.

(g) For the purposes of this section—

(1) "Adequate security measures" shall have the same meaning as the term is defined in section 2, and amendments thereto;

(2) "Building" shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

(h) Nothing in this act shall be construed to authorize the carrying or possession of a handgun where prohibited by federal law.

(i) The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on premises where carrying a concealed handgun is prohibited pursuant to subsections (a) and (b). Such regulations shall prescribe, at a minimum, that:

(1) The signs be posted at all exterior entrances to the prohibited building;

(2) the signs be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;

(3) the signs not be obstructed or altered in any way; and

(4) signs which become illegible for any reason be immediately replaced.

Sec. 10. K.S.A. 2012 Supp. 75-7c17 is hereby amended to read as follows: 75-7c17. (a) The legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed handguns for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed handguns for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person's rights. No city, county or other political subdivision of this state shall regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under this act except as provided in section 2, and amendments thereto, and subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, and amendments thereto. Any existing or future law, ordinance, rule, regulation or resolution enacted by any city, county or other political subdivision of this state that regulates, restricts or prohibits the carrying of concealed handguns by persons licensed under this act except as provided in section 2, and amendments thereto, and in subsection (b) of K.S.A. 2012 Supp. 75-7c10, and amendments thereto, and subsection (f) of K.S.A. 21-4218, prior to its repeal, or subsection (e) of K.S.A. 2012 Supp. 21-6309, and amendments thereto, shall be null and void.

(b) Prosecution of any person licensed under the personal and family protection act, and amendments thereto, for violating any restrictions on licensees “shall be done through the district court.

(c) The legislature does not delegate to the attorney general the au-
thority to regulate or restrict the issuing of licenses provided for in this act, beyond those provisions of this act pertaining to licensing and training. Subjective or arbitrary actions or rules and regulations which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this act or which create restrictions beyond those specified in this act are in conflict with the intent of this act and are prohibited.

(d) This act shall be liberally construed. This act is supplemental and additional to existing constitutional rights to bear arms and nothing in this act shall impair or diminish such rights.

Sec. 11. K.S.A. 2012 Supp. 21-6302, 21-6309, 45-221, 45-221j, 45-221k, 75-7c05, 75-7c06, 75-7c10 and 75-7c17 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

_____________________________
House adopted
Conference Committee Report

_____________________________
Speaker of the House

_____________________________
Chief Clerk of the House

Passed the SENATE
as amended

_____________________________
Senate adopted
Conference Committee Report

_____________________________
President of the Senate

_____________________________
Secretary of the Senate

APPROVED

_____________________________
Governor
17-35B-02 Armed Personnel in Schools  
Tennessee

Bill/Act: HB 6

Status: Signed into law on May 13, 2013.

Summary: Allows a person employed or assigned to a Local Education Agency to possess and carry a firearm on school grounds if they are current or former law enforcement. The person must have a handgun carry permit, have completed 40 hours in basic training in school policing, and have the written authorization of the director of schools and the principal.

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Comments: From the Commercial Appeal (April 19, 2013)
Specially trained teachers and school employees who are former law enforcement officers would be allowed to carry guns in schools. The local director of schools and the school’s principal would also have to approve which staffers come to school armed.

House Bill 6 — called the School Security Act of 2013 — will be the Tennessee legislature’s main response to the massacre of 20 first graders and six faculty and staff members at Sandy Hook Elementary School in Newtown, Conn., Dec. 14.

A separate resolution has passed that calls for state education officials to study the costs of a more comprehensive school safety plan and report the findings to lawmakers next year.

HB 6 set off a lively debate on the Senate floor Thursday when Sen. Stacey Campfield, R-Knoxville, who had sponsored a much broader bill allowing any school employee with a handgun-carry permit to go armed in schools, argued that it was “so watered down and so weak” that it’s been “neutered about as much we can neuter it.”

The sponsor, Sen. Frank Nicely, R-Strawberry Plains, said the redrawn bill represents a “consensus” among the governor, lawmakers, the Tennessee Sheriffs Association, Tennessee Police Chiefs Association and the state’s School Boards Association.

It does not mandate that local school systems alter their current policies on banning guns at school, but rather allows them to authorize school personnel who have handgun-carry permits and have undergone the more rigorous Peace Officer Standards and Training course required of police officers to carry firearms, with individual approval of the employee’s principal and the local director of schools. Carrying guns on school grounds will not become a “right” for school personnel.

The compromise focuses on allowing schools to hire retired law enforcement officers as school resource officers, who are also allowed to go armed at school, with the idea that retirees wishing to supplement their incomes would cost local schools less than hiring and training entire new staffs of resource officers.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13 and Title 49, Chapter 6, relative to carrying weapons on school property by certain employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "School Security Act of 2013".

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 6, Part 8, is amended by adding the following new section:

49-6-815. (a) Notwithstanding § 39-17-1309 or any other provision of title 39, chapter 17, part 13 to the contrary, the following people are permitted to possess and carry a firearm on the grounds of the school at which they are assigned:

(1) A person employed by an LEA as a faculty or staff member at a school within the LEA; or

(2) A person assigned to a school in accordance with a memorandum of understanding between the chief of the appropriate law enforcement agency and the LEA.

(b) In order to possess and carry a firearm on the grounds of the school pursuant to subsection (a), the person must:

(1) Be authorized to possess and carry a firearm pursuant to § 39-17-1351;

(2) Have the joint written authorization of the director of schools in conjunction with the principal of the school to carry or possess a firearm on school property; and

(3) Be a law enforcement officer, or have prior service as a law enforcement officer, as defined in § 39-11-106, and be in compliance with all laws, rules and regulations of the peace officer standards and training (POST) commission, and have successfully completed forty (40) hours in basic training in school policing as required by § 49-6-4217. Any such training shall be approved by the LEA and the cost of the training, firearm and ammunition shall be at the expense of the person seeking authorization and not the LEA.

(c)

(1) Within ten (10) days after the director of schools has authorized a person to carry or possess a firearm on school property pursuant to subdivision
(a)(1) or (a)(2), the director shall notify the chief of the appropriate law enforcement agency of each such authorization.

(2) The notification pursuant to this subsection shall contain basic information about each such person including name, address, contact information and whether the person is authorized under subdivision (a)(1) or (a)(2).

(d) The joint written authorization of the director of schools and the principal of the school given pursuant to subdivision (b)(2), the notification transmitted to the chief of the appropriate law enforcement agency pursuant to subdivision (c)(1), the names and contact information of any person authorized to carry or possess a firearm on school property pursuant to subdivision (c)(2), any listing or compilation of names or individual names of persons who are authorized to carry or possess a firearm on school property, whether the director of schools and the principal of the school have or have not issued joint written authorization to carry or possess a firearm on school property, or any other document, file, record, information or material relating to the carrying or possessing of a firearm on school property pursuant to this section that is received by, transmitted to, maintained, stored or compiled by the director of schools, the principal of the school, any LEA, or city, county or municipal law enforcement agency, shall be confidential and not open for public inspection.

(e) Nothing in § 49-3-315 shall be construed to require an LEA or a law enforcement agency of the county to assign or provide funding for a school resource officer as defined in § 49-6-4202 to any city school system within that county on the basis of the WFTEADA as defined by § 49-3-302. The providing of security or school resource officers by a sheriff shall be considered a law enforcement function and not a school operation or maintenance purpose that requires the apportionment of funds pursuant to § 49-3-315.

SECTION 3. This act shall take effect July 1, 2013 the public welfare requiring it and shall apply to the 2013-2014 academic year and each academic year thereafter.
17-35B-03 Uniform Correction or Clarification of Defamation

Bill/Act: **SB 5236**

Summary: Under the bill, a person may maintain an action for defamation when the person has made a timely and adequate request for correction or clarification from the defendant, or the defendant has made a correction or clarification. A person who, within 90 days after knowledge of the publication, fails to make a good-faith attempt to request a correction or clarification may recover only provable economic loss. According to the legislation, a request for correction or clarification is adequate when it:

- is made in writing and reasonably identifies the person making the request;
- specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication; alleges the defamatory meaning of the statement;
- specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than express language of the publication; states that the alleged defamatory meaning of the statement is false.

Status: Signed into law in May 2013.

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Comment: While the legislation was opposed by the Washington State Bar Association, the bill is has been supported by the Uniform Law Commission. Below is an excerpt from their summary of the issue:

A legal action for defamation seeks remedy for loss of reputation based upon a publication of false information about a person. The remedy traditionally comes in the form of money damages. Unlike other kinds of injury, however, lost reputation can be repaired by correction or clarification of the information that is defamatory—if the publication of the correction or clarification reaches the same audience or public as the original defamation did. In fact, restoration of reputation by correcting or clarifying the original publication may be the best remedy.

Moreover, under current law few persons who claim to be defamed recover any damages because of the difficulties in bringing such actions. This is true notwithstanding the very few large defamation awards that are reported in the news and media. A remedy may be denied because a publisher has immunity under the First Amendment to the U.S. Constitution. The First Amendment guarantees a free press and freedom of speech. There is inevitable tension between the First Amendment and defamation law. If a defamed person does lose because the publisher asserts a First Amendment privilege, the result is too often taken as confirmation of the underlying statement about the defamed person.

If correction or clarification of the original publication is an adequate remedy - maybe even a more just remedy that money damages - wouldn’t it make sense to encourage corrections or clarifications of a defamatory publication as an alternative to damages? Wouldn’t a defamed person, also, be more likely to obtain a remedy?
Because negotiations between the parties might lead to a correction or clarification of the defamatory statement which will restore the defamed person's reputation, the Uniform Law Commissioners promulgated the Uniform Correction or Clarification of Defamation Act (UCCDA) in 1993. The purpose of the UCCDA is to create significant incentives for the parties to explore a correction or clarification as an alternative to pursuing a law suit.

Several states adopted retraction statutes prior to 1993, but these efforts have been largely unsuccessful. Most apply only to an alleged defamation by newspapers whereas the UCCDA applies to all defamations. Most of these pre-UCCDA retraction statutes not only do not create sufficient incentives for correction or clarification but may create risks for the parties in any subsequent legal action. The UCCDA tries to extract the best principles from prior efforts and to provide a uniform method of achieving these objectives.

To maintain a defamation action, UCCDA requires a person who alleges a defamation to make a timely and adequate request to the publisher for a correction or clarification. A request is timely if made within the period of limitation for defamation actions, but, to preserve a right to damages that exceed economic losses (exemplary and punitive damages), the request must be made within 90 days of publication of the defamatory material.

The publisher of an alleged defamation may ask the defamed person for information respecting the falsity of the published information. The recovery of a defamed person, if that person unreasonably fails to disclose requested information going to the falsity of the publication, will be limited to economic losses.

Read more: 
http://uniformlaws.org/Act.aspx?title=Correction%20or%20Clarification%20of%20Defamation

Disposition of Entry:
SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
1 AN ACT Relating to the uniform correction or clarification of
defamation act; adding a new chapter to Title 7 RCW; and creating a new
section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. INTENT. Since the United States supreme
court recognized the First Amendment limitations on the common law tort
of defamation and defamation-like torts, courts have struggled to
achieve a balance between constitutionally protected guarantees of free
expression and the need to protect citizens from reputational harm.
Unlike personal injuries, harm to reputation can often be cured by
means other than money damages. The correction or clarification of a
published statement may restore a person's reputation more quickly and
more thoroughly than a victorious lawsuit. The salutary effect of a
correction or clarification is enhanced if it is published reasonably
soon after a statement is made.

This act seeks to provide strong incentives for individuals to
promptly correct or clarify an alleged false statement as an
alternative to costly litigation. The options created by this act
provide an opportunity for a plaintiff who believes he or she has been
harmed by a false statement to secure quick and complete vindication of
his or her reputation. This act provides publishers with a quick and
cost-effective means of correcting or clarifying alleged mistakes and
avoiding costly litigation.

NEW SECTION. Sec. 2. DEFINITION. The definition in this section
applies throughout this chapter unless the context clearly requires
otherwise.

"Person" means an individual, corporation, business trust, estate,
trust, partnership, association, joint venture, or other legal or
commercial entity. The term does not include a government or
governmental subdivision, agency, or instrumentality.

NEW SECTION. Sec. 3. SCOPE. (1) This chapter applies to any
claim for relief, however characterized, for damages arising out of
harm caused by the false content of a publication that is published on
or after the effective date of this section.

(2) This chapter applies to all publications, including writings,
broadcasts, oral communications, electronic transmissions, or other
forms of transmitting information.

NEW SECTION. Sec. 4. REQUEST FOR CORRECTION OR CLARIFICATION.
(1) A person may maintain an action for defamation or another claim
covered by this chapter only if:
   (a) The person has made a timely and adequate request for
correction or clarification from the defendant; or
   (b) The defendant has made a correction or clarification.

(2) A request for correction or clarification is timely if made
within the period of limitation for commencement of an action for
defamation.

(3) A request for correction or clarification is adequate if it:
   (a) Is made in writing and reasonably identifies the person making
   the request;
   (b) Specifies with particularity the statement alleged to be false
   and defamatory or otherwise actionable and, to the extent known, the
time and place of publication;
   (c) Alters the defamatory meaning of the statement;
(d) Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and

(e) States that the alleged defamatory meaning of the statement is false.

(4) In the absence of a previous adequate request, service of a summons and complaint stating a claim for defamation or another claim covered by this chapter and containing the information required in subsection (3) of this section constitutes an adequate request for correction or clarification.

(5) The period of limitation for commencement of a defamation action or another claim covered by this chapter is tolled during the period allowed in section 7(1) of this act for responding to a request for correction or clarification.

NEW SECTION. Sec. 5. DISCLOSURE OF EVIDENCE OF FALSITY. (1) A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory or otherwise actionable statement.

(2) If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law.

NEW SECTION. Sec. 6. EFFECT OF CORRECTION OR CLARIFICATION. If a timely and sufficient correction or clarification is made, a person may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law.

NEW SECTION. Sec. 7. TIMELY AND SUFFICIENT CORRECTION OR CLARIFICATION. (1) A correction or clarification is timely if it is published before, or within thirty days after, receipt of a request for correction or clarification or of the information in section 5(1) of this act, whichever is later, unless the period is extended by written agreement of the parties.

(2) A correction or clarification is sufficient if it:
(a) Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;

(b) Refers to the statement being corrected or clarified and:
   (i) Corrects the statement;
   (ii) In the case of defamatory or false meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
   (iii) In the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement;

(c) In advance of the publication, is provided to the person who has made a request for correction or clarification; and

(d) Accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory or otherwise actionable statement by the publisher.

(3) A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained of if it is published in a later issue, edition, or broadcast of the original publication.

(4) If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

   (a) It is timely published in a reasonably prominent manner:
      (i) In another medium likely to reach an audience reasonably equivalent to the original publication; or
      (ii) If the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed;

   (b) Reasonable steps are taken to correct undistributed copies of the original publication, if any; and

   (c) It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.

(5) A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.
NEW SECTION. Sec. 8. CHALLENGES TO CORRECTION OR CLARIFICATION OR TO REQUEST FOR CORRECTION OR CLARIFICATION. (1) If a defendant in an action governed by this chapter intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days after service of the summons and complaint or ten days after the correction or clarification is made, whichever is later.  

(2) If a defendant in an action governed by this chapter intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

NEW SECTION. Sec. 9. OFFER TO CORRECT OR CLARIFY. (1) If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory or otherwise actionable statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly harmed by the publication and:

(a) Contain the publisher's offer to:

(i) Publish, at the person's request, a sufficient correction or clarification; and

(ii) Pay the person's reasonable expenses of litigation, including attorneys' fees, incurred before publication of the correction or clarification; and

(b) Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

(2) If the person accepts in writing an offer to correct or clarify made pursuant to subsection (1) of this section:

(a) The person is barred from commencing an action against the publisher based on the statement; or

(b) If an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.

(3) A person who does not accept an offer made in conformance with subsection (1) of this section may not recover damages for injury to
reputation or presumed damages in an action based on the statement; however, the person may recover all other damages permitted by law, together with reasonable expenses of litigation, including attorneys' fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with section 4 of this act or failed to disclose information in accordance with section 5 of this act.

(4) On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.

NEW SECTION. Sec. 10. SCOPE OF PROTECTION. A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only because of the operation of section 7(2)(b)(iii) of this act does not constitute a correction or clarification made by the person to whom the statement is attributed.

NEW SECTION. Sec. 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

NEW SECTION. Sec. 12. SHORT TITLE. This chapter may be known and cited as the uniform correction or clarification of defamation act.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. Sections 2 through 12 of this act constitute a new chapter in Title 7 RCW.

--- END ---
Summary: The bill creates news criminal penalties for unlawful tethering of a domestic pet if a person uses a leash that is “not a reasonable length” for more than 10 hours in a 24-hour period. Violators of the statute can face a maximum fine of $1,000, as well as additional first-degree animal neglect charges if such tethering results in serious injury or the death of the animal.

Status: The law went into effect on January 1, 2014.

Comment: From a memo presented to the Oregon House Committee on Agriculture & Natural Resources:

WHAT THE MEASURE DOES: Creates offense of unlawful tethering of domestic animal in person’s custody or control and establishes offense as Class B violation. Specifies unlawful tethering if person tethers domestic animal in person’s custody or control: (1) with tether that is not reasonable length given size of animal and available space and allows animal to become entangled, (2) with collar that pinches or chokes animal when pulled, (3) for more than 10 hours in 24 hour period, or (4) for more than 15 hours in 24 hour period if tether attached to running line, pulley or trolley system. Establishes person does not commit offense if person tethers animal: (1) while animal remains in physical presence of person who owns or controls animal; (2) pursuant to requirements of campground or other recreational area, (3) to engage in activity that requires licensure, including hunting, (4) to allow person to transport animal, or (5) is a dog kept for herding, protecting livestock or dogsledding. Specifies that person commits crime of animal neglect in first degree if person tethers domestic animal and tethering results in serious injury or death to animal. Specifies that person commits crime of animal neglect in second degree if person tethers domestic animal and tethering results in physical injury to animal. Defines adequate bedding, adequate shelter and tethering.

Read more: https://olis.leg.state.or.us/liz/2013R1/Measures/Analysis/HB2783

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Enrolled
House Bill 2783

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

CHAPTER ..................................................

AN ACT

Relating to unlawful tethering; creating new provisions; and amending ORS 167.310, 167.325 and 167.330.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 167.310 to 167.351.

SECTION 2. (1) A person commits the offense of unlawful tethering if the person tethers a domestic animal in the person's custody or control:

(a) With a tether that is not a reasonable length given the size of the domestic animal and available space and that allows the domestic animal to become entangled in a manner that risks the health or safety of the domestic animal;

(b) With a collar that pinches or chokes the domestic animal when pulled;

(c) For more than 10 hours in a 24-hour period; or

(d) For more than 15 hours in a 24-hour period if the tether is attached to a running line, pulley or trolley system.

(2) A person does not violate this section if the person tethers a domestic animal:

(a) While the domestic animal remains in the physical presence of the person who owns, possesses, controls or otherwise has charge of the domestic animal;

(b) Pursuant to the requirements of a campground or other recreational area;

(c) For the purpose of engaging in an activity that requires licensure in this state, including but not limited to hunting;

(d) To allow the person to transport the domestic animal; or

(e) That is a dog kept for herding, protecting livestock or dogsledding.

(3) Unlawful tethering is a Class B violation.

SECTION 3. ORS 167.310 is amended to read:

167.310. As used in ORS 167.310 to 167.351:

(1) “Adequate bedding” means bedding of sufficient quantity and quality to permit a domestic animal to remain dry and reasonably clean and maintain a normal body temperature.

(2)(a) “Adequate shelter” includes a barn, dog house or other enclosed structure sufficient to protect a domestic animal from wind, rain, snow or sun, that has adequate bedding to protect against cold and dampness and that is maintained to protect the domestic animal from weather and physical injury.

(b) “Adequate shelter” does not include:

(A) Crawl spaces under buildings or parts of buildings, such as steps, decks or stoops;

(B) The space under a vehicle;
(C) The inside of a vehicle if the domestic animal is kept in the vehicle in a manner or for a length of time that is likely to be detrimental to the domestic animal’s health or safety;

(D) Shelters made from cardboard or other materials that are easily degraded by the elements;

(E) Animal carriers or crates that are designed to provide temporary housing;

(F) Shelters with wire or chain-link floors, unless the domestic animal is a bird; or

(G) Shelters surrounded by waste, debris, obstructions or impediments that could adversely affect an animal’s health.

[(I)] (3) “Animal” means any nonhuman mammal, bird, reptile, amphibian or fish.

[(J)] (4) “Domestic animal” means an animal, other than livestock or equines, that is owned or possessed by a person.

[(K)] (5) “Equine” means a horse, pony, donkey, mule, hinny, zebra or a hybrid of any of these animals.

[(L)] (6) “Good animal husbandry” includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry.

[(M)] (7) “Law enforcement animal” means a dog or horse used in law enforcement work under the control of a corrections officer, parole and probation officer, police officer or youth correction officer, as those terms are defined in ORS 181.610, who has successfully completed at least 360 hours of training in the care and use of a law enforcement animal, or who has passed the demonstration of minimum standards established by the Oregon Police Canine Association or other accredited and recognized animal handling organization.

[(N)] (8) “Livestock” has the meaning provided in ORS 609.125.

[(O)] (9) “Minimum care” means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal’s needs. Access to snow or ice is not adequate access to potable water.

(c) For a domestic animal other than a dog engaged in herding or protecting livestock, access to [a barn, dog house or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun and that has adequate bedding to protect against cold and dampness] adequate shelter.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) For a domestic animal, continuous access to an area:

(A) With adequate space for exercise necessary for the health of the animal;

(B) With air temperature suitable for the animal; and

(C) Kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health.

(f) For a livestock animal that cannot walk or stand without assistance:

(A) Humane euthanasia; or

(B) The provision of immediate and ongoing care to restore the animal to an ambulatory state.

[(P)] (10) “Physical injury” means physical trauma, impairment of physical condition or substantial pain.

[(Q)] (11) “Physical trauma” means fractures, cuts, punctures, bruises, burns or other wounds.

[(R)] (12) “Possess” has the meaning provided in ORS 161.015.

[(S)] (13) “Serious physical injury” means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ.

(14)(a) “Tethering” means to restrain a domestic animal by tying the domestic animal to any object or structure by any means.
(b) “Tethering” does not include using a handheld leash for the purpose of walking a domestic animal.

SECTION 4, ORS 167.330 is amended to read:

167.330. (1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:
   (a) Fails to provide minimum care for an animal in the person’s custody or control and the failure to provide care results in serious physical injury or death to the animal; or
   (b) Tethers a domestic animal in the person’s custody or control and the tethering results in serious physical injury or death to the domestic animal.

(2) Animal neglect in the first degree is a Class A misdemeanor.

SECTION 5, ORS 167.325 is amended to read:

167.325. (1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:
   (a) Fails to provide minimum care for an animal in such person’s custody or control; or
   (b) Tethers a domestic animal in the person’s custody or control and the tethering results in physical injury to the domestic animal.

(2) Animal neglect in the second degree is a Class B misdemeanor.

Passed by House April 10, 2013
Repassed by House June 6, 2013

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Ramona J. Line, Chief Clerk of House
Tina Kotek, Speaker of House

Passed by Senate June 4, 2013

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Peter Courtney, President of Senate

Enrolled House Bill 2783 (HB 2783-B)
Summary: This legislation amends existing state law bill to authorize the Supreme Court to admit to an applicant who is not lawfully present in the United States to practice law in the state, upon certification by a committee within the California State Bar that the applicant has fulfilled its admission requirements.

Status: Was signed into law in October 2013.

Comment: From a January 2014 San Jose Mercury News article:
Citing a new state law allowing persons living in the country illegally to get their law licenses, the California Supreme Court on Thursday paved the way for a Chico man to fulfill his dream of becoming an attorney despite his not being a U.S. citizen.

In a unanimous ruling, the state Supreme Court determined there is no reason to block Sergio Garcia's bid for a California law license, now that a new law permits the state's high court to give such licenses to immigrants who are not yet citizens. State legislators, backed by Gov. Jerry Brown, pushed the legislation last fall as Garcia's case was unfolding in the Supreme Court, which has a final say on licensing California attorneys.

During arguments in the fall, the justices appeared unlikely to back Garcia because federal immigration law precludes giving a law license to people living in this country illegally. But the court invited the Legislature to fix the problem if it wanted to solve the conflict with federal laws. In Thursday's ruling, the Supreme Court concluded that there is no longer reason to deny a law license to Garcia, or other immigrants in his position.

"We conclude there is no state law or state public policy that would justify precluding undocumented immigrants, as a class from obtaining a law license in California," Chief Justice Tani Cantil-Sakauye wrote for the court.

Garcia, a law school graduate who has waited for his green card for nearly a decade, has been in limbo while the state Supreme Court determined whether it had the legal authority to give him a law license. Attorney General Kamala Harris and the State Board of Bar Examiners backed Garcia in the Supreme Court, but the Obama administration argued that federal immigration law prevents such licensing unless a state adopts a specific law allowing law licenses for illegal immigrants.

U.S. Justice Department lawyers abandoned their opposition to Garcia's law license once the governor signed the legislation removing the primary impediment to his quest to become a lawyer.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Assembly Bill No. 1024

CHAPTER 573

An act to amend Section 6064 of the Business and Professions Code, relating to attorneys.

[ Approved by Governor October 05, 2013. Filed with Secretary of State October 05, 2013. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 1024, Gonzalez. Attorneys: admission to practice.

Existing law authorizes the Supreme Court to admit an applicant as an attorney at law in all the courts of the state, upon certification by the examining committee of the State Bar of California that the applicant has fulfilled the requirements for admission to practice law, as specified.

This bill would additionally authorize the Supreme Court to admit to the practice of law an applicant who is not lawfully present in the United States, upon certification by the committee that the applicant has fulfilled those requirements for admission, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6064 of the Business and Professions Code is amended to read:

6064. (a) Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit the applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission therefore shall be given to the applicant by the clerk of the court.

(b) Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit...
that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.
Summary: Creates enhanced penalties and prohibitions for those convicted of scrap metal theft. Permanently prohibits a person who is convicted of scrap metal theft from selling scrap metal and subjects a person convicted of certain crimes (felony theft, criminal mischief) to an enhanced sentence of an additional five year term of imprisonment at the discretion of the court if the property stolen or damaged is nonferrous metal (including aluminum, copper, lead, nickel, tin, titanium, etc.).

Status: Signed into law on April 18, 2013.

Comments: Insurance companies, law enforcement officials and industry watchdogs have called scrap metal theft—including the theft of copper, aluminum, nickel, stainless steel and scrap iron—one of the fastest-growing crimes in the United States. State lawmakers have reacted to the metal theft problem, passing a flurry of legislation meant to curb metal theft and help law enforcement find and prosecute criminals. All 50 states have passed legislation designed to curb metal theft. Arkansas passed a law in 2013 that places a lifetime ban on those convicted of metal theft from selling scrap metal in the future.
For An Act To Be Entitled

AN ACT CONCERNING ACCOMPlice LIABILITY FOR THEFT OF SCRAP METAL OR THEFT BY RECEIVING OF SCRAP METAL; TO INCREASE CIVIL PENALTIES; TO PROHIBIT A PERSON FROM SELLING SCRAP METAL UNDER CERTAIN CONDITIONS; REQUIRING TIMELY ELECTRONIC RECORDS; TO PROVIDE FOR PENALTIES FOR NONCOMPLIANCE; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE SALE, PURCHASE, OR TRANSFER OF SCRAP METAL; CONCERNING WHO MAY OR MAY NOT ENTER INTO SCRAP METAL TRANSACTIONS; AND CONCERNING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-36-106, concerning the offense of theft by receiving, is amended to add a new subsection to read as follows:

(f) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the stolen property was nonferrous metal, as it is defined in § 17-44-101.

SECTION 2. Arkansas Code § 5-36-123(a), concerning the offense of theft of scrap metal, is amended to read as follows:

(a) A person commits theft of scrap metal if he or she commits, aids, or is an accomplice to a commission of theft of property under § 5-36-103(a)
and the property is scrap metal.

SECTION 3. Arkansas Code § 5-36-124(b), concerning the offense of theft by receiving of scrap metal, is amended to read as follows:

(b) A person commits the offense of theft by receiving of scrap metal if he or she receives, retains, purchases, or disposes of scrap metal of another person knowing and he or she knows or should have known that the scrap metal was stolen.

SECTION 4. Arkansas Code § 5-36-124, concerning the offense of theft by receiving of scrap metal, is amended to add a new subsection to read as follows:

(d) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the scrap metal was nonferrous metal, as it is defined in § 17-44-101.

SECTION 5. Arkansas Code § 5-38-203, concerning the offense of criminal mischief in the first degree, is amended to add a new subsection to read as follows:

(d) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the damage to property involved the removal of nonferrous metal, as it is defined in § 17-44-101.

SECTION 6. Arkansas Code § 5-38-204, concerning the offense of criminal mischief in the second degree, is amended to add a new subsection to read as follows:

(c) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the damage to property involved the removal of nonferrous metal, as it is defined in § 17-44-101.

SECTION 7. Arkansas Code § 17-44-102(f), concerning records of scrap
metal transactions, is amended to read as follows:

(f)(1)(A) For records required under subsections (a) and (d) of this section, a scrap metal recycler shall file a daily electronic record of scrap metal purchases made for that day.

(2)(B) The report shall be made daily by entering the information into an automated database which may be interfaced accessed by law enforcement statewide.

(2)(A) The operator of the electronic database under this section shall send a report that shall include a list of all scrap metal recyclers in the county that have accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section:

(i) To the county sheriff every seven (7) days; and
(ii) To any law enforcement agency that requests periodic copies of the report more frequently than every seven (7) days.

(B)(i) A scrap metal recycler who fails to file a daily electronic record of scrap metal purchases as required by this section shall be subject to the civil penalty provided for under § 17-44-106(a) for the first offense.

(ii) A second violation of the daily reporting requirement of this section is a Class A misdemeanor.

(iii) A third or subsequent violation is a Class D felony.

(C) The report by the operator of the electronic database shall include a list of all scrap metal recyclers in the county that have accessed or that have access to the database but have not filed a daily electronic record of scrap metal purchases as required by this section.

SECTION 8. Arkansas Code § 17-44-106 is amended to read as follows:

17-44-106. Penalties.

(a) A person who violates this chapter may be assessed a civil penalty of no more than five hundred dollars ($500) one thousand dollars ($1,000) per violation.

(b) Any person who knowingly gives false information with respect to the matters required to be maintained in the records provided for in this chapter is guilty of a Class A misdemeanor.
SECTION 9. Arkansas Code Title 17, Chapter 44, is amended to add additional sections to read as follows:

17-44-107. Lifetime ban.

(a) A person who is convicted of theft of scrap metal under § 5-36-123 is forever prohibited from selling scrap metal under this chapter.

(b) A person violating this section is subject to the civil penalties under § 17-44-106.

17-44-108. License to sell required.

(a)(1) A license is required for all scrap metal recyclers to be issued by the county sheriff.

(2)(A) A license under this section shall cost two hundred and fifty dollars ($250) and may be renewed annually for twenty-five dollars ($25.00).

(B) The fees described in subsection (a)(2)(A) do not apply to a not-for-profit scrap metal dealer or not-for-profit scrap metal recycler.

(3) The license fee shall be payable to the county sheriff and shall be used for the county sheriff's general operating expenses.

(b) Before a license may be issued under this section, a person operating as a scrap metal recycler shall:

(1) Have a fixed physical location with a full complement of permanent utilities, if applicable, including without limitation:

(A) Water;

(B) Sewer;

(C) Electricity; and

(D) Gas;

(2) Show proof of a required national pollution discharge elimination system stormwater permit issued by Arkansas Department of Environmental Quality; and

(3) Have the ability to comply with online reporting as required by this chapter.

(c) A license under this section may be suspended or revoked by a court having jurisdiction if the prosecuting attorney shows in a civil action that a scrap metal recycler has failed to comply with the requirements of
this subchapter.

/s/Williams
Bill/Act: SB 174

Summary: SB 174, also referred to as Carly’s Law for 3-year-old Carly Chandler of Birmingham, who suffers from a severe neurological disorder, legalizes a prescription treatment for neurological and epileptic disorders utilizing cannabidiol derived from the cannabis plant and grants exclusive authorization for the prescription of such drugs to the University of Alabama at Birmingham’s Department of Neurology. The Act permits the possession of such drugs by those diagnosed with specific neurological and epileptic disorders and their caregivers, subject to a prescription. The Act establishes parameters around cannabidiol by requiring that it be nonpsychoactive and that it contain a THC level of no more than 3 percent. As modified by the House, the bill also provides $1 million to the University of Alabama at Birmingham to examine the effectiveness of marijuana-derived oil to treat seizure disorders such as epilepsy.

Status: Signed into law April 1, 2014.

Read more:
http://blog.al.com/wire/2014/03/alabama_senate_approves_carlys.html
http://blog.al.com/wire/2014/03/alabama_house_passes_carlys_la.html
http://blog.al.com/wire/2014/03/carlys_law_calling_for_uab_stu.html

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
ENROLLED, An Act,

Relating to the possession and use of cannabidiol (CBD) pursuant to a prescription for a debilitating epileptic condition; to provide a defense of necessity in a prosecution for the unlawful possession of marijuana when the defendant has a debilitating epileptic condition and possesses or uses cannabidiol (CBD) pursuant to an authorized prescription; to provide a defense of necessity in a prosecution for the unlawful possession of marijuana when a parent or caretaker possesses cannabidiol (CBD) on behalf of a person with an authorized prescription for the medication due to a debilitating epileptic condition and where the parent or caretaker's possession of the CBD is on behalf of the prescribed person's use only; to provide that the Department of Neurology at the University of Alabama at Birmingham will establish a research and development study purposed to determine medical uses and benefits of cannabidiol (CBD) for individuals with debilitating epileptic conditions; to provide the Department of Neurology at the University of Alabama at Birmingham with the exclusive authorization for the prescription and use of cannabidiol (CBD) in the treatment of individuals diagnosed with debilitating epileptic conditions;
and in connection therewith would have as its purpose or
effect the requirement of a new or increased expenditure of
local funds within the meaning of Amendment 621 of the
Constitution of Alabama of 1901, now appearing as Section
111.05 of the Official Recompilation of the Constitution of
Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited
as "Carly's Law."

Section 2. (a) As used in this section, the
following words shall have the following meanings:

(1) AUTHORIZED BY THE UAB DEPARTMENT. Authorized by
the UAB Department means that Cannabidiol (CBD) has been
prescribed by a health care practitioner employed by or on
behalf of the UAB Department.

(2) CANNABIDIOL (CBD). [13956-29-1]. A
(nonpsychoactive) cannabinoid found in the plant Cannabis
sativa L. or any other preparation thereof that is essentially
free from plant material, and has a THC level of no more than
3 percent. Also known as (synonyms):
2-[(1R,6R)-3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-p
entyl-1,3-benzenediol;
trans-(−)-2-p-mentha-1,8-dien-3-yl-5-pentylresorcinol;
(−)-Cannabidiol; (−)-trans-Cannabidiol; Cannabidiol (7CI);
D1(2)-trans-Cannabidiol.
(3) DEBILITATING EPILEPTIC CONDITION. Epilepsy or other neurological disorder, or the treatment of epilepsy or other neurological disorder that, as diagnosed by a board-certified neurologist under the employment or authority of the UAB Department, produces serious, debilitating, or life-threatening seizures.

(4) UAB DEPARTMENT. The Department of Neurology at the University of Alabama at Birmingham, its successors or any subdivisions.

(b) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to the prosecution that the defendant has a debilitating epileptic condition and used or possessed cannabidiol (CBD) pursuant to a prescription authorized by the UAB Department.

(c) In a prosecution for the unlawful possession of marijuana under the laws of this state, it is an affirmative and complete defense to the prosecution that the defendant possessed cannabidiol (CBD) because he or she is the parent or caretaker of an individual who has a debilitating epileptic condition and who has a prescription for the possession and use of cannabidiol (CBD) as authorized by the UAB Department, and where the parent or caretaker's possession of the CBD is on behalf of and otherwise for the prescribed person's use only.
(d) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home of a parent based solely upon the parent's or child's possession or use of cannabidiol (CBD) as authorized by this act.

(e) A prescription for the possession or use of cannabidiol (CBD) as authorized by this act shall be provided exclusively by the UAB Department for a debilitating epileptic condition. Health care practitioners of the UAB Department shall be the sole authorized source of any prescription for the use of cannabidiol (CBD), and shall be the sole authorized source to use cannabidiol (CBD) in or as a part of the treatment of a person diagnosed with a debilitating epileptic condition. A health care practitioner of the UAB Department shall have the sole authority to determine the use or amount of cannabidiol (CBD), if any, in the treatment of an individual diagnosed with a debilitating epileptic condition.

(f) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant or agent thereof, shall not be subject to prosecution for the unlawful possession, use, distribution or prescription of marijuana under the laws of this state for its activities arising directly out of or directly related to the prescription or use of cannabidiol
(CBD) in the treatment of individuals diagnosed with a debilitating epileptic condition.

(g) The UAB Department will establish a research and development study purposed to determine medical uses and benefits of cannabidiol (CBD) for individuals with debilitating epileptic conditions.

(h) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant or agent thereof, shall not be subject to prosecution for the unlawful possession, use, or distribution of marijuana under the laws of this state for its activities arising directly out of or directly related to the department's research and development activities in pursuit of medical benefits and uses of cannabidiol (CBD), as long as the prescription, treatment or use of cannabidiol (CBD) is provided only to individuals diagnosed with a debilitating epileptic condition.

(i) Pursuant to the filing requirements of Rule 15.3 of the Alabama Rules of Criminal Procedure, the defendant shall produce a valid prescription, certification of a debilitating epileptic condition, and the name of the prescribing health care professional authorized by the UAB Department.

Section 3. The provisions of this act shall terminate in five years.
Section 4. Nothing in this act shall be construed to allow or accommodate the prescription, testing, medical use or possession of any other form of Cannabis other than that defined by Section 2 of this act.

Section 5. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 6. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
Bill/Act: HB 2578

Summary: HB 2578 creates new law concerning the transfer of certain federally regulated firearms. The bill also amends current statutes and creates new provisions of law concerning the regulation and possession of weapons, including firearms, handguns, and knives.

Specifically, the bill addresses:

- **Transfers of certain federally regulated firearms**
  Under the provisions of the bill, applications for certification of firearms’ transfers by the local jurisdiction’s chief law enforcement officer, as required by federal law, must be granted within 15 days, unless a condition exists that prevents the chief law enforcement officer from certifying the transfer. The bill provides that a generalized belief by the chief law enforcement officer that certain firearms have no lawful purpose and that certain persons should not possess such firearms shall not be sufficient reason to deny certification requests. If the request for certification is not granted, the chief law enforcement officer, or someone designated by the officer, is required to provide the applicant with written notification of the denial of certification and the reason for the denial.

  The bill also allows applicants to appeal denials of requests for certification of firearms’ transfers in the district court of the county where the applicant resides. After reviewing the denial of certification, if the district court finds the applicant is not prohibited by state or federal law from receiving the firearm and there is no pending legal or administrative proceeding against the applicant that could result in such prohibition, the court is required to order the chief law enforcement officer to issue the certification.

  Chief law enforcement officers certifying and approving transfers under the provisions of the bill are not liable for any act committed by another person with the firearm after the transfer.

- **Concealed carrying of handguns**
  The bill creates new prohibitions for municipalities related to their employees and specifically to employees who are concealed carry license holders. Municipal employers of concealed carry license holders cannot require disclosure by municipal employees who possess concealed carry of handgun licenses. Municipalities cannot terminate, demote, discipline, or otherwise discriminate against an employee based on the employee’s refusal to disclose the employee’s status as a concealed carry license holder. Municipal employers are prohibited from creating a record of any employee’s possession or disclosure of a concealed carry license. The bill requires any such records created by a municipality before the effective date of the bill be destroyed by July 31, 2014.

  The bill adds a conviction for any criminal possession of a weapon offense to include all weapons, and not only firearms, as a reason the Attorney General will deny an
application for a concealed carry handgun license. This provision also requires the Attorney General to deny the concealed carry application of an applicant whose juvenile offenses, had the offenses been committed by an adult.

- Open carrying of firearms
  The bill adds new posting requirements for buildings where the open carrying of firearms can be prohibited as authorized in this legislation. The new provision makes it a violation of this statute to carry an unconcealed firearm into a building that was conspicuously posted according to the new requirements and posted in accordance with the rules and regulations of the Attorney General.

  The bill replaces the law concerning the operation, possession, or carrying of a concealed handgun under the influence of alcohol or illegally used controlled substances with a new provision applying the penalties for possessing or carrying any firearm under the influence, not just concealed handguns addressed in current law.

  The bill defines “possession of a firearm under the influence” as knowingly possessing or carrying a loaded firearm on or about such person, or within such person’s immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm. The bill amends the current standards of evidence to be used in prosecutions related to possession of firearms under the influence to make them more consistent with existing law related to driving under the influence of drugs or alcohol. The bill also establishes civil penalties for refusal to submit to testing required under the bill ($1,000 for each violation) and license revocations for concealed carry license holders after conviction of possession of a firearm while under the influence (revocation of concealed carry license for a minimum of one year for a first offense and three years for a second or subsequent offense.)

- Regulation of firearms and knives by local units of government
  Statutes passed during the 2013 Session are expanded to prohibit cities and counties from adopting or enforcing ordinances, resolutions, regulations, or administrative actions governing the purchase, transfer, ownership, storage, carrying, or transporting of firearms, ammunition, or any related component. Cities and counties also are prohibited from adopting or enforcing any ordinances, resolutions, or regulations relating to the sale of firearms by individuals having federal firearms licenses, if the local controls are more restrictive than any other ordinance, resolution, or regulation governing the sale of any other commercial good. Ordinances, resolutions, or regulations adopted before the effective date of the bill are deemed null and void.

  Cities and counties are permitted to adopt ordinances, resolutions, or regulations relative to the personnel policies governing concealed carry of handguns by city or county employees, so long as in compliance with this law. A new provision shields local units of government from being liable for the wrongful acts or omissions related to carrying a firearm, including acts or omissions by municipal employees.
The bill repeals statutory provisions delegating to local units of government the authority to regulate open carry and transportation of a firearm.

Legislation from the 2013 Session is expanded with regard to municipal regulation of knives. Municipalities cannot enact or enforce any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components. Any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components that is more restrictive than regulation on any other commercial product is prohibited. Such ordinances, resolutions, regulations, or taxes adopted prior to the effective date of the bill are void.

Additionally, individuals cannot be prosecuted for violating municipal regulations on knives or knife-making components between July 1, 2013, and the effective date of the bill (July 1, 2014). Violations occurring before the effective date are added to the list of reasons for which a court will be required to order expungement of an individual’s record and any person convicted of any municipal violation before the effective date will be given the ability to petition the court for expungement.

- Forfeiture, return, and buyback of firearms
  The bill repeals certain provisions concerning the forfeiture of firearms, adding new language that weapons or ammunition not covered elsewhere by statutes must be, at the discretion of the court:
    - Forfeited to the law enforcement agency that seized the weapon for sale or trade to a licensed federal firearms dealer;
    - Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, or comparison by the forensic laboratory;
    - Forfeited to a county forensic laboratory for law enforcement, testing, or comparison; or
    - Forfeited to the Kansas Department of Wildlife, Parks and Tourism.

The bill also addresses the return of seized weapons. Individuals not convicted of a violation and not prosecuted as juveniles must be notified that the weapon can be retrieved by the individuals after the law enforcement agency verifies the weapon is not stolen. Such notification must include the location where the weapon can be retrieved and occur within 30 days of the conclusion of prosecution. Weapons that cannot be returned, are not forfeited because of the condition of the weapon, or were used in the case of a murder or manslaughter will be destroyed. The existing statute concerning forfeiture is repealed and the new forfeiture provisions are moved to the general criminal procedures statute.

The bill prohibits local government taxes from being used to implement, administer, or operate a firearms buyback program. The firearms buyback program is defined in the bill as “any program wherein individuals are offered the opportunity to gift, sell, or otherwise transfer ownership of such individual’s firearm to a city or county.”
- Criminal use of weapons
  Daggers, dirks, dangerous knives, straight-edged razors, and stilettos are added to the list of prohibited weapons, and the possession of any such dangerous weapon with the intent to use it against another person now constitute the crime of criminal use of a weapon.

  The bill adds language to existing law, exempting use of a firearm with a barrel less than 12 inches by a person less than 18 years of age, at a private range with permission of that person’s parent or legal guardian, from the crime of criminal use of a weapon. The bill also deletes language requiring a person who is less than 18 years of age to know or have reason to know that the barrel of the firearm that a person possesses is less than 12 inches long in order to be guilty of criminal use of a weapon.

- Criminal possession of weapons
  The bill broadens language to refer to criminal possession of a weapon instead of criminal possession of only a firearm. Additionally, the bill adds references to a previous version of the drug code to ensure that conviction of drug crimes gives rise to the crime of criminal possession of a weapon.

  [link to summary]

Status: Signed into law April 23, 2014.

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Comment: *The Kansas City Star* (April 23, 2014)

The governor has signed a bill that will bar local governments from enforcing local gun ordinances, his office announced Wednesday morning.

HB 2578 is the brainchild of Rep. Jim Howell, R-Derby. Having a universal gun law across the state will make it easier for gun owners to follow and easier for law enforcement officials to enforce, he says.

The bill, signed by Gov. Sam Brownback on Tuesday, will prevent local governments from restricting open carry or from collecting information on which municipal employees have permits to conceal and carry.

It also includes a provision that prohibits someone from carrying a gun while intoxicated, similar to laws against drunk driving.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) When the transfer of a firearm requires certification by a chief law enforcement officer in accordance with 27 C.F.R. § 479.85, in effect on January 24, 2003, a person may apply for such certification to a chief law enforcement officer. Within 15 days of receipt of a request for certification, the chief law enforcement officer shall provide such certification and approve the transfer unless a condition as provided in 27 C.F.R. § 479.85 exists which the chief law enforcement officer cannot certify because of specific acts or information directly related to the applicant. A generalized belief by the chief law enforcement officer that certain types of firearms have no lawful purpose or should not be possessed even by those who are not otherwise prohibited by law from possessing or receiving them shall not be sufficient reason to deny certification under this section. If certification of the application is not completed, the chief law enforcement officer, or such officer's designee, shall provide written notification to the applicant that certification of the application cannot be completed and the reason for such denial of certification.

(b) Any applicant whose request for certification is denied pursuant to subsection (a), may appeal such denial to the district court of the county in which the applicant resides. The district court shall review any denial of certification de novo. If the district court finds that the applicant is not prohibited by state or federal law from receiving the firearm and that there is no pending legal or administrative proceeding against the applicant which could result in such prohibition, the district court shall order the chief law enforcement officer to issue the certification. In addition to such other relief as may be ordered, the district court may award the applicant court costs and reasonable attorney's fees.

(c) Any chief law enforcement officer who certifies and approves the transfer of a firearm pursuant to this section shall not be held liable in any civil or criminal action for any act committed by another person with such firearm following such transfer.

(d) For purposes of this section:
(1) “Certification” means the written certificate required under 27 C.F.R. § 479.85, in effect on January 24, 2003, to be completed by a chief law enforcement officer for the approval of an application to transfer a firearm.
(2) “Chief law enforcement officer” means a person holding any of the offices described in 27 C.F.R. § 479.85, in effect on January 24, 2003, as eligible to provide the required certification for the transfer of a firearm.
(3) “Firearm” shall have the same meaning as provided in the federal national firearms act, 26 U.S.C. § 5845, in effect as of the effective date of this act.

New Sec. 2. (a) No city or county shall expend any funds derived from the proceeds of any tax levied by such city or county or any political subdivision thereof, for the purpose of implementing, administering or otherwise operating a firearms buyback program.

(b) For purposes of this section:
(1) “Firearm” shall have the same meaning as that term is defined in K.S.A. 2013 Supp. 21-5111, and amendments thereto.
(2) “Firearms buyback program” means any program wherein individuals are offered the opportunity to gift, sell or otherwise transfer ownership of such individual’s firearm to a city or county.

New Sec. 3. (a) No employee of a municipality shall be required to disclose to such person’s employer the fact that such employee possesses a valid license to carry a concealed handgun. No employee shall be terminated, demoted, disciplined or otherwise discriminated against due to such employee’s refusal to disclose the fact that the employee possesses a valid license to carry a concealed handgun. No municipality shall create or maintain a record of an employee’s possession of a valid license to carry a concealed handgun, or that an employee has disclosed the fact that such employee possesses a valid license to carry a concealed handgun. Any such record created and maintained by a municipality on or before June
30, 2014, shall be destroyed by such municipality on or before July 31, 2014.

(b) For purposes of this section, the term “municipality” has the same meaning as that term is defined in K.S.A. 75-6102, and amendments thereto.

(c) This section shall be a part of and supplemental to the personal and family protection act.

New Sec. 4. (a) No municipality shall be liable for any wrongful act or omission relating to the actions of any person carrying a firearm, including employees of such municipality, concerning acts or omissions regarding such firearm.

(b) For purposes of this section, the term “municipality” has the same meaning as that term is defined in K.S.A. 75-6102, and amendments thereto.

New Sec. 5. (a) Provided that the building is conspicuously posted in accordance with rules and regulations adopted by the attorney general as a building where carrying an unconcealed firearm is prohibited, it shall be unlawful to carry an unconcealed firearm into such building.

(b) Nothing in this section shall be construed to prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer’s duties.

(c) It shall be a violation of this section to carry an unconcealed firearm if the building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (d). Any person who violates this section shall not be subject to a criminal penalty but may be subject to denial to such premises or removal from such premises.

(d) (1) The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on a building where carrying an unconcealed firearm is prohibited pursuant to subsection (a). Such regulations shall prescribe, at a minimum, that:

(A) The signs be posted at all exterior entrances to the prohibited buildings;

(B) the signs be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;

(C) the signs not be obstructed or altered in any way;

(D) signs which become illegible for any reason be immediately replaced; and

(E) except as provided in paragraph (2), signs shall include the following, which shall be printed in large, conspicuous print: “The open carrying of firearms in this building is prohibited.”

(2) Such rules and regulations shall provide that the same signage used to prohibit the carrying of concealed handguns under K.S.A. 75-7c01 et seq., and amendments thereto, may be used to also prohibit the carrying of unconcealed firearms.

New Sec. 6. (a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person’s immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.

(b) Possession of a firearm under the influence is a class A nonperson misdemeanor.

(c) This section shall not apply to:

(1) A person who possesses or carries a firearm while in such person’s own dwelling or place of business or on land owned or possessed by such person; or

(2) the transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.

(d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person’s blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.

(e) (1) If a law enforcement officer requests a person to submit to a
test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:

(A) A person licensed to practice medicine and surgery, licensed as a physician’s assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse;

(C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

(D) a phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person’s life, cause serious injury to the person or seriously impede the person’s medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility may act on good faith provided the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not be liable in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person’s safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).

(7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:

(A) A person licensed to practice medicine and surgery, licensed as a physician’s assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse; or

(C) a law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

(8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who
is acting in accordance with this section shall not be liable in any civil and
criminal proceeding involving the action.

(f) (1) The person’s refusal shall be admissible in evidence against the
person at any trial on a charge arising out of possession of a firearm under
the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or sam-

ples as directed shall constitute a refusal unless the person shows that the
failure was due to physical inability caused by a medical condition unre-
lated to any ingested alcohol or drugs.

(3) In any criminal prosecution for a violation of this section, if the
court finds that a person refused to submit to testing when requested
pursuant to this section, the county or district attorney, upon petition to
the court, may recover on behalf of the state, in addition to the criminal
penalties provided in this section, a civil penalty not exceeding $1,000 for
each violation.

(g) If a person who holds a valid license to carry a concealed handgun
issued pursuant to K.S.A. 2013 Supp. 75-7c01 et seq., and amendments
thereto, is convicted of a violation of this section, such person’s license
to carry a concealed handgun shall be revoked for a minimum of one year
for a first offense and three years for a second or subsequent offense.

(h) In any criminal prosecution for possession of a firearm under
the influence of alcohol or drugs, or both, evidence of the concentration of
alcohol or drugs in the defendant’s blood, urine, breath or other bodily
substance may be admitted and shall give rise to the following:

(1) If the alcohol concentration is less than .08, that fact may be con-
sidered with other competent evidence to determine if the defendant was
under the influence of alcohol or drugs, or both.

(2) If the alcohol concentration is .08 or more, it shall be prima facie
evidence that the defendant was under the influence of alcohol.

(i) If there was present in the defendant’s bodily substance any nar-
cotic, hypnotic, somnifacient, stimulating or other drug which has the
capacity to render the defendant incapacitated, that fact may be consid-
ered to determine if the defendant was under the influence of alcohol or
drugs, or both.

(i) The provisions of subsection (h) shall not be construed as limiting
the introduction of any other competent evidence bearing upon the ques-
tion of whether or not the defendant was under the influence of alcohol
or drugs, or both.

(j) Upon the request of any person submitting to testing under this
section, a report of the results of the testing shall be made available to
such person.

Sec. 7. K.S.A. 2013 Supp. 12-16,124 is hereby amended to read as
follows: 12-16,124. (a) No city or county shall adopt or enforce any ordi-
nance, resolution or regulation, and no agent of any city or county shall
take any administrative action, governing the purchase, transfer, owner-
ship, storage, carrying or transporting of firearms or ammunition, or any
component or combination thereof. Except as provided in subsection (b)
of this section and subsection (b) of K.S.A. 2013 Supp. 75-7c10, and
amendments thereto, any such ordinance, resolution or regulation
adopted prior to the effective date of this 2007 act shall be null and void.

(b) No city or county shall adopt or enforce any ordinance, resolution
or regulation relating to the sale of a firearm by an individual, who holds
a federal firearms license, that is more restrictive than any ordinance,
resolution or regulation relating to the sale of any other commercial good.

(c) Any ordinance, resolution or regulation prohibited by either sub-
section (a) or (b) that was adopted prior to July 1, 2014, shall be null and
c Void.

(d) Nothing in this section shall:

(1) Prohibit a city or county from adopting and enforcing any ordi-
nance, resolution or regulation relating to the personnel policies of such
city or county and the carrying of firearms by employees of such city or
county, except that any such ordinance, resolution or regulation shall
comply with the provisions of K.S.A. 2013 Supp. 75-7c01 et seq., and
amendments thereto;

(2) Prohibit a city or county from adopting any ordinance, resolution
or regulation pursuant to K.S.A. 2013 Supp. 75-7c20, and amendments
thereto; or
(3) prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties;

(2) prohibit a city or county from regulating the manner of openly carrying a loaded firearm on one's person or in the immediate control of a person not licensed or recognized under the personal and family protection act while on property open to the public;

(3) prohibit a city or county from regulating in any manner the carrying of any firearm in any jail, juvenile detention facility, prison, court house, or courthouse annex in the city or county;

(4) prohibit a city or county from adopting an ordinance, resolution or regulation requiring a firearm transported in any air, land or water vehicle to be unloaded and encased in a container which completely encloses the firearm or any less restrictive provision governing the transporting of firearms, provided such ordinance, resolution or regulation shall not apply to persons licensed or recognized under the personal and family protection act.

(c) Except as provided in subsection (b) of this section and subsection (b) of K.S.A. 2013 Supp. 75-7c10, and amendments thereto, no person shall be prosecuted or convicted of a violation of any ordinance, resolution or regulation of a city or county which regulates the storage or transportation of a firearm if such person: (1) Is storing or transporting the firearm without violating any provision of the Kansas criminal code; or (2) is otherwise transporting the firearm in a lawful manner.

(d) No person shall be prosecuted under any ordinance, resolution or regulation for transporting a firearm in any air, land or water vehicle if the firearm is unloaded and encased in a container which completely encloses the firearm.

Sec. 8. K.S.A. 2013 Supp. 12-16,134 is hereby amended to read as follows: 12-16,134. (a) A municipality shall not enact or enforce any ordinance, resolution or regulation relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration or use of a knife or knife-making components.

(b) A municipality shall not enact or enforce any ordinance, resolution or regulation relating to the manufacture of a knife that is more restrictive than any such ordinance, resolution or regulation relating to the manufacture of any other commercial goods.

(c) Any ordinance, resolution or regulation prohibited by either subsection (a) or (b) that was adopted prior to July 1, 2014, shall be null and void.

(d) No action shall be commenced or prosecuted against any individual for a violation of any ordinance, resolution or regulation that is prohibited by either subsection (a) or (b) and which was adopted prior to July 1, 2014, if such violation occurred on or after July 1, 2013.

(e) As used in this section:

(1) “Knife” means a cutting instrument and includes a sharpened or pointed blade.

(2) “Municipality” has the same meaning as defined in K.S.A. 75-6102, and amendments thereto, but shall not include unified school districts, jails, as defined in K.S.A. 38-2302, and amendments thereto, or juvenile correctional facilities, as defined in K.S.A. 38-2302, and amendments thereto.

Sec. 9. K.S.A. 2013 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d) and (e), and (f), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d) and (f), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Any person convicted of a violation of any ordinance that is pro-
hbited by either subsection (a) or (b) of K.S.A. 2013 Supp. 12-16,134, and amendments thereto, and which was adopted prior to July 1, 2014, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records.

(c) Any person convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 2013 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, “coercion” means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

d) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 2013 Supp. 21-3405b, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

e) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

f) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-2,144, and amendments thereto.

g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state the:

(A) Defendant’s full name;
(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant’s current name;
(C) defendant’s sex, race and date of birth;
(D) crime for which the defendant was arrested, convicted or diverted;
(E) date of the defendant’s arrest, conviction or diversion; and
(F) identity of the convicting court, arresting law enforcement agency or diverting authority.
(2) A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section.

(3) Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) At the hearing on the petition, the court shall order the petitioner’s arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department for children and families;

(B) in any application for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner’s qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner’s qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner’s qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver’s license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner’s qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner’s qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-9602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner’s qualifications for a license to carry a concealed
weapon pursuant to the personal and family protection act, K.S.A. 2013 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(j) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) Subject to the disclosures required pursuant to subsection (j), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of the department for children and families, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department for children and families of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and
prospective managers, licensees and certificate holders; and (B) their officers, employees, owners, agents and contractors;

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto.

Sec. 10. K.S.A. 2013 Supp. 12-4516a is hereby amended to read as follows: 12-4516a. (a) Any person who has been arrested on a violation of a city ordinance of this state may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. The petition shall state:

(1) The petitioner's full name;

(2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;

(3) the petitioner's sex, race and date of birth;

(4) the crime for which the petitioner was arrested;

(5) the date of the petitioner's arrest; and

(6) the identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2013 Supp. 21-6107, and amendments thereto. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

(1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings;

(4) the arrest was for a violation of any ordinance that is prohibited by either subsection (a) or (b) of K.S.A. 2013 Supp. 12-16,134, and amendments thereto, and which was adopted prior to July 1, 2014; or

(5) the expungement would be in the best interests of justice and:

(A) Charges have been dismissed; or (B) no charges have been or are likely to be filed.
(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes:

1. In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

2. In any application for admission, or for an order of reinstatement, to the practice of law in this state;

3. To aid in determining the petitioner’s qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

4. To aid in determining the petitioner’s qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

5. In any application for a commercial driver’s license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

6. To aid in determining the petitioner’s qualifications to be an employee of the state gaming agency;

7. To aid in determining the petitioner’s qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

8. In any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court’s possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

1. Completing a person’s criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

2. Providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person’s qualification to possess a firearm.

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(h) Whenever a petitioner’s arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

Sec. 11. K.S.A. 2013 Supp. 21-6301 is hereby amended to read as follows: 21-6301. (a) Criminal use of weapons is knowingly:

1. Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star;

2. Possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character;

3. Setting a spring gun;
(4) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;

(6) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight, whether the person knows or has reason to know that the plastic-coated bullet has a core of less than 60% lead by weight;

(7) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

(8) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(10) possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(11) possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(12) refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(13) possessing any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto; or

(14) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a class A nonperson misdemeanor;

(2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson felony;

(3) subsection (a)(10) or (a)(11) is a class B nonperson misdemeanor;

(4) subsection (a)(13) is a severity level 8, nonperson felony; and

(5) subsection (a)(14) is:

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

(B) severity level 8, nonperson felony upon a second or subsequent conviction.

(c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention
of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

d. Subsections (a)(4) and (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee’s name by the transferor.

e. Subsection (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

f. Subsection (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer’s law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer’s law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer’s possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

g. Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

h. Subsections (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

i. Subsection (a)(11) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person’s behalf who is delivering or collecting a student;

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or

(5) possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. 2013 Supp. 75-7c01 et seq., and amendments thereto.

j. Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2013 Supp. 75-7c26, and amendments thereto.

k. Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter’s safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, or at another private range with permission of such person’s parent or legal guardian;

(3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of
the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(5) traveling with any such firearm in such person’s possession being unloaded to or from any activity described in subsections (k)(1) through (k)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person’s parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person’s residence and who, with the permission of such person’s parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 2013 Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto.

(l) As used in this section, “throwing star” means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Sec. 12. K.S.A. 2013 Supp. 21-6304 is hereby amended to read as follows: 21-6304. (a) Criminal possession of a firearm by a convicted felon is possession of any firearm by a person who:

(1) Has been convicted of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, and was found to have been in possession of a firearm at the time of the commission of the crime;

(2) within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(3)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was not found to have been in possession of a firearm at the time of the commission of the crime; or

(3) within the preceding 10 years, has been convicted of a:

(A) Felony under K.S.A. 2013 Supp. 21-5402, 21-5403, 21-5404, 21-5405, 21-5406, 21-5407, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of 21-5507, and amendments thereto; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto; K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b, 65-4159 through 65-4165 or 65-7006, prior to their repeal; an attempt, conspiracy or criminal solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2013 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such felony; or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was not found to have been in possession of a firearm at the time of the commission of the crime, and has not had the conviction of such crime expunged or been pardoned for such crime. The provisions of subsection (j)(2) of K.S.A. 2013 Supp. 21-6614, and amendments...
thereto, shall not apply to an individual who has had a conviction under this paragraph expunged; or

(B) nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the crime.

(b) Criminal possession of a firearm by a convicted felon is a severity level 8, nonperson felony.

(c) As used in this section:

(1) "Knife" means a dagger, dirk, switchblade, stiletto, straight-edged razor or any other dangerous or deadly cutting instrument of like character; and

(2) "weapon" means a firearm or a knife.

Sec. 13. K.S.A. 2013 Supp. 22-2512 is hereby amended to read as follows:

22-2512. (1)

(a) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held and shall file a copy of such receipt with the magistrate before whom the person detained or arrested is taken. Where seized property is no longer required as evidence in the prosecution of any indictment or information, the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

(b) Notwithstanding the provisions of subsection (a) and with the approval of the affected court, any law enforcement officer who seizes hazardous materials as evidence related to a criminal investigation may collect representative samples of such hazardous materials, and lawfully destroy or dispose of, or direct another person to lawfully destroy or dispose of the remaining quantity of such hazardous materials.

(c) In any prosecution, representative samples of hazardous materials accompanied by photographs, videotapes, laboratory analysis reports or other means used to verify and document the identity and quantity of the material shall be deemed competent evidence of such hazardous materials and shall be admissible in any proceeding, hearing or trial as if such materials had been introduced as evidence.

(d) As used in this section, the term "hazardous materials" means any substance which is capable of posing an unreasonable risk to health, safety and property. It shall include any substance which by its nature is explosive, flammable, corrosive, poisonous, radioactive, a biological hazard or a material which may cause spontaneous combustion. It shall include, but not be limited to, substances listed in the table of hazardous materials contained in the code of federal regulations title 49 and national fire protection association’s fire protection guide on hazardous materials.

(e) The provisions of this subsection shall not apply to ammunition and components thereof.

(f) When property seized is no longer required as evidence, it shall be disposed of as follows:

(1) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;

(2) money shall be restored to the owner unless it was contained in a slot machine or otherwise used in unlawful gambling or lotteries, in which case it shall be forfeited, and shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(3) property which is unclaimed or the ownership of which is unknown shall be sold at public auction to be held by the sheriff and the proceeds, less the cost of sale and any storage charges incurred in pre-
serving it, shall be paid to the state treasurer pursuant to K.S.A. 20-2801, and amendments thereto;

(4) articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law shall be dealt with as so provided and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (2)(b) (c)(3);

(5) firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime, may be returned to the rightful owner, or in the discretion of the court having jurisdiction of the property, destroyed or forfeited to the Kansas bureau of investigation as provided in K.S.A. 2013 Supp. 21-6207, and amendments thereto;

(6) (A) except as provided in subsections (c)(6)(B) and (d), any weapon or ammunition, in the discretion of the court having jurisdiction of the property, shall be:

(i) Forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency’s use;

(ii) forfeited to the Kansas bureau of investigation for law enforcement, testing or comparison by the Kansas bureau of investigation forensic laboratory;

(iii) forfeited to a county regional forensic science center, or other county forensic laboratory for testing, comparison or other forensic science purposes; or

(iv) forfeited to the Kansas department of wildlife, parks and tourism for use pursuant to the conditions set forth in K.S.A. 32-1047, and amendments thereto.

(B) Except as provided in subsection (d), any weapon which cannot be forfeited pursuant to subsection (c)(6)(A) due to the condition of the weapon, and any weapon which was used in the commission of a felony as described in K.S.A. 2013 Supp. 21-5401, 21-5402, 21-5403, 21-5404 or 21-5405, and amendments thereto, shall be destroyed.

(7) controlled substances forfeited for violations of K.S.A. 2013 Supp. 21-5701 through 21-5717, and amendments thereto, shall be dealt with as provided under K.S.A. 60-4101 through 60-4126, and amendments thereto;

(8) unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

(d) If a weapon is seized from an individual and the individual is not convicted of or adjudicated as a juvenile offender for the violation for which the weapon was seized, then within 30 days after the declination or conclusion of prosecution of the case against the individual, including any period of appeal, the law enforcement agency that seized the weapon shall certify that the weapon is not stolen, and upon such certification shall notify the person from whom it was seized that the weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.

(e) If weapons are sold as authorized by subsection (c)(6)(A), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

(f) For purposes of this section, the term “weapon” means a weapon described in K.S.A. 2013 Supp. 21-6201, and amendments thereto.

Sec. 14. K.S.A. 2013 Supp. 32-1047 is hereby amended to read as follows: 32-1047. The department is hereby empowered and directed to seize and possess any wildlife which is taken, possessed, sold or transported unlawfully, and any steel trap, snare or other device or equipment used in taking or transporting wildlife unlawfully or during closed season. The department is hereby authorized and directed to:

(a) Sell the seized item, including wildlife parts with a dollar value, and remit the proceeds to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. If the seized item is a firearm that has been forfeited pursuant to K.S.A. 19-2801, and amendments thereto, then it may be sold unless: (1) The firearm is significantly altered in any manner; or (2) the sale and
public possession of such firearm is otherwise prohibited by law. Upon
receipt of each such remittance, the state treasurer shall deposit the entire
amount in the state treasury to the credit of the wildlife fee fund; or
(b) retain the seized item for educational, scientific or department
operational purposes.

Sec. 15. K.S.A. 2013 Supp. 75-7c04 is hereby amended to read as
follows: 75-7c04. (a) The attorney general shall not issue a license pur-
suant to this act if the applicant:
(1) is not a resident of the county where application for licensure is
made or is not a resident of the state;
(2) is prohibited from shipping, transporting, possessing or receiving
a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amend-
ments thereto, or K.S.A. 21-4204, prior to its repeal, or subsections (a)(10)
through (a)(13) of K.S.A. 2013 Supp. 21-6301 or subsections (a)(1)
through (a)(3) of K.S.A. 2013 Supp. 21-6304, and amendments thereto;
(3) has been convicted of or was adjudicated a juvenile offender be-
cause of the commission of an act which if done by an adult would con-
stitute the commission of any of the offenses described in subsections (a)(1)
and (a)(3)(A) of K.S.A. 2013 Supp. 21-6304, and amendments thereto; or
(4) is less than 21 years of age.
(b) (1) The attorney general shall adopt rules and regulations estab-
lishing procedures and standards as authorized by this act for an eight-
hour handgun safety and training course required by this section. Such
standards shall include: (A) A requirement that trainees receive training
in the safe storage of handguns, actual firing of handguns and instruction
in the laws of this state governing the carrying of concealed handguns
and the use of deadly force; (B) general guidelines for courses which are
compatible with the industry standard for basic handgun training for ci-
vilians; (C) qualifications of instructors; and (D) a requirement that the
course be: (i) A handgun course certified or sponsored by the attorney
general; or (ii) a handgun course certified or sponsored by the national
rifle association or by a law enforcement agency, college, private or public
institution or organization or handgun training school, if the attorney gen-
eral determines that such course meets or exceeds the standards required
by rules and regulations adopted by the attorney general and is taught by
instructors certified by the attorney general or by the national rifle asso-
ciation, if the attorney general determines that the requirements for cer-
tification of instructors by such association meet or exceed the standards
required by rules and regulations adopted by the attorney general. Any
person wanting to be certified by the attorney general as an instructor
shall submit to the attorney general an application in the form required
by the attorney general and a fee not to exceed $150.
(2) The cost of the handgun safety and training course required by
this section shall be paid by the applicant. The following shall constitute
satisfactory evidence of satisfactory completion of an approved handgun
safety and training course:
(A) Evidence of completion of the course, in the form provided by
rules and regulations adopted by the attorney general;
(B) an affidavit from the instructor, school, club, organization or
group that conducted or taught such course attesting to the completion
of the course by the applicant; or
(C) a determination by the attorney general pursuant to subsection
(d) of K.S.A. 2013 Supp. 75-7c03, and amendments thereto.

Sec. 16. K.S.A. 2013 Supp. 75-7c20 is hereby amended to read as
follows: 75-7c20. (a) The carrying of a concealed handgun as authorized
by the personal and family protection act shall not be prohibited in any
state or municipal building unless such building has adequate security
measures to ensure that no weapons are permitted to be carried into such
building and the building is conspicuously posted in accordance with
K.S.A. 2013 Supp. 75-7c10, and amendments thereto.
(b) Any state or municipal building which contains both public access
entrances and restricted access entrances shall provide adequate security
measures at the public access entrances in order to prohibit the carrying
of any weapons into such building.
(c) No state agency or municipality shall prohibit an employee who
is licensed to carry a concealed handgun under the provisions of the per-

sonal and family protection act from carrying such concealed handgun at the employee’s work place unless the building has adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto.

(d) It shall not be a violation of the personal and family protection act for a person to carry a concealed handgun into a state or municipal building so long as that person is licensed to carry a concealed handgun under the provisions of the personal and family protection act and has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto.

(e) A state agency or municipality which provides adequate security measures in a state or municipal building and which conspicuously posts signage in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building, as authorized by the personal and family protection act, such state agency or municipality shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(f) A state agency or municipality which does not provide adequate security measures in a state or municipal building and which allows the carrying of a concealed handgun as authorized by the personal and family protection act shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun concerning acts or omissions regarding such handguns.

(g) Nothing in this act shall limit the ability of a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of a handgun or other firearm concealed or unconcealed by any person into any secure area of a building located on such premises, except those areas of such building outside of a secure area and readily accessible to the public shall be subject to the provisions of subsection (b).

(h) Nothing in this section shall limit the ability of the chief judge of each judicial district to prohibit the carrying of a concealed handgun by any person into courtrooms or ancillary courtrooms within the district provided that other means of security are employed such as armed law enforcement or armed security officers.

(i) The governing body or the chief administrative officer, if no governing body exists, of a state or municipal building, may exempt the building from this section until January 1, 2014, by notifying the Kansas attorney general and the law enforcement agency of the local jurisdiction by letter of such exemption. Thereafter, such governing body or chief administrative officer may exempt a state or municipal building for a period of only four years by adopting a resolution, or drafting a letter, listing the legal description of such building, listing the reasons for such exemption, and including the following statement: “A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act.” A copy of the security plan for the building shall be maintained on file and shall be made available, upon request, to the Kansas attorney general and the law enforcement agency of local jurisdiction. Notice of this exemption, together with the resolution adopted or the letter drafted, shall be sent to the Kansas attorney general and to the law enforcement agency of local jurisdiction. The security plan shall not be subject to disclosure under the Kansas open records act.

(j) The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may exempt any building of such institution from this section for a period of four years only by stating the reasons for such exemption and sending notice of such exemption to the Kansas attorney general:

(1) A state or municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;
(2) a state or municipal-owned adult care home, as defined in K.S.A. 39-925, and amendments thereto;
(3) a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;
(4) an indigent health care clinic, as defined by K.S.A. 2013 Supp. 65-7402, and amendments thereto; or

(5) a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto, including any buildings located on the grounds of such institution and any buildings leased by such institution.

(k) The provisions of this section shall not apply to any building located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.

(l) For purposes of this section:

(1) “Adequate security measures” means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.

(2) The terms “municipality” and “municipal” are interchangeable and have the same meaning as the term “municipality” is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.

(3) “Restricted access entrance” means an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel.

(4) “State” means the same as the term is defined in K.S.A. 75-6102, and amendments thereto.

(5) (A) “State or municipal building” means a building owned or leased by such public entity. It does not include a building owned by the state or a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by the state or a municipality solely for reasons of revenue bond financing.

(B) On and after July 1, 2014, provided that the provisions of K.S.A. 2013 Supp. 75-7c21, and amendments thereto, are in full force and effect, the term “state and municipal building” shall not include the state capitol.

(6) “Weapon” means a weapon described in K.S.A. 2013 Supp. 21-6301, and amendments thereto, except the term “weapon” shall not include any cutting instrument that has a sharpened or pointed blade.

(m) This section shall be a part of and supplemental to the personal and family protection act.

Sec. 17. K.S.A. 2013 Supp. 12-16,124, 12-16,134, 12-4516, 12-4516a, 21-6301, 21-6304, 21-6307, 22-2512, 32-1047, 75-7c04, 75-7c12 and 75-7c20 are hereby repealed.
Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above bill originated in the House, and was adopted by that body.

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HOUSE adopted
Conference Committee Report

_________________________
Speaker of the House

_________________________
Chief Clerk of the House

Passed the Senate
as amended

SENATE adopted
Conference Committee Report

_________________________
President of the Senate

_________________________
Secretary of the Senate

APPROVED

_________________________
Governor
SB 268 requires a provider of wireless telecommunications to provide call location information concerning the telecommunications device of a user to a law enforcement agency in certain circumstances; requires a provider of wireless telecommunications to submit its emergency contact information to the Department of Public Safety; requires the Department to maintain a database of such emergency contact information; authorizes the Department to adopt regulations; and provides other matters properly relating thereto.

Federal law authorizes, but does not require, telecommunications carriers to provide call location information concerning the user of a commercial mobile service in certain emergency situations. This bill requires a provider of wireless telecommunications to provide, upon the request of a law enforcement agency, the most accurate call location information readily available concerning the telecommunications device of a user to assist the law enforcement agency in certain emergency situations. This bill requires a provider of wireless telecommunications to submit its emergency contact information to the Department of Public Safety to facilitate such requests from law enforcement agencies. This bill requires the Department to maintain a database of such emergency contact information and to make the information available to a law enforcement agency immediately upon request. This bill authorizes the Department to adopt any necessary regulations to carry out the provisions of this bill.

Status: Signed into law May 23, 2013.

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Comments: Fox News (April 13, 2013)
When 18-year-old Kelsey Smith was abducted in broad daylight outside a Kansas shopping mall in 2007, the teen's parents spent four harrowing days searching for their daughter, whose body was found after police scoured an area close to a tower where her cellphone last pinged.

But the search for the young woman would have ended much sooner had Verizon Wireless promptly handed over cellphone records to authorities, according to Smith's mother as well as a U.S. congressman – both of whom are calling for legislation mandating that all cellphone carriers provide police with a customer's location information in an emergency.

Current federal law allows cellphone companies to release information to police in certain situations, but it does not require them to do so. “Kelsey’s Law” seeks to mandate it on the state and ultimately national level.

Smith, who just 10 days prior had graduated from high school, was forced into her car by 26-year-old Edwin Roy "Jack" Hall as she walked through the parking lot of a Target store behind the Oak Park Mall in Overland Park, Kansas, on June 2, 2007. Hall drove Smith 20 miles across state lines to Missouri, where he raped and strangled the young woman with her own belt, leaving her body covered in brush in woods near a lake.
Smith's parents acknowledge that their daughter was likely killed by the time authorities were notified of her disappearance – and that any information obtained by Verizon would not have changed that outcome.

“It would not have saved Kelsey’s life,” Missey Smith said of the law she is advocating, “But it would have saved us four days of agony not knowing where our child was.” Verizon eventually released the information four days after she disappeared, and her body was found within an hour.

Sgt. Charles Tippie of the Overland Police Department, who worked on the case, said the teen’s cellphone provider was cooperative to the extent that it could be six years ago. “Did Verizon have easily available to them the technical capacity to identify the specific location of a phone?” Tippie said. “That information was available to their engineers back in the day, but it wasn’t available to the Verizon person we contacted at 2 o’clock in the morning. That has now changed,” he said. “We call them up and say we have an emergency and we get the information immediately.”

But that isn’t always the case for local law enforcement in many states. Only nine have adopted Kelsey’s Law, requiring cellphone companies to release pertinent information to police in an emergency, like an abducted teenager or an elderly person who wanders off and can’t be found. Since Kansas adopted the law in 2009, Nebraska, Minnesota, New Hampshire, North Dakota, Missouri, Hawaii, Tennessee and Utah have followed suit.

Missey Smith and her husband, Greg, a Kansas state senator, are the law's toughest proponents, traveling the country to lobby the legislation by speaking before lawmakers in various states. The couple visited Rhode Island last week and Nevada on Monday.

“The information is readily available to cellphone providers within 15 to 20 minutes and we could not get our cell provider at the time to release that information,” Missey Smith told FoxNews.com. “This is not an issue of privacy. It’s not a matter of content – we’re not asking for text messages or information about who the person is contacting. We’re simply asking for the location of the phone. This law costs zero to implement,” she added. “And it absolutely saves lives.”

Such was the case in Loudon County, Tenn., in May 2012, one month after the governor signed the bill into law. Local authorities there were able to quickly obtain cellphone records from Verizon leading them to a suspected child rapist who was believed to have snatched a child.

"They had reason to believe the child was in imminent danger, and we were able to use the Kelsey Smith Act to obtain the location of the suspect’s cellphone without having to go through a court order process," said Jennifer Estes, president of the Tennessee Emergency Number Association.

In most cases, victims of abductions by strangers are killed within a very narrow window of time -- making it imperative for law enforcement to obtain cellphone records quickly.
"Time is of the essence when a child is missing -- the first 3 hours are critical to recovering a child alive," John Ryan, chief executive officer of the National Center for Missing & Exploited Children, said in an email to FoxNews.com. "Law enforcement must be able to obtain cellphone locations as quickly as possible in these circumstances. We support the efforts to clarify current laws to prevent any delays in disclosing this information in cases of missing children, which includes persons under age 21 under federal law."

Debra Lewis, a spokeswoman for Verizon, said the phone carrier supports the Smiths in their effort to pass the bill, but declined to comment further on the legislation.

Groups like the American Civil Liberties Union say proposals such as Kelsey’s Law raise some privacy concerns.

“The major one is that it removes a check on when law enforcement can access this type of information,” Chris Calabrese, legislative counsel for the ACLU, told FoxNews.com. “An emergency can’t be a magic word – where all police have to do is say ‘emergency’ and cellphone companies release information,” he said.

While Calabrese acknowledged that the vast majority of calls by local police are legitimate emergencies, many have also been proven not to be.

“People want companies to safeguard their information and this removes their discretion to do that,” he said.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Senate Bill No. 268—Senators Ford, Jones, Kihuen, Spearman; Atkinson, Manendo and Woodhouse

Joint Sponsors: Assemblymen Frierson; Healey and Spiegel

CHAPTER..........

AN ACT relating to telecommunications; requiring a provider of wireless telecommunications to provide call location information concerning the telecommunications device of a user to a law enforcement agency in certain circumstances; requiring a provider of wireless telecommunications to submit its emergency contact information to the Department of Public Safety; requiring the Department to maintain a database of such emergency contact information; authorizing the Department to adopt regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Federal law authorizes, but does not require, telecommunications carriers to provide call location information concerning the user of a commercial mobile service in certain emergency situations. (47 U.S.C. § 222(d)(4)) Section 5 of this bill requires a provider of wireless telecommunications to provide, upon the request of a law enforcement agency, the most accurate call location information readily available concerning the telecommunications device of a user to assist the law enforcement agency in certain emergency situations. Section 6 of this bill requires a provider of wireless telecommunications to submit its emergency contact information to the Department of Public Safety to facilitate such requests from law enforcement agencies. Section 6 also requires the Department to maintain a database of such emergency contact information and to make the information available to a law enforcement agency immediately upon request. Section 7 of this bill authorizes the Department to adopt any necessary regulations to carry out the provisions of this bill.

EXPLANATION – Matter in bolded italics is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 707 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.
Sec. 3. “Department” means the Department of Public Safety.

Sec. 4. “Provider of wireless telecommunications” means a person that is licensed by the Federal Communications Commission to provide wireless telecommunications services over a designated radio frequency and is authorized to do business in or submits to the jurisdiction of this State. The term includes a reseller of wireless telecommunications services.

Sec. 5. 1. Upon the request of a law enforcement agency, a provider of wireless telecommunications shall provide call location information concerning the telecommunications device of a user to assist the law enforcement agency in responding to a call for emergency services or in an emergency situation that involves the immediate risk of death or serious physical harm. The provider of wireless telecommunications shall provide the most accurate call location information readily available, given any technical or other limitations that may affect the accuracy of the call location information in the relevant area.

2. Notwithstanding any other provision of law, nothing in this section prohibits a provider of wireless telecommunications from establishing any protocols which enable the provider to disclose call location information voluntarily in an emergency situation that involves the immediate risk of death or serious physical harm.

3. No cause of action may be brought against any provider of wireless telecommunications, its officers, employees or agents for providing call location information while acting in good faith and in accordance with the provisions of sections 2 to 7, inclusive, of this act.

Sec. 6. 1. Any provider of wireless telecommunications shall submit its emergency contact information to the Department to facilitate requests from law enforcement agencies for call location information in accordance with section 5 of this act. Such emergency contact information must be submitted:

(a) Annually; and

(b) As soon as practicable following any change in emergency contact information.

2. The Department shall maintain a database which contains all emergency contact information received pursuant to subsection 1 and shall make such information available to a law enforcement agency immediately upon request.

Sec. 7. The Department may adopt such regulations as are necessary to carry out the provisions of sections 2 to 7, inclusive, of this act.
Sec. 8. This act becomes effective:
1. Upon passage and approval for the purpose of adopting regulations; and
2. On October 1, 2013, for all other purposes.
False Reporting of Emergencies

California

Bill/ Act: SB 333

Summary: The bill amends existing law to ensure that a person who knowingly reports a false emergency would be liable to a public agency for the reasonable costs of the emergency response by the public agency. Previous California law allowed a person to be convicted or a misdemeanor or felony (depending on severity) and fined for purposely misreporting an emergency, but did not allow for agencies to recoup reasonable expenses.

Status: Signed into law on September 9, 2013.

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Comment: From the California Statewide Law Enforcement Association (August 23, 2013)

Reckless pranksters who get a thrill out of making false reports of an emergency and getting law enforcement to respond "code three" to a situation that does not exist will have to pay up under Senate Bill 333.

The bill provides that those convicted of the offense would be responsible for the full cost of the police response. The cost of responding to these types of calls can amount to thousands of dollars, particularly if SWAT officers are called upon.

It is not only a drain on emergency response resources, "swatting" is dangerous for the officers who respond and the homeowners who are suddenly surprised by officers rushing in with guns drawn. Celebrities in Los Angeles County are often the victims of "swatting." Miley Cyrus, Khloe Kardashian, Justin Timberlake, Rihanna, Tom Cruise, Ashton Kutcher have all been victims of swatting incidents.

Read more:

Disposition of Entry:

SSL Committee Meeting: 2015 B
 ( ) Include in Volume
 ( ) Defer consideration:
 ( ) next SSL mtg.
 ( ) next SSL cycle
 ( ) Reject

Comments/Note to staff:
Senate Bill No. 333

CHAPTER 284

An act to amend Section 148.3 of the Penal Code, relating to crimes.

[Approved by Governor September 9, 2013. Filed with Secretary of State September 9, 2013.]

LEGISLATIVE COUNSEL’S DIGEST


Existing law provides that any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an emergency exists, knowing that the report is false, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine not exceeding $1,000, or by both that imprisonment and fine.

Existing law provides that any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an emergency exists, and who knows that the report is false, and who knows or should know that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death is sustained by any person as a result of the false report, is guilty of a felony, as specified.

This bill would provide that any person convicted of violating these provisions, based upon a report that resulted in an emergency response, would be liable to a public agency for the reasonable costs of the emergency response by the public agency. The bill would further provide that nothing in these provisions precludes punishment for the conduct prescribed by existing law under any other law providing for greater punishment.

The people of the State of California do enact as follows:

SECTION 1. Section 148.3 of the Penal Code is amended to read:

148.3. (a) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division, commission, or board, that an “emergency” exists, knowing that the report is false, is guilty of a misdemeanor and upon conviction thereof shall be punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any individual who reports, or causes any report to be made, to any city, county, city and county, or state department, district, agency, division,
commission, or board, that an “emergency” exists, who knows that the report is false, and who knows or should know that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death is sustained by any person as a result of the false report, is guilty of a felony and upon conviction thereof shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(c) “Emergency” as used in this section means any condition that results in, or could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, any condition that jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter, or any situation that results in or could result in activation of the Emergency Alert System pursuant to Section 8594 of the Government Code. An activation or possible activation of the Emergency Alert System pursuant to Section 8594 of the Government Code shall not constitute an “emergency” for purposes of this section if it occurs as the result of a report made or caused to be made by a parent, guardian, or lawful custodian of a child that is based on a good faith belief that the child is missing.

(d) Nothing in this section precludes punishment for the conduct described in subdivision (a) or (b) under any other section of law providing for greater punishment for that conduct.

(e) Any individual convicted of violating this section, based upon a report that resulted in an emergency response, is liable to a public agency for the reasonable costs of the emergency response by that public agency.
Summary: Wisconsin AB 409 requires the use of outside investigators in the event of a police related death of a citizen. The bill was created in response to three officer-involved shootings in which individuals died while being detained by law enforcement. Previously these types of cases were reviewed internally.

Status: Signed into law on April 23, 2014.

Comment: From the Milwaukee Journal Sentinel (April 23, 2014)
For nearly 10 years, Michael Bell has waged a campaign for greater accountability when police use lethal force. He has spent more than $1 million on billboards, newspaper advertisements and a website, all of them asking some variation of this question: When police kill, should they judge themselves?

Gov. Scott Walker answered with a resounding "no," signing into law a bill that requires outside investigation when people die in police custody — the first of its kind in the nation.

The new law requires a team of at least two investigators from an outside agency to lead reviews of such deaths. It requires reports of custody death investigations throughout the state to be publicly released if criminal charges are not filed against the officers involved. Officers also must inform victims' families of their options to pursue additional reviews via the U.S. attorney's office or a state-level John Doe investigation.

The new mandates do not apply to deaths in county jails and state prisons, which already are investigated by the state Department of Corrections.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
2013 WISCONSIN ACT 348

AN ACT to create 175.47, 950.04 (1v) (do) and 950.08 (2g) (h) of the statutes; relating to: investigation of a death involving a law enforcement officer.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 175.47 of the statutes is created to read:

175.47  Review of deaths involving officers. (1) In this section:
   (a) “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).
   (b) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).
   (c) “Officer-involved death” means a death of an individual that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties.

(2) Each law enforcement agency shall have a written policy regarding the investigation of officer-involved deaths that involve a law enforcement officer employed by the law enforcement agency.

(3) (a) Each policy under sub. (2) must require an investigation conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by a law enforcement agency that employs a law enforcement officer involved in the officer-involved death.

   (b) If the officer-involved death being investigated is traffic-related, the policy under sub. (2) must require the investigation to use a crash reconstruction unit from a law enforcement agency that does not employ a law enforcement officer involved in the officer-involved death being investigated, except that a policy for a state law enforcement agency may allow an investigation involving a law enforcement officer employed by that state law enforcement agency to use a crash reconstruction unit from the same state law enforcement agency.

   (c) Each policy under sub. (2) may allow an internal investigation into the officer-involved death if the internal investigation does not interfere with the investigation conducted under par. (a).

(4) Compensation for participation in an investigation under sub. (3) (a) may be determined in a manner consistent with mutual aid agreements.

(5) (a) The investigators conducting the investigation under sub. (3) (a) shall, in an expeditious manner, provide a complete report to the district attorney of the county in which the officer-involved death occurred.

   (b) If the district attorney determines there is no basis to prosecute the law enforcement officer involved in the officer-involved death, the investigators conducting the investigation under sub. (3) (a) shall release the report.

SECTION 2. 950.04 (1v) (do) of the statutes is created to read:
950.04 (1v) (do) To be informed about the process by which he or she may file a complaint under s. 968.02 or 968.26 (2) and about the process of an inquest under s. * Section 991.11, Wisconsin Statutes: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."
979.05 if he or she is the victim of an officer-involved
death, as defined in s. 175.47 (1) (c).

SECTION 3. 950.08 (2g) (h) of the statutes is created to read:

950.08 (2g) (h) If the victim is a victim of an officer-
involved death, as defined in s. 175.47 (1) (c), informa-
tion about the process by which he or she may file a com-
plaint under s. 968.02 or 968.26 (2) and about the process
of an inquest under s. 979.05.

SECTION 4. Initial applicability.

(1) This act first applies to officer-involved deaths
occurring on the effective date of this subsection.
Prohibiting the “Re-Homing” of Children

Wisconsin

Bill/Act: AB 581

Summary: AB 581 requires parents that wish to delegate their parental powers for more than one year to file a petition through the juvenile court system in order to allow the court to assess if the new parents will be able to adequately care for the child. Previously physical custody could be signed over through a power of attorney document, which required no state oversight. The bill also closes a loophole in the states advertising laws, making it illegal to advertise that a child is up for adoption over the internet.

Status: Signed into law on April 16, 2014.

Comment: From Reuters (April 16, 2014)
Wisconsin has adopted a law to limit private custody transfers of children, the first law of its kind in the United States. Reuters reported in September that parents were transferring custody of their unwanted adopted children to strangers met on the Internet, often with no government oversight and sometimes illegally. No state or federal laws specifically prohibit the practice, which is known as "re-homing." And state laws that restrict the advertising and custody transfers of children are often confusing, and rarely spell out criminal sanctions.

In the absence of government safeguards, boys and girls have been placed in the care of abusers and others who escape scrutiny. In one case, a mother gave her nine-year-old adopted son to a pedophile in a motel parking lot in Wisconsin within hours of posting an advertisement for the child on a Yahoo group.

The Wisconsin law makes it illegal for anyone not licensed by the state to advertise a child over age one for adoption or any other custody transfer, both in print and online. Parents who want to transfer custody of a child to someone other than a relative must seek permission from a judge. Violators face up to nine months in jail or up to $10,000 in fines. Ohio, Colorado and Florida also have introduced similar legislation.

Read more: http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
  ( ) next SSL mtg.
  ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to repeal 48.825 (3) (e); to amend 48.028 (2) (e), 48.028 (3) (c) (intro.), 48.028 (3) (e), 48.028 (4) (a), 48.028 (7) (a) (intro.), 48.028 (7) (c), 48.028 (7) (e) 1. b., 48.028 (7) (e) 1. c., 48.028 (7) (f), 48.825 (1) (a), 48.825 (2) (a), 48.825 (2) (b), 48.825 (2) (c), 48.825 (3) (a), 48.979 (1) (a), 48.979 (1) (dm) and 48.979 (2); to repeal and recreate 48.028 (7) (title); and to create 48.028 (2) (d) 5., 48.825 (1) (c), 48.979 (1) (am), 48.979 (1m) and 948.25 of the statutes; relating to: advertising related to adoption or other permanent physical placements of a child, delegation of parental power regarding the care and custody of a child for more than one year, unauthorized interstate placements of children, requesting a study of adoption disruption and dissolution, and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1d. 48.028 (2) (d) 5. of the statutes is created to read:

48.028 (2) (d) 5. A delegation of powers by a parent regarding the care and custody of an Indian child for longer than one year under s. 48.979.

SECTION If. 48.028 (2) (e) of the statutes is amended to read:

48.028 (2) (e) “Out−of−home care placement” means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the child returned upon demand. “Out−of−home care placement” does not include an adoptive placement, a preadoptive placement, a delegation of powers, as described in par. (d) 5., or holding an Indian child in custody under ss. 48.19 to 48.21.

SECTION 1h. 48.028 (3) (c) (intro.) of the statutes is amended to read:

48.028 (3) (c) Transfer of proceedings to tribe. (intro.) In any Indian child custody proceeding under this chapter involving an out−of−home placement of, or termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, an Indian child who is not residing or domiciled within the reservation of the Indian child’s tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child’s parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

SECTION 1j. 48.028 (3) (e) of the statutes is amended to read:

48.028 (3) (e) Intervention. An Indian child’s Indian custodian or tribe may intervene at any point in an Indian child custody proceeding under this chapter involving an out−of−home care placement of, or termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, the Indian child.

SECTION 1m. 48.028 (4) (a) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”
48.028 (4) Notice. In any involuntary proceeding involving the out-of-home care placement of an Indian child under par. (a), termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, a child whom the court knows or has reason to know is an Indian child, the party seeking the out-of-home care placement or termination of parental rights, or delegation of powers shall, for the first hearing of the proceeding, notify the Indian child’s parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail. If the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

SECTION 10. 48.028 (7) (title) of the statutes is amended to read:

48.028 (7) (title) PLACEMENTS AND DELEGATIONS OF POWERS; PREFERENCES.

SECTION 11. 48.028 (7) (a) (intro.) of the statutes is amended to read:

48.028 (7) (a) Adoptive placement or delegation of powers; preferences. (intro.) Subject to pars. (c) and (d), in placing an Indian child for adoption or in delegating powers, as described in sub. (2) (d) 5., regarding an Indian child, preference shall be given, in the absence of good cause, as described in par. (e), to a placement with or delegation to one of the following, in the order of preference listed:

SECTION 12. 48.028 (7) (c) of the statutes is amended to read:

48.028 (7) (c) Tribal or personal preferences. In placing an Indian child under par. (a), (b), or (bm) or in delegating powers regarding an Indian child under par. (a), if the Indian child’s tribe has established, by resolution, an order of preference that is different from the order specified in par. (a) or (b), the order of preference established by that tribe shall be followed, in the absence of good cause, as described in par. (e), to the contrary, so long as the placement or delegation is appropriate for the Indian child’s special needs, if any, and the placement under par. (b) or (bm) is the least restrictive setting appropriate for the Indian child’s needs as specified in par. (b). When appropriate, the preference of the Indian child or parent shall be considered, and, when a parent who has consented to the placement or deleg-
48.825 (2) (a) Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody.

SECTION 3. 48.825 (2) (b) of the statutes is amended to read:

48.825 (2) (b) Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption or adoptive placement, or any other permanent physical placement of a child.

SECTION 4. 48.825 (2) (c) of the statutes is amended to read:

48.825 (2) (c) Advertise that the person will place a child for adoption or in any other permanent physical placement.

SECTION 5. 48.825 (3) (a) of the statutes is amended to read:

48.825 (3) (a) The department, a county department, or a child welfare agency licensed under s. 48.60 to place children for adoption, in licensed foster homes or group homes, or in the homes of guardians under s. 48.977 (2).

SECTION 6d. 48.825 (3) (e) of the statutes is repealed.

SECTION 7. 48.979 (1) (a) of the statutes is amended to read:

48.979 (1) (a) A parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to an agent, for a period not to exceed one year as provided in par. (am), any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. A delegation of powers under this paragraph does not deprive the parent of any of his or her powers regarding the care and custody of the child.

SECTION 8. 48.979 (1) (am) of the statutes is created to read:

48.979 (1) (am) A delegation of powers to an agent under par. (a) may remain in effect for no longer than one year, except that such a delegation may remain in effect for longer than one year if the delegation is to a relative of the child or the delegation is approved by the court as provided in sub. (1m).

SECTION 8g. 48.979 (1) (dm) of the statutes is amended to read:

48.979 (1) (dm) A delegation of powers under par. (a) regarding the care and custody of an Indian child for any length of time is subject to the requirements of s. 48.028 (5) (a). A delegation of powers under par. (a) regarding the care and custody of an Indian child for longer than one year is also subject to the requirements of s. 48.028 (3) (c), (4) (a), and (7) (a), (c), (e), and (f).

SECTION 9. 48.979 (1m) of the statutes is created to read:

48.979 (1m) (a) A parent who wishes a delegation of powers under sub. (1) (a) to an agent who is not a relative of the child to remain in effect for longer than one year, the agent to whom the parent wishes to delegate those powers, or an organization that is facilitating that delegation shall file a petition with the court requesting the court’s approval of that delegation. The petition shall be entitled “In the interest of .... (child’s name), a person under the age of 18.” The petitioner shall attach a draft copy of the power of attorney delegating those powers to the petition and shall state in the petition all of the following:

1. The name, address, and date of birth of the child who is the subject of the delegation of powers.
2. The names and addresses of the parents of the child.
3. The name and address of the person nominated as agent and the relationship of the agent to the child.
4. Whether the parent wishes to delegate to the agent full parental power regarding the care and custody of the child or partial parental power regarding the care and custody of the child and, if the parent wishes to delegate partial parental power, the specific powers that the parent wishes to delegate and any limitations on those powers.
5. The proposed term of the delegation of powers, the reasons for the delegation of powers, and whether the parent proposes to provide any support to the agent during that term. If so, the petition shall indicate the amount of that support.
6. Facts and circumstances showing that the delegation of powers would be in the best interests of the child and that the person nominated as agent is fit, willing, and able to exercise those powers.
7. If the delegation of powers is being facilitated by an entity, as defined in s. 48.685 (1) (b), facts and circumstances showing that the entity has complied with sub. (1) (b) and is permitted under sub. (1) (b) to facilitate that delegation.
8. The information required under s. 822.29 (1) and whether the child is subject to the jurisdiction of the court under s. 48.13, 48.14, 938.12, 938.13, or 938.14.
9. Whether the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act under ch. 822.
10. Whether the child may be subject to s. 48.028 or 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to those sections or that act, the names and addresses of the child’s Indian custodian, if any, and Indian tribe, if known.
(b) Except as provided in par. (bm), the court shall hold a hearing on a petition filed under par. (a) within 45 days after the filing of the petition. The petitioner shall cause the petition and notice of the time and place of the hearing to be served at least 10 days before the time of the hearing on the child, if 12 years of age or over, the child’s guardian ad litem and counsel, if any; the parents of the
child; the person nominated as agent; any guardian, legal custodian, and physical custodian of the child; any organization that is facilitating the delegation of power; and, if the child is an Indian child, the Indian child’s Indian custodian, if any, and tribe, if known. The petition and notice shall be served in person or by 1st class mail. The petition and notice are considered to be served by personal service, by proof that the petition and notice were mailed to the last-known address of the recipient, or, if the recipient is an adult, by the written admission of service of the person served.

(bm) If the petitioner knows or has reason to know that the child is an Indian child, service under par. (b) to the Indian child’s parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under par. (c) until at least 10 days after receipt of service by the Indian child’s parent, Indian custodian, and tribe or, if the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of service by the U.S. secretary of the interior. On request of the Indian child’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) At the hearing the court shall first determine whether any party wishes to contest the petition. If the petition is not contested, the court shall immediately proceed to a fact–finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or if an adjournment is requested, the court shall set a date for a fact–finding and dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the initial hearing. At the fact–finding and dispositional hearing, any party may present evidence and argument relating to the allegations in the petition.

(d) In determining the appropriate disposition of a petition filed under par. (a), the best interests of the child shall be the prevailing factor to be considered by the court. The court shall also consider whether the person nominated as agent would be fit, willing, and able to exercise the powers to be delegated, the reasons for the delegation of powers, the amount of support that the parent is willing and able to provide to the agent during the term of the delegation of powers, and, if the child is an Indian child, the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(e) At the conclusion of the fact–finding and dispositional hearing, the court shall grant one of the following dispositions, unless the court adjourns the hearing under par. (f):

1. A disposition dismissing the petition if the court finds that the petitioner has not proved the allegations in the petition by clear and convincing evidence or determines that approval of the proposed delegation of powers is not in the best interests of the child.

2. A disposition approving the proposed delegation of powers, if the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence and determines that the proposed delegation of powers is in the best interests of the child. The disposition may also designate an amount of support to be paid by the child’s parents to the agent. If the court approves the proposed delegation of powers, the parent and the person nominated as agent may execute a power of attorney delegating those powers as approved by the court.

(f) If at the conclusion of the fact–finding and dispositional hearing the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence, but that the person nominated as agent is not fit, willing, and able to serve as agent or that appointment of that person as agent would not be in the best interests of the child, the court may, in lieu of granting a disposition dismissing the petition under par. (e) 1., adjourn the hearing for not more than 30 days and request the petitioner or any other party to nominate a different person as agent.

(g) Any person who delegates his or her powers regarding the care and custody of a child to a person who is not a relative of the child for longer than one year without first obtaining the approval of the court as provided in this subsection is subject to a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

**SECTION 10.** 48.979 (2) of the statutes is amended to read:

48.979 (2) A power of attorney complies with sub. (1) (a) if the power of attorney substantially conforms to the following form:

**POWER OF ATTORNEY**

**DELEGATING PARENTAL POWER**

AUTHORIZED BY S. 48.979, WIS. STATS.

NAME(S) OF CHILD(REN)

This power of attorney is for the purpose of providing for the care and custody of:

Name, address, and date of birth of child ....

Name, address, and date of birth of child ....

Name, address, and date of birth of child ....

**DELEGATION OF POWER TO AGENT**

I, ..... (name and address of parent), state that I have legal custody of the child(ren) named above. (Only a parent who has legal custody may use this form.) A parent may not use this form to delegate parental powers regarding a child who is subject to the jurisdiction of the juvenile court under s. 48.13, 48.14, 938.12, 938.13, or 938.14, Wis. Stats.

I delegate my parental power to:

Name of agent ....

Agent’s address ....

Agent’s telephone number(s) ....
2013 Assembly Bill 581

Agent’s e–mail address ....
Relationship of agent to child(ren) ....
The parental power I am delegating is as follows:

FULL

(Check if you want to delegate full parental power regarding the care and custody of the child(ren) named above.)

.... Full parental power regarding the care and custody of the child(ren) named above

PARTIAL

(Check each subject over which you want to delegate your parental power regarding the child(ren) named above.)

.... The power to consent to all health care; or
.... The power to consent to only the following health care:
.... Ordinary or routine health care, excluding major surgical procedures, extraordinary procedures, and experimental treatment
.... Emergency blood transfusion
.... Dental care
.... Disclosure of health information about the child(ren)
.... The power to consent to educational and vocational services
.... The power to consent to the employment of the child(ren)
.... The power to consent to the disclosure of confidential information, other than health information, about the child(ren)
.... The power to provide for the care and custody of the child(ren)
.... The power to consent to the child(ren) obtaining a motor vehicle operator’s license
.... The power to travel with the child(ren) outside the state of Wisconsin
.... The power to obtain substitute care, such as child care, for the child(ren)
.... Other specifically delegated powers or limits on delegated powers (Fill in the following space or attach a separate sheet describing any other specific powers that you wish to delegate or any limits that you wish to place on the powers you are delegating.) ....

This delegation of parental powers does not deprive a custodial or noncustodial parent of any of his or her powers regarding the care and custody of the child, whether granted by court order or force of law.

THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME, GROUP HOME, OR INPATIENT TREATMENT FACILITY.

EFFECTIVE DATE AND TERM OF THIS DELEGATION

This Power of Attorney takes effect on .... and will remain in effect until .... If no termination date is given or if the termination date given is more than one year after the effective date of this Power of Attorney, this Power of Attorney will remain in effect for a period of one year after the effective date, but no longer. If the termination date given is more than one year after the effective date of this Power of Attorney, this Power of Attorney must be approved by the juvenile court. This Power of Attorney may be revoked in writing at any time by a parent who has legal custody of the child(ren) and such a revocation invalidates the delegation of parental powers made by this Power of Attorney, except with respect to acts already taken in reliance on this Power of Attorney.

SIGNATURE(S) OF PARENT(S)

Signature of parent .... Date ....
Parent’s name printed ....
Parent’s address ....
Parent’s telephone number ....
Parent’s e–mail address ....
Signature of parent .... Date ....
Parent’s name printed ....
Parent’s address ....
Parent’s telephone number ....
Parent’s e–mail address ....
WITNESSING OF SIGNATURE(S) (OPTIONAL)

State of ....
County of ....
This document was signed before me on .... (date) by .... (name(s) of parent(s)).
Signature of notary ....
My commission expires: ....

STATEMENT OF AGENT

I, .... (name and address of agent), understand that .... (name(s) of parent(s)) has (have) delegated to me the powers specified in this Power of Attorney regarding the care and custody of .... (name(s) of child(ren)). I further understand that this Power of Attorney may be revoked in writing at any time by a parent who has legal custody of .... (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney, understand the powers delegated to me by this Power of Attorney, am fit, willing, and able to undertake those powers, and accept those powers.

Agent’s signature .... Date ....

APPENDIX

(Here the parent(s) may indicate where they may be located during the term of the Power of Attorney if different from the address(es) set forth above.)

.... I can be located at:
Address(es) ....
Telephone number(s) ....
E–mail address(es) ....
... Or, by contacting:
Name ....
Address ....
Telephone number ....
E-mail address ....
... Or, I cannot be located

SECTION 11. 948.25 of the statutes is created to read:
948.25 Unauthorized interstate placements of children. (1) Any person who sends a child out of this state, brings a child into this state, or causes a child to be sent out of this state or brought into this state for the purpose of permanently transferring physical custody of the child to a person who is not a relative, as defined in s. 48.02 (15), of the child is guilty of a Class A misdemeanor.
(2) Subsection (1) does not apply to any of the following:
(a) A placement of a child that is authorized under s. 48.98, 48.988, or 48.99.
(b) A placement of a child that is approved by a court of competent jurisdiction of the sending state or receiving state.

(1) Study of adoption disruption and dissolution. The joint legislative council is requested to study adoption disruption and dissolution in this state. If the joint legislative council undertakes such a study, the joint legislative council shall do all of the following:
(a) Study the extent of adoption disruption and dissolution in this state and the efforts by the department of children and families, counties, and child welfare agencies to prevent such disruption and dissolution.
(b) Recommend legislation to accomplish all of the following:
1. Define adoption disruption and adoption dissolution.
2. Prevent adoption disruption and adoption dissolution in this state.
3. Require the department of children and families, county departments of human services or social services that are authorized to place children for adoption, and child welfare agencies that are licensed to place children for adoption to track and report on disrupted or dissolved adoptions.
(c) Consider legislative options to prepare prospective adoptive parents for adoption and to support adoptive parents after an adoption.
(d) Submit its findings, conclusions, and recommendations to the 2015 legislature when it commences.

SECTION 13. Initial applicability.
(1) Advertising related to adoption or other permanent physical placements of a child. The treatment of section 48.825 (1) (a) and (c), (2) (a), (b), and (c), and (3) (a) and (e) of the statutes first applies to advertising placed or posted on the effective date of this subsection.
Bill/Act: **SB 274**

Summary: Under the bill, if more than two people have claims to parentage, the court may, if it would otherwise be detrimental to the child, recognize that the child has more than two parents. The measure applies only to families with more than two people who meet the state’s definition of a parent.

Status: Signed into law on October 4, 2013.

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Comments: From the *Los Angeles Times* (October 4, 2013):

Gov. Jerry Brown signed legislation Friday that will allow children in California to have more than two legal parents, a measure opposed by some conservative groups as an attack on the traditional family.

Sen. Mark Leno said he authored the measure to address the changes in family structure in California, including situations in which same-sex couples have a child with an opposite-sex biological parent. The law will allow the courts to recognize three or more legal parents so that custody and financial responsibility can be shared by all those involved in raising a child, Leno said. "Courts need the ability to recognize these changes so children are supported by the adults that play a central role in loving and caring for them," Leno said. "It is critical that judges have the ability to recognize the roles of all parents so that no child has to endure separation from one of the adults he or she has always known as a parent."

The bill was partially a reaction to a 2011 court decision involving a lesbian couple that briefly ended their relationship, according to Leno's office. One of the women was impregnated by a man before the women resumed their relationship. A fight broke out, putting one of the women in the hospital and the other in jail, but the daughter was sent to foster care because her biological father did not have parental rights.

"Everyone who places the interests of children first and realizes that judges shouldn't be forced to rule in ways that hurt children should cheer this bill becoming law," said Ed Howard, senior counsel for the Children's Advocacy Institute at the University of San Diego School of Law.

SB 274 was opposed by advocates for traditional families, including Brad Dacus, president of the Pacific Justice Institute, who said Friday he was disappointed by the governor's action. "This is in the long run going to be a mistake," Dacus said. "The ones who are going to pay the price are not the activists, but it's going to be children, who will see greater conflict and indecision over matters involving their well-being." Dacus said having more than two legal parents will create the potential for greater conflict over what is best for a child and result in more complicated court fights.
The measure was opposed in the Legislature by the conservative Capitol Resource Institute, which called it detrimental to children. The group said children thrive in homes with their biological mother and father, or with adoptive parents being male and female role models.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
SB-274 Family law: parentage: child custody and support. (2013-2014)

An act to amend Sections 3040, 4057, 7601, 7612, and 8617 of, and to add Section 4052.5 to, the Family Code, relating to family law.

[ Approved by Governor October 04, 2013. Filed with Secretary of State October 04, 2013. ]

LEGISLATIVE COUNSEL’S DIGEST


(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child’s mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that more than 2 persons with a claim to parentage, as specified, are parents if the court finds that recognizing only 2 parents would be detrimental to the child. The bill would direct the court, in making this determination, to consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child’s parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents. The
bill would require any reference to 2 parents to be interpreted to apply to all of a child’s parents where a child is found to have more than 2 parents, as specified.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child’s best interest.

This bill would, in the case of a child with more than 2 parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, as specified.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support, which is rebuttably presumed to be the correct amount of child support. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the uniform guideline would be unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.

This bill would direct the court to apply the statewide uniform guideline in a case where a child has more than 2 parents by dividing the child support obligations among the parents based on the income of each of the parents and the amount of time spent with the child by each parent. The bill would require the court to divide child support obligations among the parents in a just and appropriate manner, as specified, if the court finds that applying the statewide uniform guideline to a child with more than 2 parents would be unjust and inappropriate, as specified.

(5) Under existing law, the birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

This bill would provide that the termination of the parental duties and responsibility of the parent or parents may be waived if both the parent or parents and the prospective adoptive parent or parents sign a waiver at any time prior to the finalization of the adoption.

(6) This bill would incorporate additional changes in Sections 7601 and 7612 of the Family Code, proposed by AB 1403, to be operative only if AB 1403 and this bill are both chaptered and become effective January 1, 2014, and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Most children have two parents, but in rare cases, children have more than two people who are that child’s parent in every way. Separating a child from a parent has a devastating psychological and emotional impact on the child, and courts must have the power to protect children from this harm.

(b) The purpose of this bill is to abrogate In re M.C. (2011) 195 Cal.App.4th 197 insofar as it held that where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances.

(c) This bill does not change any of the requirements for establishing a claim to parentage under the Uniform Parentage Act. It only clarifies that where more than two people have claims to parentage, the court may, if it would otherwise be detrimental to the child, recognize that the child has more than two parents.

(d) It is the intent of the Legislature that this bill will only apply in the rare case where a child truly has
more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents.

SEC. 2. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

(d) In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in Sections 3011 and 3020.

SEC. 3. Section 4052.5 is added to the Family Code, to read:

4052.5. (a) The statewide uniform guideline, as required by federal regulations, shall apply in any case in which a child has more than two parents. The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent, pursuant to Section 4053.

(b) Consistent with federal regulations, after calculating the amount of support owed by each parent under the guideline, the presumption that the guideline amount of support is correct may be rebutted if the court finds that the application of the guideline in that case would be unjust or inappropriate due to special circumstances, pursuant to Section 4057. If the court makes that finding, the court shall divide child support obligations among the parents in a manner that is just and appropriate based on income and amount of time spent with the child by each parent, applying the principles set forth in Section 4053 and this article.

(c) Nothing in this section shall be construed to require reprogramming of the California Child Support Automation System, established pursuant to Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code, a change to the statewide uniform guideline for determining child support set forth in Section 4055, or a revision by the Department of Child Support Services of its regulations, policies, procedures, forms, or training materials.

SEC. 4. Section 4057 of the Family Code is amended to read:

4057. (a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.
(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court states in writing or on the record the information required in subdivision (a) of Section 4056:

1. The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

2. The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

3. The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

4. A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

5. Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

   A. Cases in which the parents have different time-sharing arrangements for different children.

   B. Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

   C. Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

   D. Cases in which a child is found to have more than two parents.

SEC. 5. Section 7601 of the Family Code is amended to read:

7601. (a) "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child’s natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

(b) This part does not preclude a finding that a child has a parent and child relationship with more than two parents.

(c) For purposes of state law, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, benefits, responsibilities, obligations, and duties of parents, any reference to two parents shall be interpreted to apply to every parent of a child where that child has been found to have more than two parents under this part.

SEC. 5.5. Section 7601 of the Family Code is amended to read:

7601. (a) "Natural parent" as used in this code means a nonadoptive parent established under this part, whether biologically related to the child or not.

(b) "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child’s natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship.

(c) This part does not preclude a finding that a child has a parent and child relationship with more than two parents.
(d) For purposes of state law, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, benefits, responsibilities, obligations, and duties of parents, any reference to two parents shall be interpreted to apply to every parent of a child where that child has been found to have more than two parents under this part.

SEC. 6. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

(d) Unless a court orders otherwise after making the determination specified in subdivision (c), a presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

(e) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court’s ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court’s consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(f) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

1. The child already had a presumed parent under Section 7540.
2. The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.
3. The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

SEC. 6.5. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.
(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

(d) Unless a court orders otherwise after making the determination specified in subdivision (c), a presumption under Section 7611 is rebutted by a judgment establishing parentage of the child by another person.

(e) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court’s ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court’s consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party’s relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

(f) A voluntary declaration of paternity is invalid if, at the time the declaration was signed, any of the following conditions exist:

(1) The child already had a presumed parent under Section 7540.

(2) The child already had a presumed parent under subdivision (a), (b), or (c) of Section 7611.

(3) The man signing the declaration is a sperm donor, consistent with subdivision (b) of Section 7613.

SEC. 7. Section 8617 of the Family Code is amended to read:

8617. (a) Except as provided in subdivision (b), the existing parent or parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

(b) The termination of the parental duties and responsibilities of the existing parent or parents under subdivision (a) may be waived if both the existing parent or parents and the prospective adoptive parent or parents sign a waiver at any time prior to the finalization of the adoption. The waiver shall be filed with the court.

SEC. 8. (a) Section 5.5 of this bill incorporates amendments to Section 7601 of the Family Code proposed by both this bill and Assembly Bill 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 7601 of the Family Code, and (3) this bill is enacted after Assembly Bill 1403, in which case Section 5 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 7612 of the Family Code proposed by both this bill and Assembly Bill 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 7612 of the Family Code, and (3) this bill is enacted after Assembly Bill 1403, in which case Section 6 of this bill shall not become operative.
Summary: The bill requires public education providers to remove all seclusion cells from the premises of a school prior to September 1, 2013. It also prohibits public education providers from purchasing, building or otherwise taking possession of seclusion cells.

Status: Signed into law in April 2013.

Comment: From a memorandum on the bill produced by the Oregon Department of Education:

During the 2013 session, the Oregon Legislature passed House Bill 2756 which prohibits public education programs from purchasing, building, possessing and using “seclusion cells” or “freestanding” units built and used for the seclusion of students. The bill required the immediate dismantling and removal of “seclusion cells” from classrooms by July 1, 2013 and the removal from the school or public education program’s premises by September 1, 2013. The new law does not prohibit the use of seclusion in public education programs to assist with helping a student regain self-control; it simply bans the use of seclusion cells.

The bill applies to all public education programs meaning a program that:

- Is for students in early childhood education, elementary school or secondary school;
- Is under the jurisdiction of a school district, an education service district or another educational institution or program; and
- Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.
- Seclusion means the student is physically prevented from leaving the unit or room, or believes they are prevented from leaving; and the student is alone or isolated from other students.
- Public education programs may not purchase, build or otherwise take possession of a seclusion cell; and may not use a seclusion cell.
- Seclusion cell is defined as a freestanding, self-contained unit, whether attached to the wall or not.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
  ( ) next SSL mtg.
  ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT

Relating to seclusion of students; creating new provisions; amending section 7, chapter 665, Oregon Laws 2011; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:
   (a) “Public education program” means a program that:
      (A) Is for students in early childhood education, elementary school or secondary school;
      (B) Is under the jurisdiction of a school district, an education service district or another educational institution or program;
      (C) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.
   (b) “Seclusion cell” means a freestanding, self-contained unit that is used to:
      (A) Isolate a student from other students; or
      (B) Physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

   (2) A public education program may not:
      (a) Purchase, build or otherwise take possession of a seclusion cell; or
      (b) Use a seclusion cell.

   (3) Nothing in this section prevents a public education program from using seclusion as allowed under sections 1 to 6, chapter 665, Oregon Laws 2011.

SECTION 2. Section 1 of this 2013 Act is amended to read:
Sec. 1. (1) As used in this section:
   (a) “Public education program” means a program that:
      (A) Is for students in early childhood education, elementary school or secondary school;
      (B) Is under the jurisdiction of a school district, an education service district or another educational institution or program;
      (C) Receives, or serves students who receive, support in any form from any program supported, directly or indirectly, with funds appropriated to the Department of Education.
   (b) “Seclusion cell” means a freestanding, self-contained unit that is used to:
      (A) Isolate a student from other students; or
      (B) Physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

   (2) A public education program may not:
      (a) Purchase, build or otherwise take possession of a seclusion cell; or
      (b) Use a seclusion cell.

   (3) Nothing in this section prevents a public education program from using seclusion as allowed under sections 1 to 6, chapter 665, Oregon Laws 2011.
(3) Nothing in this section prevents a public education program from using seclusion as allowed under sections 1 to 6, chapter 665, Oregon Laws 2011.

SECTION 3. Section 7, chapter 665, Oregon Laws 2011, is amended to read:

Sec. 7. (1) Sections 1 to 6 of this 2011 Act, chapter 665, Oregon Laws 2011, are repealed on June 30, 2017.

(2) The amendments to section 1 of this 2013 Act by section 2 of this 2013 Act become operative on the date specified in subsection (1) of this section.

SECTION 4. (1) As used in this section:

(a) “Public education program” has the meaning given that term in section 1 of this 2013 Act.

(b) “Seclusion cell” has the meaning given that term in section 1 of this 2013 Act.

(2) No later than July 1, 2013, a public education program shall ensure that all seclusion cells are removed from the classrooms of the public education program.

(3) No later than September 1, 2013, a public education program shall ensure that all seclusion cells are removed from the premises of the public education program.

SECTION 5. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House March 6, 2013

Ramona J. Line, Chief Clerk of House

Tina Kotek, Speaker of House

Passed by Senate April 1, 2013

Peter Courtney, President of Senate

Received by Governor:

M.,........................................................., 2013

Approved:

M.,........................................................., 2013

John Kitzhaber, Governor

Filed in Office of Secretary of State:

M.,........................................................., 2013

Kate Brown, Secretary of State
Summary: This bill requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his/her gender identity, regardless of the gender listed on the pupil’s records.

Status: Signed into law on August 12, 2013.

California Gov. Jerry Brown signed legislation on Monday that will allow students to compete on sports teams and use facilities like showers and bathrooms based on their gender identity, regardless of what is listed on the student's records.

Although other states, such as Colorado and Massachusetts, have policies on transgender equity and discrimination, California is the first to have the law written into state codes, mandating that schools must respect students' preferences for what programs they participate in and what facilities they use. The law, dubbed by some as the "School Bathroom Bill," will go into effect on Jan. 1, 2014.

Assembly member Tom Ammiano, D-San Francisco, who authored the bill, said Brown's signature was "terrific" and that it marks an important victory for transgender rights as transgender students "no longer must hide who they are, nor be treated as someone other than who they are."

Although California law already bans discrimination against transgender students in public schools, the law serves as a clarification so transgender students will not be unfairly denied access to certain programs and facilities. Ammiano cited a recent case in which a transgender student in Arcadia, Calif., who was born female and identifies as a male, had to file a complaint with the U.S. Department of Education to resolve a dispute in which the school district denied him access to men's restrooms and locker rooms on campus.

"This is a powerful affirmation of basic human dignity, and puts California at the forefront of leadership on transgender rights," said Assembly Speaker John Perez, D-Los Angeles, in a statement. "Young transgender Californians should be treated with dignity and respect, and recognized for who they truly are."

Although the law is meant to give transgender students equal rights and to avoid future lawsuits, Republican lawmakers and religious leaders still strongly opposed the measure, saying it would force co-ed locker rooms and that it infringes on the privacy of other students.

Assemblymember Curt Hagman, R-Chino Hills, for example, delivered more than 3,000 of letters of opposition to Brown last week, from members of a church in his district.
"This 'one size fits all' approach to something like gender disregards the privacy of our children and the diversity and local authority of school districts in California," Hagman said in a statement.

The California Catholic Conference said that the law was unnecessary and that incidents in which students are "struggling with or confused about their gender identity" should be handled individually and confidentially.

"Solidarity with those who may be the object of discrimination is appropriate and should be shared by all, but we ought to balance that with common sense and trust in the leadership of the local school level," the organization said in a statement to lawmakers.


Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Assembly Bill No. 1266

CHAPTER 85

An act to amend Section 221.5 of the Education Code, relating to pupil rights.

[Approved by Governor August 12, 2013. Filed with Secretary of State August 12, 2013.]

LEGISLATIVE COUNSEL’S DIGEST

AB 1266, Ammiano. Pupil rights: sex-segregated school programs and activities.

Existing law prohibits public schools from discriminating on the basis of specified characteristics, including gender, gender identity, and gender expression, and specifies various statements of legislative intent and the policies of the state in that regard. Existing law requires that participation in a particular physical education activity or sport, if required of pupils of one sex, be available to pupils of each sex.

This bill would require that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.

The people of the State of California do enact as follows:

SECTION 1. Section 221.5 of the Education Code is amended to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) A school district may not prohibit a pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Chapter 5.6 (commencing with Section 51930) of Part 28 of Division 4 of Title 2.

(c) A school district may not require a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex.

(d) A school counselor, teacher, instructor, administrator, or aide may, on the basis of the sex of a pupil, offer vocational or school program guidance to a pupil of one sex that is different from that offered to a pupil of the opposite sex or, in counseling a pupil, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to a pupil shall affirmatively explore with the pupil the
possibility of careers, or courses leading to careers, that are nontraditional for that pupil’s sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

(f) A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.
Summary: Creates the Innovation Education Campus Fund to provide funding to innovation education campuses - an educational partnership between high schools or school districts, a Missouri four-year public or private institution of higher education, a Missouri-based business or businesses, and either a Missouri public two-year institution of higher education or Linn State Technical College. Specifies criteria that must be met to receive funding which include actively working to lower the cost for students to complete a college degree; decrease the amount of time required for a student to earn a college degree; and provide applied and project-based learning experiences for students. Requires the Coordinating Board for Higher Education to conduct a review every five years of any innovation education campus for compliance with the requirements.

Status: Signed on July 11, 2013.

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Comments: From the Office of Gov. Jay Nixon (July 11, 2013)
Innovation Campuses throughout Missouri connect students with careers in high-demand fields through local partnerships; cut the time it takes to earn a degree. Gov. Nixon launched the Innovation Campus initiative in 2012 to train students for careers in high-demand fields, cut the time it takes to earn a college degree, and reduce student debt.

"The Innovation Campus initiative is connecting Missouri businesses with local institutes of higher education to make sure that students today are preparing for the jobs of tomorrow," Gov. Nixon said. "The strength of our economy and the future of our state are directly tied to ensuring that higher education remains affordable and provides students with the knowledge and skills they need to be successful in the global marketplace. I anticipate the Innovation Campus initiative could become a model for the rest of the nation."

Last fall, Gov. Nixon announced $9 million in Innovation Campus grants to establish partnerships between local high schools, community colleges, four-year colleges and universities, and area businesses.

Senate Bill 381 officially defines in state statute an Innovation Campus as an educational partnership comprised of one or more Missouri public community colleges or Linn State Technical College; one or more Missouri public or private four-year institutions of higher education; one or more Missouri high schools or K-12 education districts; and at least one Missouri-based business.

Innovation Campuses offer students accelerated degree programs specifically designed to prepare them for careers in science, technology and other high demand fields, and to reduce the time and cost needed to earn their degrees.
Employees recommended by area businesses also participate in the program, obtaining scholarships to begin or complete a baccalaureate degree, while receiving on-site training and mentoring beyond what would otherwise occur within the company. Participants receive college credit for these applied learning experiences, and the corporate partners benefit from a pool of highly trained candidates for positions once they have completed their degrees and the apprenticeship training.


Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 381

97TH GENERAL ASSEMBLY
2013

AN ACT
To amend chapter 178, RSMo, by adding thereto one new section relating to the innovation education campus fund.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 178, RSMo, is amended by adding thereto one new section, to be known as section 178.1100, to read as follows:

178.1100. 1. As used in this section, except in those instances where the context states otherwise, the following words and phrases shall mean:

(1) "Innovation education campus" or "innovation campus", an educational partnership consisting of at least one of each of the following entities:
(a) A local Missouri high school or K-12 school district;
(b) A Missouri four-year public or private higher education institution;
(c) A Missouri-based business or businesses; and
(d) A Missouri two-year public higher education institution or Linn State Technical College;

(2) "Innovation education campus fund" or "fund", the fund to be administered by the commissioner of higher education and in the custody of the state treasurer created under this section to fund the instruction of an innovation campus.

2. There is hereby created in the state treasury the "Innovation Education Campus Fund". The commissioner of higher education shall administer the fund. The state treasurer shall be custodian of the fund and may approve disbursements from the fund in accordance with
sections 30.170 and 30.180. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

3. The general assembly may appropriate moneys to the fund that shall be used to fund the program of instruction at any innovation education campus.

4. Participating institutions, as provided in this section, may receive moneys from the fund when the following criteria are satisfied:
   (1) The innovation education campus demonstrates it is actively working to lower the cost for students to complete a college degree;
   (2) The program at the innovation education campus decreases the general amount of time required for a student to earn a college degree;
   (3) The innovation education campus provides applied and project-based learning experiences for students and leverages curriculum developed in consultation with partner Missouri business and industry representatives;
   (4) Students graduate from the innovation education campus with direct access to internship, apprentice, part-time or full-time career opportunities with Missouri-based businesses that are in partnership with the innovation education campus; and
   (5) The innovation education campus engages and partners with industry stakeholders in ongoing program development and program outcomes review.

5. The existing Missouri innovation campus, consisting of the University of Central Missouri, a school district with a student enrollment between seventeen thousand and nineteen thousand students that is located in any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, a community college located in any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants,
and private enterprises, has satisfied these criteria and is eligible for funding under this section.

6. The coordinating board for higher education shall conduct a review every five years of any innovation education campus to verify ongoing compliance with the requirements of subsection 4 of this section, including the Missouri innovation campus identified in subsection 5 of this section. As part of its review, the coordinating board shall consult with and take input from each entity that is a partner to an innovation education campus. Business and industry involved in an innovation education campus, either financially or through in-kind support, may provide feedback regarding the curriculum, courses, and investment quality of the innovation education campus to the coordinating board.

7. Any innovation education campus shall annually verify to the coordinating board for higher education that it has satisfied the criteria established in subsection 4 of this section. Upon verification that the criteria are satisfied, moneys from the fund shall be disbursed.

8. If the general assembly appropriates moneys to the fund, the allocation of moneys between entities partnered in an innovation education campus for purposes of operating the innovation education campus shall be determined through the appropriations process. Moneys appropriated to the fund shall not be considered part of the annual appropriation to any institution of higher education or any school district. If an innovation education campus, or any entity that has partnered to create and operate an innovation education campus, receives private funds, such private funds shall not be placed in the fund created in this section.

9. The coordinating board for higher education shall promulgate rules and regulations to implement the provisions of this section. Nothing in this section is intended to conflict with or supercede rules or regulations promulgated by the coordinating board for higher education. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
to review, to delay the effective date, or to disapprove and annul a rule
are subsequently held unconstitutional, then the grant of rulemaking
authority and any rule proposed or adopted after August 28, 2013, shall
be invalid and void.
Bill/Act: **SB 130**

Summary: The bill creates the Flexible Pathways Initiative to expand opportunities for secondary students to complete high school and achieve postsecondary readiness. The focus is on creativity and innovation in local school districts to provide 21st Century classrooms. The act provides the opportunity for each high school student to enroll in two dual enrollment courses at no expense to the student, authorizes the development of additional early college programs through which students complete 12th grade entirely on a college campus, and removes the upper age limit for participation in the High School Completion Program. Additionally, each student grade 7 through 12 will participate in an ongoing personalized learning planning process based on their individual goals, learning style and abilities.

Status: Signed into law on June 6, 2013.

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Comments: From VTDigger.org (May 17, 2013)

The Legislature made good on Gov. Peter Shumlin’s vision for expanding college opportunities for Vermont high school students. S.130 does exactly what Shumlin proposed during his inaugural speech — it doubles the funding for dual enrollment, which allows juniors and seniors to take college courses while in high school, and it lays the foundation for expanding early college programs, which allow students to simultaneously complete their senior year of high school and their first year of college.

Currently, eligible 11th- and 12th-graders can take one college course at the University of Vermont, the Vermont State Colleges, or seven private colleges at public expense. During the 2011-2012 school year, the state gave out 584 course vouchers for students participating in dual enrollment programs.

Under the new proposal, students could take two courses, fully funded, either at the college or onsite at the high school. To pay for it, the Legislature increased the allocation for the program — the money is drawn from the Next Generation Fund — from $400,000 to $800,000 in the 2014 budget. The state will pay 100 percent of tuition for FY 2014 and FY 2015; after that it will share the cost with the student’s high school.

Vermont Academy of Science and Technology (VAST), the state’s only early college program, serves about 40 students each year. Eighty-seven percent of the base education amount is used to pay for students’ enrollment in this program. S.130 authorizes the Secretary of Education to pay this same rate to UVM, Vermont State Colleges or approved private colleges if these institutions start early college programs.

S.130 also requires schools to develop “personalized learning plans” for students in seventh-grade and above. The secretary will publish “guiding principles” by Jan. 20, 2014, and the plans will be implemented on a rolling basis starting in 2015.
Read more: http://vtdigger.org/2013/05/17/legislative-wrap-up-flexible-pathways

Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
No. 77. An act relating to encouraging flexible pathways to secondary school completion.

(S.130)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Flexible Pathways Initiative; Dual Enrollment * * *

Sec. 1. 16 V.S.A. chapter 23, subchapter 2 is added to read:

Subchapter 2. Flexible Pathways to Secondary School Completion

§ 941. FLEXIBLE PATHWAYS INITIATIVE

(a) There is created within the Agency a Flexible Pathways Initiative:

(1) to encourage and support the creativity of school districts as they develop and expand high-quality educational experiences that are an integral part of secondary education in the evolving 21st Century classroom;

(2) to promote opportunities for Vermont students to achieve postsecondary readiness through high-quality educational experiences that acknowledge individual goals, learning styles, and abilities; and

(3) to increase the rates of secondary school completion and postsecondary continuation in Vermont.

(b) The Secretary shall develop, publish, and regularly update guidance, in the form of technical assistance, sharing of best practices and model documents, legal interpretations, and other support designed to assist school districts:
(1) to identify and support secondary students who require additional assistance to succeed in school and to identify ways in which individual students would benefit from flexible pathways to graduation;

(2) to work with every student in grade seven through grade 12 in an ongoing personalized learning planning process that:
   
   (A) identifies the student’s emerging abilities, aptitude, and disposition;
   
   (B) includes participation by families and other engaged adults;
   
   (C) guides decisions regarding course offerings and other high-quality educational experiences; and
   
   (D) is documented by a personalized learning plan;

(3) to create opportunities for secondary students to pursue flexible pathways to graduation that:

   (A) increase aspiration and encourage postsecondary continuation of training and education;

   (B) are an integral component of a student’s personalized learning plan; and

   (C) include:

   (i) applied or work-based learning opportunities, including career and technical education and internships;

   (ii) virtual learning and blended learning;
(iii) dual enrollment opportunities as set forth in section 944 of this title;

(iv) early college programs as set forth in subsection 4011(e) of this title;

(v) the High School Completion Program as set forth in section 943 of this title; and

(vi) the Adult Diploma Program and General Educational Development Program as set forth in section 946 of this title; and

(4) to provide students, beginning no later than in the seventh grade, with career development and postsecondary planning resources to ensure that they are able to take full advantage of the opportunities available within the flexible pathways to graduation and to achieve their career and postsecondary education and training goals.

(c) Nothing in this subchapter shall be construed as discouraging or limiting the authority of any school district to develop or continue to provide educational opportunities for its students that are otherwise permitted, including the provision of Advanced Placement courses.

(d) An individual entitlement or private right of action shall not arise from creation of a personalized learning plan.

§ 942. DEFINITIONS

As used in this title:
(1) “Accredited postsecondary institution” means a postsecondary institution that has been accredited by the New England Association of Schools and Colleges or another regional accrediting agency recognized by the U.S. Department of Education.

(2) “Approved provider” means an entity approved by the Secretary to provide educational services that may be awarded credits or used to determine proficiency necessary for a high school diploma.

(3) “Blended learning” means a formal education program in which content and instruction are delivered both in a traditional classroom setting and through virtual learning.

(4) “Career development” means the identification of student interests and aptitudes and the ability to link these to potential career paths and the training and education necessary to succeed on these paths.

(5) “Carnegie unit” means 125 hours of class or contact time with a teacher over the course of one year at the secondary level.

(6) “Contracting agency” means an entity that enters into a contract with the Agency to provide “flexible pathways to graduation” services itself or in conjunction with one or more approved providers in Vermont.

(7) “Dual enrollment” means enrollment by a secondary student in a course offered by an accredited postsecondary institution and for which, upon successful completion of the course, the student will receive:
(A) secondary credit toward graduation from the secondary school in
which the student is enrolled; and

(B) postsecondary credit from the institution that offered the course if
the course is a credit-bearing course at that institution.

(8) “Early college” means full-time enrollment, pursuant to subsection
4011(e) of this title, by a 12th grade Vermont student for one academic year in
a program offered by a postsecondary institution in which the credits earned
apply to secondary school graduation requirements.

(9) “Flexible pathways to graduation” means any combination of
high-quality academic and experiential components leading to secondary
school completion and postsecondary readiness, which may include
assessments that allow the student to apply his or her knowledge and skills to
tasks that are of interest to that student.

(10) “Personalized learning plan” and “PLP” mean documentation of an
evolving plan developed on behalf of a student in an ongoing process
involving a secondary student, a representative of the school, and, if the
student is a minor, the student’s parents or legal guardian and updated at least
annually by November 30; provided, however, that a home study student and
the student’s parent or guardian shall be solely responsible for developing a
plan. The plan shall be developmentally appropriate and shall reflect the
student’s emerging abilities, aptitude, and disposition. The plan shall define
the scope and rigor of academic and experiential opportunities necessary for a
secondary student to complete secondary school successfully, attain postsecondary readiness, and be prepared to engage actively in civic life. While often less formalized, personalized learning and personalized instructional approaches are critical to students in kindergarten through grade 6 as well.

(11) “Postsecondary planning” means the identification of education and training programs after high school that meet a student’s academic, vocational, financial, and social needs and the identification of financial assistance available for those programs.

(12) “Postsecondary readiness” means the ability to enter the workforce or to pursue postsecondary education or training without the need for remediation.

(13) “Virtual learning” means learning in which the teacher and student communicate concurrently through real-time telecommunication. “Virtual learning” also means online learning in which communication between the teacher and student does not occur concurrently and the student works according to his or her own schedule.

§ 943. [RESERVED.]

§ 944. DUAL ENROLLMENT PROGRAM

(a) Program creation. There is created a statewide Dual Enrollment Program to be a potential component of a student’s flexible pathway. The Program shall include college courses offered on the campus of an accredited
postsecondary institution and college courses offered by an accredited
postsecondary institution on the campus of a secondary school. The Program
may include online college courses or components.

(b) Students.

(1) A Vermont resident who has completed grade 10 but has not
received a high school diploma is eligible to participate in the Program if:

(A) the student:

(i) is enrolled in:

(I) a Vermont public school, including a Vermont career
technical center;

(II) a public school in another state or an approved independent
school that is designated as the public secondary school for the student’s
district of residence; or

(III) an approved independent school in Vermont to which the
student’s district of residence pays publicly funded tuition on behalf of the
student;

(ii) is assigned to a public school through the High School
Completion Program; or

(iii) is a home study student;

(B) dual enrollment is an element included within the student’s
personalized learning plan; and
(C) the secondary school and the postsecondary institution have
determined that the student is sufficiently prepared to succeed in a dual
enrollment course, which can be determined in part by the assessment tool or
tools identified by the participating postsecondary institution.

(2) An eligible student may enroll in up to two dual enrollment courses
prior to completion of secondary school for which neither the student nor the
student’s parent or guardian shall be required to pay tuition. A student may
enroll in courses offered while secondary school is in session and during the
summer.

(c) Public postsecondary institutions. The Vermont State Colleges and the
University of Vermont shall work together to provide dual enrollment
opportunities throughout the State.

(1) When a dual enrollment course is offered on a secondary school
campus, the public postsecondary institution shall:

(A) retain authority to determine course content; and

(B) work with the secondary school to select, monitor, support, and
evaluate instructors.

(2) The public postsecondary institution shall maintain the
postsecondary academic record of each participating student and provide
transcripts on request.

(3) To the extent permitted under the Family Educational Rights and
Privacy Act, the public postsecondary institution shall collect and send data
related to student participation and success to the student’s secondary school and the Secretary and shall send data to the Vermont Student Assistance Corporation necessary for the Corporation’s federal reporting requirements.

(4) The public postsecondary institution shall accept as full payment the tuition set forth in subsection (f) of this section.

(d) Secondary schools. Each school identified in subdivision (b)(1) of this section that is located in Vermont shall:

(1) provide access for eligible students to participate in any dual enrollment courses that may be offered on the campus of the secondary school;

(2) accept postsecondary credit awarded for dual enrollment courses offered by a Vermont public postsecondary institution under this section as meeting secondary school graduation requirements;

(3) collect enrollment data as prescribed by the Secretary for longitudinal review and evaluation;

(4) identify and provide necessary support for participating students and continue to provide services for students with disabilities; and

(5) provide support for a seamless transition to postsecondary enrollment upon graduation.

(e) Program management. The Agency shall manage or may contract for the management of the Dual Enrollment Program in Vermont by:

(1) marketing the Dual Enrollment Program to Vermont students and their families;
(2) assisting secondary and postsecondary partners to develop memoranda of understanding, when requested;

(3) coordinating with secondary and postsecondary partners to understand and define student academic readiness;

(4) convening regular meetings of interested parties to explore and develop improved student support services;

(5) coordinating the use of technology to ensure access and coordination of the Program;

(6) reviewing program costs;

(7) evaluating all aspects of the Dual Enrollment Program and ensuring overall quality and accountability; and

(8) performing other necessary or related duties.

(f) Tuition and funding.

(1) Tuition shall be paid to public postsecondary institutions in Vermont as follows:

(A) For any course for which the postsecondary institution pays the instructor, the student’s school district of residence shall pay tuition to the postsecondary institution in an amount equal to the tuition rate charged by the Community College of Vermont (CCV) at the time the dual enrollment course is offered; provided however, that tuition paid to CCV under this subdivision (A) shall be in an amount equal to 90 percent of the CCV rate.
(B) For any course that is taught by an instructor who is paid as part of employment by a secondary school, the student’s school district of residence shall pay tuition to the postsecondary institution in an amount equal to 20 percent of the tuition rate charged by the Community College of Vermont at the time the dual enrollment course is offered.

(2) Notwithstanding subdivision (1) of this subsection requiring the district of residence to pay tuition, the State shall pay 50 percent of the tuition owed to public postsecondary institutions under subdivision (1)(A) of this subsection from the Next Generation Initiative Fund created in section 2887 of this title; provided, however, that the total amount paid by the State in any fiscal year shall not exceed the total amount of General Fund dollars the General Assembly appropriated from the Fund in that year for dual enrollment purposes plus any balance carried forward from the previous fiscal year; and further provided that, notwithstanding subdivision (b)(2) of this section, the cumulative amount to be paid by school districts under subdivision (1)(A) in any fiscal year shall not exceed the amount available to be paid by General Fund dollars in that year.

(3) If it agrees to the terms of subsection (c) of this section, an accredited private postsecondary institution in Vermont approved pursuant to section 176 of this title shall receive tuition pursuant to subdivisions (1) and (2) of this subsection (f) for each eligible student it enrolls in a college-level course under this section.
(g) Private and out-of-state postsecondary institutions. Nothing in this section shall be construed to limit a school district’s authority to enter into a contract for dual enrollment courses with an accredited private or public postsecondary institution not identified in subsection (c) of this section located in or outside Vermont. The school district may negotiate terms different from those set forth in this section, including the amount of tuition to be paid. The school district may determine whether enrollment by an eligible student in a course offered under this subsection shall constitute one of the two courses authorized by subdivision (b)(2) of this section.

(h) Number of courses. Nothing in this section shall be construed to limit a school district’s authority to pay for more than the two courses per eligible student authorized by subdivision (b)(2) of this section; provided, however, that payment under subdivision (f)(2) of this section shall not be made for more than two courses per eligible student.

(i) Other postsecondary courses. Nothing in this section shall be construed to limit a school district’s authority to award credit toward graduation requirements to a student who receives prior approval from the school and successfully completes a course offered by an accredited postsecondary institution that was not paid for by the district pursuant to this section. The school district shall determine the number and nature of credits it will award to the student for successful completion of the course, including whether the course will satisfy one or more graduation requirements, and shall inform the
student prior to enrollment. Credits awarded shall be based on performance and not solely on Carnegie units; provided, however, that unless the school district determines otherwise, a three-credit postsecondary course shall be presumed to equal one-half of a Carnegie unit. A school district shall not withhold approval or credit without reasonable justification. A student may request that the superintendent review the district’s determination regarding course approval or credits. The superintendent’s decision shall be final.

(j) Reports. Notwithstanding 2 V.S.A. § 20(d), the Secretary shall report to the House and Senate Committees on Education annually in January regarding the Dual Enrollment Program, including data relating to student demographics, levels of participation, marketing, and program success.

§ 945. [RESERVED.]

Sec. 2. DUAL ENROLLMENT; TRANSITION; FUNDING; NONOPERATING DISTRICTS

(a) Notwithstanding any provision of Sec. 1, 16 V.S.A. § 944(f), to the contrary, the State shall pay 100 percent of the tuition owed to postsecondary institutions under subdivision (f)(1) for courses offered in fiscal years 2014 and 2015; provided, however, that the total amount paid by the State in either fiscal year shall not exceed the total amount of General Fund dollars the General Assembly appropriated from the Fund in that year for dual enrollment purposes plus any balance carried forward from the previous fiscal year. Any balance
carried forward from fiscal year 2015 shall be used to satisfy the financial
obligations of school districts under subsection (f) in fiscal year 2016.

(b)(1) The Secretary shall analyze issues relating to providing dual
enrollment opportunities pursuant to Sec. 1 of this act to publicly funded
students enrolled in Vermont approved independent schools. Specifically, the
analysis shall include:

(A) the anticipated utilization of dual enrollment opportunities;

(B) the anticipated financial impact on sending school districts;

(C) the ways in which sending school districts will ensure student
participation in a personalized learning planning process and inclusion of dual
enrollment in the student’s plan; and

(D) other financial and programmatic issues related to dual
enrollment access by publicly funded students enrolled in approved
independent schools.

(2) On or before February 1, 2014, the Secretary shall report the results
of the analysis to the House and Senate Committees on Education together
with any recommendations for amendment to statutes or rules, including
whether it would be advisable to amend or repeal Sec. 1, 16 V.S.A.
§ 944(b)(1)(A)(i)(III) (eligibility of publicly funded student enrolled in
Vermont approved independent school).

Sec. 3. REPEAL

16 V.S.A. § 913 (secondary credit; postsecondary course) is repealed.
Sec. 4. 16 V.S.A. § 1049a is redesignated to read:

§ 1049a 943. HIGH SCHOOL COMPLETION PROGRAM

Sec. 5. 16 V.S.A. § 943 is amended to read:

§ 943. HIGH SCHOOL COMPLETION PROGRAM

(a) In this section:

(1) “Graduation education plan” means a written plan leading to a high school diploma for a person who is 16 to 22 years of age and has not received a high school diploma, who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.

(2) “Approved provider” means an entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.

(3) “Contracting agency” means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.

There is created a High School Completion Program to be a potential component of a flexible pathway for any Vermont student who is at least
16 years old, who has not received a high school diploma, and who may or may not be enrolled in a public or approved independent school.

(b) If a person who wishes to work on a graduation education plan personalized learning plan leading to graduation through the High School Completion Program is not enrolled in a public or approved independent school, then the commissioner Secretary shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. The school district in which a student is enrolled or to which a non-enrolled student is assigned shall work with the contracting agency and the student to develop a graduation education personalized learning plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner Secretary shall reimburse, and net cash payments where possible, a school district that has agreed to a graduation education personalized learning plan developed under this section in an amount:

(1) established by the commissioner Secretary for the development and ongoing evaluation and revision of the graduation education personalized learning plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in cocurricular activities, and participation in academic or other courses; provided, however, that this
amount shall not be available to a school district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner Secretary and the contracting agency, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the graduation education personalized learning plan.

* * * Flexible Pathways: Adult Diploma Program; GED * * *

Sec. 6. 16 V.S.A. § 1049 is redesignated to read:

§ 1049. PROGRAMS § 945. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

Sec. 7. 16 V.S.A. § 945 is amended to read:

§ 945. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

(a) The commissioner of education may provide programs designed to fit the individual needs and circumstances of adult students. Programs authorized under this section shall give priority to those adult persons with the lowest levels of literacy skills.

(b)(1) Fees for general educational development shall be $3.00 for a transcript.

(2) The Secretary shall maintain an adult diploma program (ADP) means, which shall be an assessment process administered by the Vermont department of education Agency through which an adult individual who is at
least 20 years old can receive a local high school diploma granted by one of the program’s participating high schools.

(3) General (b) The Secretary shall maintain a general educational development (GED) means a testing program administered jointly by the Vermont department of education, program, which it shall administer jointly with the GED testing service, and approved local testing centers and through which an adult individual who is at least 16 years old and who is not enrolled in secondary school can receive a secondary school equivalency certificate based on successful completion of the GED tests of general educational development.

(c) Fees collected under this section shall be credited to a special fund established and managed pursuant to chapter 7, subchapter 5 of Title 32, and shall be available to the department to offset the costs of providing those services. The Secretary may provide additional programs designed to address the individual needs and circumstances of adult students, particularly students with the lowest levels of literacy skills.

* * * Flexible Pathways: Early College * * *

Sec. 8. 16 V.S.A. § 4011(e) is amended to read:

(e) Early college.

(1) The commissioner For each 12th grade Vermont student enrolled, the Secretary shall pay an amount equal to 87 percent of the base education amount to:
(A) the Vermont Academy of Science and Technology for each Vermont resident, 12th grade student enrolled (VAST); and

(B) an early college program other than the VAST program that is developed and operated or overseen by one of the Vermont State Colleges, by the University of Vermont, or by an accredited private postsecondary school located in Vermont and that is approved for operation by the Secretary; provided, however, when making a payment under this subdivision (B), the Secretary shall not pay more than the tuition charged by the institution.

(2) The Secretary shall make the payment pursuant to subdivision (1) of this subsection directly to the postsecondary institution, which shall accept the amount as full payment of the student’s tuition.

(3) A student on whose behalf the Secretary makes a payment pursuant to subdivision (1) of this subsection:

(A) shall be enrolled as a full-time student in the institution receiving the payment for the academic year for which payment is made;

(B) shall not be enrolled concurrently in a secondary school operated by the student’s district of residence or to which the district pays tuition on the student’s behalf; and

(C) shall not be included in the average daily membership of any school district for the academic year for which payment is made; provided, however, that if more than five percent of the 12th grade students residing in a district enroll in an early college program, then the district may include the
number of students in excess of five percent in its average daily membership;
but further provided that a 12th grade student enrolled in a college program
shall be included in the percentage calculation only if, for the previous
academic year, the student was enrolled in a school maintained by the district
or was a student for whom the district paid tuition to a public or approved
independent school.

(4) A postsecondary institution shall not accept a student into an early
college program unless enrollment in an early college program was an element
of the student’s personalized learning plan.

Sec. 9. 16 V.S.A. § 1545(c) is amended to read:

(c) For any resident 12th grade student attending the Vermont Academy for
Science and Technology enrolled in the Vermont Academy of Science and
Technology pursuant to subsection 4011(e) of this title or in another early
college program pursuant to that subsection, the credits and grades earned
shall, upon request of the student or the student’s parent or guardian, be
applied toward graduation requirements at the Vermont high school which
secondary school that the student attended prior to enrolling in the academy
early college program.

Sec. 10. 16 V.S.A. § 4011a is added to read:

§ 4011a. EARLY COLLEGE PROGRAM; REPORT; APPROPRIATION

(a) Notwithstanding 2 V.S.A. § 20(d), any postsecondary institution
receiving funds pursuant to subsection 4011(e) of this title shall report annually
in January to the Senate and House Committees on Education regarding the level of participation in the institution’s early college program, the success in achieving the stated goals of the program to enhance secondary students’ educational experiences and prepare them for success in college and beyond, and the specific outcomes for participating students relating to programmatic goals.

(b) In the budget submitted annually to the General Assembly pursuant to 32 V.S.A. chapter 5, the Governor shall include the recommended appropriation for all early college programs to be funded pursuant to subsection 4011(e) of this title, including the VAST program, as a distinct amount.

Sec. 11. EARLY COLLEGE; ENROLLMENT; CAPS; REPORTS; SUNSET

(a) A postsecondary institution receiving funds in connection with an early college program pursuant to Sec. 8, 16 V.S.A. § 4011(e), of this act shall not enroll more than 18 Vermont students in the program in one academic year; provided, however, that:

(1) the Vermont Academy of Science and Technology shall not enroll more than 60 Vermont students in one academic year; and

(2) there shall be no limitations on enrollment in any early college programs offered by the Community College of Vermont.

(b) Annually in January of 2014 through 2017, the Vermont State Colleges and the University of Vermont shall report to the House and Senate
Committees on Education regarding the expansion of the early college program in public and private postsecondary institutions as provided in Sec. 8 of this act, including data regarding actual enrollment, expected enrollment, unmet demand, if any, and marketing efforts for the purpose of considering whether it would be advisable to consider legislation repealing or amending the limit on the total number of students who may enroll.

(c) This section is repealed on July 1, 2017.

*** Implementation and Transitional Provisions; Effective Dates ***

Sec. 12. FLEXIBLE PATHWAYS IMPLEMENTATION PROJECT ON POSTSECONDARY PLANNING

To assist implementation of the Flexible Pathways Initiative established in Sec. 1 of this act, the Secretary of Education is authorized to enter into an agreement with the Vermont Student Assistance Corporation and one or more elementary or secondary schools to design and implement demonstration projects related to career planning and planning for postsecondary education and training.

Sec. 13. PERSONALIZED LEARNING PLAN PROCESS; IMPLEMENTATION; WORKING GROUP

(a) The process of developing and updating a personalized learning plan reflects the discussions and collaboration of a student and involved adults.

When students engage in the personalized learning plan process, they assume
an active role in the planning, assessment, and reflection required to identify developmentally appropriate academic, social, and career goals.

(b) On or before July 15, 2013, the Secretary of Education shall convene a working group to consist of teachers and principals of elementary and secondary schools, superintendents, and other interested parties to support implementation of the personalized learning plan process, particularly in those schools that do not already have a process in place. The working group shall consider ways in which effective personalized learning plan processes enhance development of the evolving academic, career, social, transitional, and family engagement elements of a student’s plan and shall identify best practices that can be replicated in other schools. The working group also shall consider ways in which the personalized learning that should occur in kindergarten through grade six can be used to reinforce and enhance the personalized learning plan process in grade seven through grade 12.

(c) By January 20, 2014, the working group shall develop and the Secretary shall publish on the Agency website guiding principles and practical tools for the personalized learning plan process and for developing personalized learning plans. The Secretary shall provide clarity regarding the differences in form, purpose, and function of personalized learning plans, educational support teams, plans created pursuant to section 504 of the federal Rehabilitation Act of 1973, and individualized education programs (IEPs). The Agency shall provide further guidance and support to schools as requested.
Sec. 14. EFFECTIVE DATE; IMPLEMENTATION DATES

(a) This act shall take effect on July 1, 2013.

(b)(1) By November 30, 2015, a school district shall ensure development of a personalized learning plan for:

(A) each student then in grade seven or nine; and

(B) for each student then in grade 11 or 12 who wishes to enroll in a dual enrollment pursuant to Sec. 1 of this act.

(2) By November 30, 2016, a school district:

(A) shall ensure development of a personalized learning plan for:

(i) each student then in grade seven or nine; and

(ii) each student then in grade 11 or 12 who wishes to enroll in a dual enrollment course; and

(B) shall ensure that the personalized learning plan process continues for enrolled students for whom plans were developed in previous years.

(3) By November 30, 2017 and by that date in each subsequent year, a school district:

(A) shall ensure development of a personalized learning plan for:

(i) each student then in grade seven; and

(ii) each student then in grade 11 or 12 who wishes to enroll in a dual enrollment course for whom a plan was not previously developed; and

(B) shall ensure that the personalized learning plan process continues for enrolled students for whom plans were developed in previous years.
(4) During academic years 2013–14 and 2014–15, a student who has not developed a personalized learning plan may enroll in a dual enrollment course pursuant to Sec. 1 of this act or an early college program pursuant to Sec. 8 of this act upon receiving prior approval of participation from the postsecondary institution and the principal or headmaster of the secondary school in which the student is enrolled. The principal or headmaster shall not withhold approval without reasonable justification. A student may request that the superintendent review a decision of the principal or headmaster to withhold approval. The superintendent’s decision shall be final.

(5) Upon the recommendation of the working group created in Sec. 13 of this act, the Secretary of Education may extend by one year any of the implementation dates required under this subsection (b).

(c) Funds for new early college programs pursuant to Sec. 8, 16 V.S.A. § 4011(c)(1)(B), of this act shall be available to students beginning in the 2014–2015 academic year.

Date the Governor signed the bill: June 6, 2013
Summary: The bill states parental consent is not required for the use of private insurance for early intervention services as defined in the Early Intervention Services System Act that are provided in this State pursuant to Part C of the federal Individuals with Disabilities Education Act. Provides that a policy of accident and health insurance that provides coverage for early intervention services must conform to the following criteria: the use of private health insurance to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act may not (1) count towards or result in a loss of benefits due to annual or lifetime insurance caps for, (2) negatively affect the availability of health insurance to, or (3) be the basis for increasing the health insurance premiums of an infant or toddler with a disability, the infant's or toddler's parent, or the infant's or toddler's family members covered under that health insurance policy.


Comments: From the sponsor, Rep. Sara Feigenholtz
Early Intervention (EI) services are given to children from birth to three years old who have exhibited developmental delays in growing and learning. Examples of EI services include: developmental evaluations and assessments, physical therapy, occupational therapy, speech/language therapy, nutrition services, psychological services, and social work services.

Senate Bill 626 prevents insurance companies from discriminating against families who need these early intervention services. Under this new law, insurance companies cannot use EI services as a reason for families to lose insurance benefits or to be denied coverage. Additionally, EI services cannot be the basis for increasing the insurance premium on the child or family.

Read more: Rep. Sara Feigenholtz

From Education Commission of the States
The bill provides that a policy of accident and health insurance that provides coverage for early intervention services must conform to the following criteria: the use of private health insurance to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act may not:
(1) count towards or result in a loss of benefits due to annual or lifetime insurance caps
(2) negatively affect the availability of health insurance to, or
(3) be the basis for increasing the health insurance premiums of an infant or toddler with a disability, the infant's or toddler's parent, or the infant's or toddler's family members covered under that health insurance policy.

Amends the Early Intervention Services System Act. Adds nursing services, nutrition services, and sign language and cued language services to the list of services included in the definition of
"early intervention services". Directs the Illinois Interagency Council on Early Intervention to coordinate and collaborate with state interagency early learning initiatives, as appropriate. Provides that before adopting any new policy or procedure needed to comply with certain provisions under the Individuals with Disabilities Education Act, the department of human services must hold public hearings on the new policy or procedure, provide notice of the hearings at least 30 days before the hearings are conducted, and provide an opportunity for the general public, including individuals with disabilities and parents of infants and toddlers with disabilities, early intervention providers, and other specified persons to comment for at least 30 days on the new policy or procedure.

Requires statewide system of locally based early intervention services include appropriate early intervention services based on scientifically based research to the extent practicable. Provides that multidisciplinary evaluation of potentially eligible infant or toddler is not necessary if child meets definition of eligibility based on medical records. For child deemed eligible for services, requires multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs, and family-directed assessment of the resources, priorities, and concerns of the family and the identification of supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. Extends central directory that the statewide system for early intervention services and programs must include, to include public and private early intervention services, professional and other groups that provide assistance to infants and toddlers with disabilities and their families, and research and demonstration projects being conducted in Illinois relating to infants and toddlers with disabilities.

Read more:
http://www.ecs.org/ecs/ecscat.nsf/3b2ac7b7ed456d2687257af2007dc0a3/10b56bf441ce669987257ba2005393d2?OpenDocument

Disposition of Entry:
SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Insurance Code is amended by adding Section 367m as follows:

(215 ILCS 5/367m new)

Sec. 367m. Early intervention services. A policy of accident and health insurance that provides coverage for early intervention services must conform to the following criteria:

(1) The use of private health insurance to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act may not count towards or result in a loss of benefits due to annual or lifetime insurance caps for an infant or toddler with a disability, the infant's or toddler's parent, or the infant's or toddler's family members who are covered under that health insurance policy.

(2) The use of private health insurance to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act may not negatively affect the availability of health insurance to an infant or toddler with a disability, the infant's or toddler's parent, or the infant's or toddler's family
members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the federal Individuals with Disabilities Education Act.

(3) The use of private health insurance to pay for early intervention services under Part C of the federal Individuals with Disabilities Education Act may not be the basis for increasing the health insurance premiums of an infant or toddler with a disability, the infant's or toddler's parent, or the infant's or toddler's family members covered under that health insurance policy.

For the purposes of this Section, "early intervention services" has the same meaning as in the Early Intervention Services System Act.

Section 10. The Early Intervention Services System Act is amended by changing Sections 3, 4, 5, 7, 9, 10, 11, 12, 13, 13.5, 13.10, and 13.30 as follows:

(325 ILCS 20/3) (from Ch. 23, par. 4153)
Sec. 3. Definitions. As used in this Act:
(a) "Eligible infants and toddlers" means infants and toddlers under 36 months of age with any of the following conditions:
(1) Developmental delays.
Summary: Requires any candidate entering a program of teacher preparation to complete training in social and emotional development and learning of children. The training must include instruction concerning a comprehensive, coordinated social and emotional assessment and early intervention for children displaying behaviors associated with social or emotional problems, the availability of treatment services for such children and referring such children for assessment, intervention or treatment services.

Status: Signed into law July 1, 2013.

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Comments: From State Rep. Ezequiel Santiago
Teaching our youth is a tremendous and increasingly complex responsibility. While our current teacher certification process is quite vigorous, it does not specifically include comprehensive training regarding how children learn and develop socially and emotionally. This session, we passed a law that requires the State Board of Education to include in their current course of study instruction in how to conduct a comprehensive, coordinated social and emotional assessment of, and early intervention for, children who appear to have social or emotional problems. This better prepares future teachers to handle all aspects of a child’s learning and development. Training must also include educating teachers about the availability of treatment services for such children, referrals for assessment or intervention. This training will be embedded in the existing coursework for prospective teachers.


Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT CONCERNING TEACHER EDUCATION PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 10-145a of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2013):

(a) The State Board of Education may, in accordance with section 10-19 and such regulations and qualifications as it prescribes, issue certificates of qualification to teach, to administer, to supervise or to serve in other positions requiring certification pursuant to regulations adopted by the State Board of Education in any public school in the state and may revoke the same. Any such regulations shall provide that the qualifications to maintain any administrator, supervisor or special service certificate shall incorporate the professional development provisions of section 10-148a. The certificates of qualification issued under this section shall be accepted by boards of education in lieu of any other certificate, provided additional qualifications may be required by a board of education, in which case the state certificate shall be accepted for such subjects as it includes.

(b) Any candidate in a program of teacher preparation leading to professional certification shall be encouraged to successfully complete an intergroup relations component of such a program which shall be developed with the participation of both sexes, and persons of various ethnic, cultural and economic backgrounds. Such intergroup relations program shall have the following objectives: (1) The imparting of an appreciation of the contributions to American civilization of the various ethnic, cultural and economic groups composing American society and an understanding of the life styles of such groups; (2) the counteracting of biases, discrimination and prejudices; and (3) the assurance of respect for human diversity and personal rights. The State Board of Education, the Board of Regents for Higher Education, the Commission on Human Rights and Opportunities and the Permanent Commission on the Status of Women shall establish a joint committee composed of members of the four agencies, which shall develop and implement such programs in intergroup relations.

(c) Any candidate in a program of teacher preparation leading to professional certification shall be encouraged to complete a (1) health component of such a program, which includes, but need not be limited to, human growth and development, nutrition, first aid, disease prevention and community and consumer health, and (2) mental health component of such a program, which includes, but need not be limited to, youth suicide, child abuse and alcohol and drug abuse.

(d) Any candidate in a program of teacher preparation leading to professional certification shall complete a
school violence, bullying, as defined in section 10-222d, and suicide prevention and conflict resolution component of such a program.

(e) On and after July 1, 1998, any candidate in a program of teacher preparation leading to professional certification shall complete a computer and other information technology skills component of such program, as applied to student learning and classroom instruction, communications and data management.

(f) On and after July 1, 2006, any program of teacher preparation leading to professional certification shall include, as part of the curriculum, instruction in literacy skills and processes that reflects current research and best practices in the field of literacy training. Such instruction shall be incorporated into requirements of student major and concentration.

(g) On and after July 1, 2006, any program of teacher preparation leading to professional certification shall include, as part of the curriculum, instruction in the concepts of second language learning and second language acquisition and processes that reflects current research and best practices in the field of second language learning and second language acquisition. Such instruction shall be incorporated into requirements of student major and concentration.

(h) On and after July 1, 2011, any program of teacher preparation leading to professional certification may permit teaching experience in a nonpublic school, approved by the State Board of Education, and offered through a public or private institution of higher education to count towards the preparation and eligibility requirements for an initial educator certificate, provided such teaching experience is completed as part of a cooperating teacher program, in accordance with the provisions of subsection (d) of section 10-220a.

(i) On and after July 1, 2012, any candidate entering a program of teacher preparation leading to professional certification shall be required to complete training in competency areas contained in the professional teaching standards established by the State Board of Education, including, but not limited to, development and characteristics of learners, evidence-based and standards-based instruction, evidence-based classroom and behavior management, assessment and professional behaviors and responsibilities, and social and emotional development and learning of children. The training in social and emotional development and learning of children shall include instruction concerning a comprehensive, coordinated social and emotional assessment and early intervention for children displaying behaviors associated with social or emotional problems, the availability of treatment services for such children and referring such children for assessment, intervention or treatment services.

(j) On and after July 1, 2015, any program of teacher preparation leading to professional certification shall require, as part of the curriculum, clinical experience, field experience or student teaching experience in a classroom during four semesters of such program of teacher preparation.

(k) On and after July 1, 2012, any program of teacher preparation leading to professional certification shall include, as part of the curriculum, instruction in the implementation of student individualized education programs as it relates to the provision of special education and related services.

Approved June 18, 2013
Summary: The bill defines "reasonably accommodate" a student in public education and provides that the parent is primarily responsible for a student's education with the state in a secondary and supportive role to the parent. The Act provides that the parent has a right to reasonable accommodations from the student's LEA.

Requirements for a local education agency include:
- Reasonably accommodate a parent's initial selection of a teacher or request for a change of teacher; and
- Allow a student to earn course credit towards high school graduation by testing out of the course, or demonstrating competency in course standards.

Also requires a school district to reasonably accommodate a parent request to:
- Excuse a student from taking a statewide test or the National Assessment of Educational Progress (NAEP);
- Retain a student in grade level based on student's academic ability or the student's social, emotional, or physical maturity;
- Visit and observe any class the student attends;
- Excuse the student to attend a family event or visit to a health care provider, without obtaining a note from the provider;
- Place a student in a specialized class or an advanced course; and
- Meet with a teacher at a mutually agreeable time if the parent is unable to attend a regularly scheduled parent teacher conference.

Comments: From the Salt Lake Tribune (March 13, 2014)
Parents would have what amounts to a bill of rights in education under SB 122. It declares that parents are the people primarily in charge of their children's education, and schools "shall reasonably accommodate" their requests for special or advanced education, absences, advancing early, remaining in a grade or skipping year-end assessment tests, among other rights newly defined.

Sen. Aaron Osmond, R-South Jordan, sponsor of the bill, earlier said he wants schools to recognize that "the parent really is the lead" and that will customize education to get the best outcomes for students.

Among the rights in the bill are:
- A parent is the person primarily responsible for the education of the student and the state is in a secondary and supportive role. As such, the parent has the right to reasonable academic accommodations.
• Schools shall reasonably accommodate a parent’s request to "retain a student on grade level based on the student’s academic ability or the student’s social, emotional, or physical maturity."
• Schools shall reasonably accommodate a parent’s request to visit and observe a child’s class.
• Schools shall reasonably accommodate a written request from a parent to excuse the student from attendance for a family event or to visit a doctor, without obtaining a note from the provider.
• Schools shall "reasonably accommodate a parent’s written request "to place a student in a specialized class or an advanced course."
• Schools shall allow students to earn credit toward high school graduation without completing a course by testing out of it or demonstrating competency in course standards.
• Schools shall reasonably accommodate a parent’s request to meet with a teacher.
• Upon written request of a parent, schools shall excuse the student from taking year-end assessment tests.
• Schools shall give parents copies of their discipline policies.


Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
     ( ) next SSL mtg.
     ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
PARENTAL RIGHTS IN PUBLIC EDUCATION

2014 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Aaron Osmond
House Sponsor: Rich Cunningham
Cosponsor: Mark B. Madsen

LONG TITLE
General Description:
This bill addresses certain rights of a parent or guardian of a student enrolled in a public school.

Highlighted Provisions:
This bill:
  • specifies certain rights of a parent or guardian of a student enrolled in a public school; and
  • requires a school district, charter school, or the Utah Schools for the Deaf and the Blind to annually notify a student's parent or guardian of certain rights.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
ENACTS:
  53A-15-1501, Utah Code Annotated 1953
  53A-15-1502, Utah Code Annotated 1953
  53A-15-1503, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 53A-15-1501 is enacted to read:

**Part 15. Parental Rights**

**53A-15-1501. Definitions.**

As used in this part:

(1) "LEA" means a school district, charter school, or the Utah Schools for the Deaf and the Blind.

(2) "Reasonably accommodate" means an LEA shall make its best effort to enable a parent or guardian to exercise a parental right specified in Section 53A-15-1503:

(a) without substantial impact to staff and resources, including employee working conditions, safety and supervision on school premises and for school activities, and the efficient allocation of expenditures; and

(b) while balancing:

(i) the parental rights of parents or guardians;

(ii) the educational needs of other students;

(iii) the academic and behavioral impacts to a classroom;

(iv) a teacher's workload; and

(v) the assurance of the safe and efficient operation of a school.

Section 2. Section 53A-15-1502 is enacted to read:

**53A-15-1502. Annual notice of parental rights.**

An LEA shall annually notify a parent or guardian of a student enrolled in the LEA of the parent's or guardian's rights as specified in this part.

Section 3. Section 53A-15-1503 is enacted to read:

**53A-15-1503. Parental right to academic accommodations.**

(1) (a) A student's parent or guardian is the primary person responsible for the education of the student, and the state is in a secondary and supportive role to the parent or guardian. As such, a student's parent or guardian has the right to reasonable academic accommodations from the student's LEA as specified in this section.

(b) Each accommodation shall be considered on an individual basis and no student
shall be considered to a greater or lesser degree than any other student.

(c) The parental rights specified in this section do not include all the rights or accommodations that may be available to a student's parent or guardian as a user of the public education system.

(2) An LEA shall reasonably accommodate a parent's or guardian's written request to retain a student on grade level based on the student's academic ability or the student's social, emotional, or physical maturity.

(3) An LEA shall reasonably accommodate a parent's or guardian's initial selection of a teacher or request for a change of teacher.

(4) An LEA shall reasonably accommodate the request of a student's parent or guardian to visit and observe any class the student attends.

(5)(a) An LEA shall reasonably accommodate a written request of a student's parent or guardian to excuse the student from attendance for a family event or visit to a health care provider, without obtaining a note from the provider.

(b) An excused absence provided under Subsection (5)(a) does not diminish expectations for the student's academic performance.

(6)(a) An LEA shall reasonably accommodate a parent's or guardian's written request to place a student in a specialized class or an advanced course.

(b) An LEA shall consider multiple academic data points when determining an accommodation under Subsection (6)(a).

(7) Consistent with Section 53A-13-108, which requires the State Board of Education to establish graduation requirements that use competency-based standards and assessments, an LEA shall allow a student to earn course credit towards high school graduation without completing a course in school by:

(a) testing out of the course; or

(b) demonstrating competency in course standards.

(8) An LEA shall reasonably accommodate a parent's or guardian's request to meet with a teacher at a mutually agreeable time if the parent or guardian is unable to attend a
(9) (a) Upon the written request of a student's parent or guardian, an LEA shall excuse the student from taking a test that is administered statewide or the National Assessment of Educational Progress.

(b) The State Board of Education shall ensure through board rule that neither an LEA nor its employees are negatively impacted through school grading or employee evaluation due to a student not taking a test pursuant to Subsection (9)(a).

(10) (a) An LEA shall provide for:

(i) the distribution of a copy of a school's discipline and conduct policy to each student in accordance with Section 53A-11-903; and

(ii) a parent's or guardian's signature acknowledging receipt of the school's discipline and conduct policy.

(b) An LEA shall notify a parent or guardian of a student's violation of a school's discipline and conduct policy and allow a parent or guardian to respond to the notice in accordance with Chapter 11, Part 9, School Discipline and Conduct Plans.
Bill/Act: **SB 6552**

Status: Signed into law on April 3, 2014.

Summary: The Office of the Superintendent of Public Instruction (OSPI), in consultation with one or more technical working groups, is directed to develop curriculum frameworks for a selected list of CTE courses whose content in science, technology, engineering, and mathematics is considered equivalent, in full or in part, to science or mathematics courses that meet high school graduation requirements. The course content must be aligned with industry standards and with the adopted state learning standards in mathematics and science.

Beginning no later than the 2015-16 school year, school districts are required to grant academic credit in science or mathematics for CTE courses on the OSPI list if the course is offered, but are not limited to the courses on the list. School districts must provide high school students with the opportunity to access at least one CTE course from the OSPI list that is equivalent to mathematics or one that is equivalent to science. Students may access these courses at high schools, skill centers, inter-district cooperatives, or through online learning or the Running Start program.

Comments: From the *Bonney Lake Courier-Herald* (March 14, 2014)

**SB 6552** authorizes the 24-credit graduation requirement framework developed by the SBE, provides flexibility to school districts in meeting the instructional hour requirement, and expands math and science course equivalencies for Career and Technical Education (CTE) programs.

“The career and college ready diploma is a big win for kids,” said Board Chair Dr. Kristina Mayer. “Establishing a meaningful high school diploma that prepares students for their next step in life, whatever that might be, has been a top priority for the board for nearly a decade.”

This bill embraces a multiple pathway approach providing more student choice in math and science course-taking decisions, seven combined credits of electives and Personalized Pathway Requirements that allow students to explore or focus on a range of fields of knowledge that interest them, and increased opportunities to earn course equivalency credits in CTE courses.

While the framework increases the credits needed to graduate from 20 to 24, **SB 6552** also makes the culminating project voluntary, somewhat offsetting the change.

In addition, the bill provides school districts the opportunity to request a waiver of up to two years to fully implement the new requirements, and the ability to waive up to two of the 24 credits for individual students in unusual circumstances.

Finally, the bill directs the Office of the Education Ombuds to convene a task force to review barriers to the 24-credit diploma for students with special needs.
“The new framework is rigorous and flexible,” explained Executive Director Ben Rarick. “It sets high graduation standards for all students, yet is sensitive to those who many need extra help to get there.”


Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT Relating to improving student success by modifying instructional hour and graduation requirements; amending RCW 28A.700.070, 28A.230.097, 28A.230.010, 28A.150.220, 28A.230.090, 28A.230.097, 28A.320.240, and 28A.150.260; adding a new section to chapter 28A.305 RCW; adding a new section to chapter 43.06B RCW; creating new sections; providing effective dates; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature recognizes that preparing students to be successful in postsecondary education, gainful employment, and citizenship requires increased rigor and achievement, including attaining a meaningful high school diploma with the opportunity to earn twenty-four credits. The legislature finds that an investment was made in the 2013-2015 omnibus appropriations act to implement an increase in instructional hours in the 2014-15 school year. School districts informed the legislature that the funding as provided in the 2013-2015 omnibus appropriations act would result in only a few minutes being added onto each class period and would not result in a meaningful increase in instruction that would have the
positive impact on student learning that the legislature expects. The
school districts suggested that it would be a better educational policy
to use the funds to implement the requirement of twenty-four credits
for high school graduation, which will result in a meaningful increase
of instructional hours. Based on input from school districts across
the state, the legislature recognizes the need to provide flexibility
for school districts to implement the increase in instructional hours
while still moving towards an increase in the high school graduation
requirements. Therefore, the legislature intends to shift the focus
and intent of the investments from compliance with the minimum
instructional hours offering to assisting school districts to provide
an opportunity for students to earn twenty-four credits for high school
graduation and obtain a meaningful diploma, beginning with the
graduating class of 2019, with the opportunity for school districts to
request a waiver for up to two years.

PART I

CAREER AND TECHNICAL EQUIVALENCIES

Sec. 101. RCW 28A.700.070 and 2008 c 170 s 201 are each amended to
read as follows:

(1) The office of the superintendent of public instruction shall
support school district efforts under RCW 28A.230.097 to adopt course
equivalencies for career and technical courses by:

(a) Recommending career and technical curriculum suitable for
course equivalencies;

(b) Publicizing best practices for high schools and school
districts in developing and adopting course equivalencies; and

(c) In consultation with the Washington association for career and
technical education, providing professional development, technical
assistance, and guidance for school districts seeking to expand their
lists of equivalent courses.

(2) The office of the superintendent of public instruction shall
provide professional development, technical assistance, and guidance
for school districts to develop career and technical course
equivalencies that also qualify as advanced placement courses.

(3) The office of the superintendent of public instruction, in
consultation with one or more technical working groups convened for
this purpose, shall develop curriculum frameworks for a selected list of career and technical courses that may be offered by high schools or skill centers whose content in science, technology, engineering, and mathematics is considered equivalent in full or in part to science or mathematics courses that meet high school graduation requirements. The content of the courses must be aligned with state essential academic learning requirements in mathematics as adopted by the superintendent of public instruction in July 2011 and the essential academic learning requirements in science as adopted in October 2013, and industry standards. The office shall submit the list of equivalent career and technical courses and their curriculum frameworks to the state board of education for review, an opportunity for public comment, and approval. The first list of courses under this subsection must be developed and approved before the 2015-16 school year. Thereafter, the office may periodically update or revise the list of courses using the process in this subsection.

(4) Subject to funds appropriated for this purpose, the office of the superintendent of public instruction shall allocate grant funds to school districts to increase the integration and rigor of academic instruction in career and technical courses. Grant recipients are encouraged to use grant funds to support teams of academic and technical teachers using a research-based professional development model supported by the national research center for career and technical education. The office of the superintendent of public instruction may require that grant recipients provide matching resources using federal Carl Perkins funds or other fund sources.

Sec. 102. RCW 28A.230.097 and 2013 c 241 ss 2 are each amended to read as follows:

(1) Each high school or school district board of directors shall adopt course equivalencies for career and technical high school courses offered to students in high schools and skill centers. A career and technical course equivalency may be for whole or partial credit. Each school district board of directors shall develop a course equivalency approval procedure. Boards of directors must approve AP computer science courses as equivalent to high school mathematics or science, and must denote on a student's transcript that AP computer science qualifies as a math-based quantitative course for students who take the
course in their senior year. In order for a board to approve AP
computer science as equivalent to high school mathematics, the student
must be concurrently enrolled in or have successfully completed algebra
II. Beginning no later than the 2015-16 school year, a school district
board of directors must, at a minimum, grant academic course
equivalency in mathematics or science for a high school career and
technical course from the list of courses approved by the state board
of education under RCW 28A.700.070, but is not limited to the courses
on the list. If the list of courses is revised after the 2015-16
school year, the school district board of directors must grant academic
course equivalency based on the revised list beginning with the school
year immediately following the revision.

(2) Career and technical courses determined to be equivalent to
academic core courses, in full or in part, by the high school or school
district shall be accepted as meeting core requirements, including
graduation requirements, if the courses are recorded on the student's
transcript using the equivalent academic high school department
designation and title. Full or partial credit shall be recorded as
appropriate. The high school or school district shall also issue and
keep record of course completion certificates that demonstrate that the
career and technical courses were successfully completed as needed for
industry certification, college credit, or preapprenticeship, as
applicable. The certificate shall be either part of the student's high
school and beyond plan or the student's culminating project, as
determined by the student. The office of the superintendent of public
instruction shall develop and make available electronic samples of
certificates of course completion.

Sec. 103. RCW 28A.230.010 and 2003 c 49 s 1 are each amended to
read as follows:

(1) School district boards of directors shall identify and offer
courses with content that meet or exceed: (a) The basic
education skills identified in RCW 28A.150.210; (b) the
graduation requirements under RCW 28A.230.090; (c) the courses
required to meet the minimum college entrance requirements under RCW
28A.230.130; and (d) the course options for career development
under RCW 28A.230.130. Such courses may be applied or theoretical,
academic, or vocational.
(2) School district boards of directors must provide high school students with the opportunity to access at least one career and technical education course that is considered equivalent to a mathematics course or at least one career and technical education course that is considered equivalent to a science course as determined by the office of the superintendent of public instruction and the state board of education in RCW 28A.700.070. Students may access such courses at high schools, interdistrict cooperatives, skill centers or branch or satellite skill centers, or through online learning or applicable running start vocational courses.

(3) School district boards of directors of school districts with fewer than two thousand students may apply to the state board of education for a waiver from the provisions of subsection (2) of this section.

NEW SECTION. Sec. 104. A new section is added to chapter 28A.305 RCW to read as follows:

The state board of education may grant a waiver from the provisions of RCW 28A.230.010(2) based on an application from a board of directors of a school district with fewer than two thousand students.

PART II
INSTRUCTIONAL HOURS AND HIGH SCHOOL GRADUATION CREDIT REQUIREMENTS

Sec. 201. RCW 28A.150.220 and 2013 2nd sp.s. c 9 s 2 are each amended to read as follows:

(1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be
increased beginning in the 2015-16 school year to at least one thousand eighty instructional hours for students enrolled in ((each of)) grades seven nine through twelve and at least one thousand instructional hours for students in ((each of)) grades one through six according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year) eight, all of which may be calculated by a school district using a district-wide annual average of instructional hours over grades one through twelve; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, ((subject to a phased-in implementation of the twenty-four credits as established by the legislature)) beginning with the graduating class of 2019 or as otherwise provided in RCW 28A.230.090. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students and exited students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and
(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5)(a) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315. (However)

(b) Schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory. (In addition, effective May 1, 1979)

(c) In the case of students who are graduating from high school, a school district may schedule the last five school days of the one hundred (and) eighty day school year for noninstructional purposes (in the case of students who are graduating from high school) including, but not limited to, the observance of graduation and early release from school upon the request of a student (and). All such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260. Any hours scheduled by a school district for noninstructional purposes during the last five school days for such students shall count toward the instructional hours requirement in subsection (2)(a) of this section.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and
ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish.

Sec. 202. RCW 28A.230.090 and 2011 c 203 s 2 are each amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for students, except as provided in RCW 28A.230.122 and except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level. Effective with the graduating class of 2015, the state board of education may not establish a requirement for students to complete a culminating project for graduation.

(d)(i) The state board of education shall adopt rules to implement the career and college ready graduation requirement proposal adopted under board resolution on November 10, 2010, and revised on January 9, 2014, to take effect beginning with the graduating class of 2019 or as otherwise provided in this subsection (1)(d). The rules must include authorization for a school district to waive up to two credits for individual students based on unusual circumstances and in accordance with written policies that must be adopted by each board of directors of a school district that grants diplomas. The rules must also provide that the content of the third credit of mathematics and the content of the third credit of science may be chosen by the student based on the
student's interests and high school and beyond plan with agreement of
the student's parent or guardian or agreement of the school counselor
or principal.

(ii) School districts may apply to the state board of education for
a waiver to implement the career and college ready graduation
requirement proposal beginning with the graduating class of 2020 or
2021 instead of the graduating class of 2019. In the application, a
school district must describe why the waiver is being requested, the
specific impediments preventing timely implementation, and efforts that
will be taken to achieve implementation with the graduating class
proposed under the waiver. The state board of education shall grant a
waiver under this subsection (1)(d) to an applying school district at
the next subsequent meeting of the board after receiving an
application.

(2)(a) In recognition of the statutory authority of the state board
of education to establish and enforce minimum high school graduation
requirements, the state board shall periodically reevaluate the
graduation requirements and shall report such findings to the
legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements
for students enrolled in vocationally intensive and rigorous career and
technical education programs, particularly those programs that lead to
a certificate or credential that is state or nationally recognized.
The purpose of the evaluation is to ensure that students enrolled in
these programs have sufficient opportunity to earn a certificate of
academic achievement, complete the program and earn the program's
certificate or credential, and complete other state and local
graduation requirements.

(c) The state board shall forward any proposed changes to the high
school graduation requirements to the education committees of the
legislature for review and to the quality education council established
under RCW 28A.290.010. The legislature shall have the opportunity to
act during a regular legislative session before the changes are adopted
through administrative rule by the state board. Changes that have a
fiscal impact on school districts, as identified by a fiscal analysis
prepared by the office of the superintendent of public instruction,
shall take effect only if formally authorized and funded by the
legislature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit.

NEW SECTION. Sec. 203. The Washington state school directors' association shall adopt a model policy and procedure that school districts may use for granting waivers to individual students of up to two credits required for high school graduation based on unusual circumstances. The purpose of the model policy and procedure is to assist school districts in providing all students the opportunity to complete graduation requirements without discrimination and without disparate impact on groups of students. The model policy must take
into consideration the unique limitations of a student that may be associated with such circumstances as homelessness, limited English proficiency, medical conditions that impair a student's opportunity to learn, or disabilities, regardless of whether the student has an individualized education program or a plan under section 504 of the federal rehabilitation act of 1973. The model policy must also address waivers if the student has not been provided with an opportunity to retake classes or enroll in remedial classes free of charge during the first four years of high school. The Washington state school directors' association must distribute the model policy and procedure to all school districts in the state that grant high school diplomas by June 30, 2015.

Sec. 204. RCW 28A.230.097 and 2013 c 241 s 2 are each amended to read as follows:

(1) Each high school or school district board of directors shall adopt course equivalencies for career and technical high school courses offered to students in high schools and skill centers. A career and technical course equivalency may be for whole or partial credit. Each school district board of directors shall develop a course equivalency approval procedure. Boards of directors must approve AP computer science courses as equivalent to high school mathematics or science, and must denote on a student's transcript that AP computer science qualifies as a math-based quantitative course for students who take the course in their senior year. In order for a board to approve AP computer science as equivalent to high school mathematics, the student must be concurrently enrolled in or have successfully completed algebra II.

(2) Career and technical courses determined to be equivalent to academic core courses, in full or in part, by the high school or school district shall be accepted as meeting core requirements, including graduation requirements, if the courses are recorded on the student's transcript using the equivalent academic high school department designation and title. Full or partial credit shall be recorded as appropriate. The high school or school district shall also issue and keep record of course completion certificates that demonstrate that the career and technical courses were successfully completed as needed for industry certification, college credit, or preapprenticeship, as
applicable. The certificate shall be ((either)) part of the student's high school and beyond plan ((or the student's culminating project, as determined by the student)). The office of the superintendent of public instruction shall develop and make available electronic samples of certificates of course completion.

Sec. 205. RCW 28A.320.240 and 2006 c 263 s 914 are each amended to read as follows:

(1) The purpose of this section is to identify quality criteria for school library media programs that support the student learning goals under RCW 28A.150.210, the essential academic learning requirements under RCW 28A.655.070, and high school graduation requirements adopted under RCW 28A.230.090.

(2) Every board of directors shall provide for the operation and stocking of such libraries as the board deems necessary for the proper education of the district's students or as otherwise required by law or rule of the superintendent of public instruction.

(3) "Teacher-librarian" means a certified teacher with a library media endorsement under rules adopted by the professional educator standards board.

(4) "School-library media program" means a school-based program that is staffed by a certificated teacher-librarian and provides a variety of resources that support student mastery of the essential academic learning requirements in all subject areas and the implementation of the district's school improvement plan.

(5) The teacher-librarian, through the school-library media program, shall collaborate as an instructional partner to help all students meet the content goals in all subject areas, and assist high school students completing ((the culminating project and)) high school and beyond plans required for graduation.

Sec. 206. RCW 28A.150.260 and 2011 1st sp.s. c 27 s 2 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:
(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.
For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;
(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and
(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

<table>
<thead>
<tr>
<th>Grades</th>
<th>Average Class Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>K-3</td>
<td>25.23</td>
</tr>
<tr>
<td>Grade 4</td>
<td>27.00</td>
</tr>
<tr>
<td>Grades 5-6</td>
<td>27.00</td>
</tr>
<tr>
<td>Grades 7-8</td>
<td>28.53</td>
</tr>
<tr>
<td>Grades 9-12</td>
<td>28.74</td>
</tr>
</tbody>
</table>

(ii) The minimum class size allocation for each prototypical high school shall also provide for enhanced funding for class size reduction for two laboratory science classes within grades nine through twelve per full-time equivalent high school student multiplied by a laboratory science course factor of 0.0833, based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours in RCW 28A.150.220, and providing at least one teacher planning period per school day:

<table>
<thead>
<tr>
<th>Grades</th>
<th>Average Class Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grades 9-12</td>
<td>19.98</td>
</tr>
</tbody>
</table>

(b) During the 2011-2013 biennium and beginning with schools with the highest percentage of students eligible for free and reduced-price
meals in the prior school year, the general education average class
size for grades K-3 shall be reduced until the average class size
funded under this subsection (4) is no more than 17.0 full-time
equivalent students per teacher beginning in the 2017-18 school year.

(c) The minimum allocation for each prototypical middle and high
school shall also provide for full-time equivalent classroom teachers
based on the following number of full-time equivalent students per
teacher in career and technical education:

<table>
<thead>
<tr>
<th>Career and technical education average class size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved career and technical education offered at the middle school and high school level</td>
</tr>
<tr>
<td>Skill center programs meeting the standards established by the office of the superintendent of public instruction</td>
</tr>
</tbody>
</table>

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for laboratory science, advanced placement, and international baccalaureate courses.

(5) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

<table>
<thead>
<tr>
<th>Elementary School</th>
<th>Middle School</th>
<th>High School</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principals, assistant principals, and other certificated building-level administrators</td>
<td>1.253</td>
<td>1.353</td>
</tr>
<tr>
<td>Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs</td>
<td>0.663</td>
<td>0.519</td>
</tr>
</tbody>
</table>
Health and social services:

School nurses ................................................. 0.076 0.060 0.096
Social workers ................................................ 0.042 0.006 0.015
Psychologists ............................................... 0.017 0.002 0.007
Guidance counselors, a function that includes parent outreach and graduation
advising .......................................................... 0.493 1.116 (1.000)

Teaching assistance, including any aspect of educational instructional
services provided by classified employees ........................... 0.936 0.700 0.652
Office support and other noninstructional aides ..................... 2.012 2.325 3.269
Custodians ...................................................... 1.657 1.942 2.965
Classified staff providing student and staff safety ................... 0.079 0.092 0.141
Parent involvement coordinators .................................. 0.00 0.00 0.00

(6)(a) The minimum staffing allocation for each school district to
provide district-wide support services shall be allocated per one
thousand annual average full-time equivalent students in grades K-12 as
follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Staff per 1,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology</td>
<td>0.628</td>
</tr>
<tr>
<td>Facilities, maintenance, and</td>
<td>1.813</td>
</tr>
<tr>
<td>grounds</td>
<td></td>
</tr>
<tr>
<td>Warehouse, laborers, and</td>
<td>0.332</td>
</tr>
<tr>
<td>mechanics</td>
<td></td>
</tr>
</tbody>
</table>

(b) The minimum allocation of staff units for each school district
to support certificated and classified staffing of central
administration shall be 5.30 percent of the staff units generated under
subsections (4)(a) and (b) and (5) of this section and (a) of this
subsection.

(7) The distribution formula shall include staffing allocations to
school districts for career and technical education and skill center
administrative and other school-level certificated staff, as specified
in the omnibus appropriations act.

(8)(a) Except as provided in (b) and (c) of this subsection, the
minimum allocation for each school district shall include allocations
per annual average full-time equivalent student for the following
materials, supplies, and operating costs, to be adjusted for inflation
from the 2008-09 school year:
(b) During the 2011-2013 biennium, the minimum allocation for maintenance, supplies, and operating costs shall be increased as specified in the omnibus appropriations act. The following allocations, adjusted for inflation from the 2007-08 school year, are provided in the 2015-16 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology</td>
<td>$113.80</td>
</tr>
<tr>
<td>Utilities and insurance</td>
<td>$309.21</td>
</tr>
<tr>
<td>Curriculum and textbooks</td>
<td>$122.17</td>
</tr>
<tr>
<td>Other supplies and library materials</td>
<td>$259.39</td>
</tr>
<tr>
<td>Instructional professional development</td>
<td>$18.89</td>
</tr>
<tr>
<td>classified staff</td>
<td>$153.18</td>
</tr>
<tr>
<td>Security and central office administration</td>
<td>$106.12</td>
</tr>
</tbody>
</table>

(c) In addition to the amounts provided in (a) and (b) of this subsection, beginning in the 2014-15 school year, the omnibus appropriations act shall provide the following minimum allocation for each annual average full-time equivalent student in grades nine through twelve for the following materials, supplies, and operating costs, to be adjusted annually for inflation:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology</td>
<td>$147.90</td>
</tr>
<tr>
<td>Utilities and insurance</td>
<td>$153.18</td>
</tr>
<tr>
<td>Curriculum and textbooks</td>
<td>$153.18</td>
</tr>
<tr>
<td>Other supplies and library materials</td>
<td>$309.21</td>
</tr>
<tr>
<td>Instructional professional development</td>
<td>$153.18</td>
</tr>
<tr>
<td>classified staff</td>
<td>$309.21</td>
</tr>
<tr>
<td>Security and central office administration</td>
<td>$309.21</td>
</tr>
</tbody>
</table>
in grades 9-12

Technology .................................................. $36.35
Curriculum and textbooks ................................. $39.02
Other supplies and library materials ................. $82.84
Instructional professional development for certificated and
classified staff ............................................. $6.04

(9) In addition to the amounts provided in subsection (8) of this
section, the omnibus appropriations act shall provide an amount based
on full-time equivalent student enrollment in each of the following:

(a) Exploratory career and technical education courses for students
in grades seven through twelve;

(b) Laboratory science courses for students in grades nine
through twelve;

(e+) Preparatory career and technical education courses for
students in grades nine through twelve offered in a high school; and

(c) Preparatory career and technical education courses for
students in grades eleven and twelve offered through a skill center.

(10) In addition to the allocations otherwise provided under this
section, amounts shall be provided to support the following programs
and services:

(a) To provide supplemental instruction and services for
underachieving students through the learning assistance program under
RCW 28A.165.005 through 28A.165.065, allocations shall be based on the
district percentage of students in grades K-12 who were eligible for
free or reduced-price meals in the prior school year. The minimum
allocation for the program shall provide for each level of prototypical
school resources to provide, on a statewide average, 1.5156 hours per
week in extra instruction with a class size of fifteen learning
assistance program students per teacher.

(b) To provide supplemental instruction and services for students
whose primary language is other than English, allocations shall be
based on the head count number of students in each school who are
eligible for and enrolled in the transitional bilingual instruction
program under RCW 28A.180.010 through 28A.180.080. The minimum
allocation for each level of prototypical school shall provide
resources to provide, on a statewide average, 4.7780 hours per week in
extra instruction with fifteen transitional bilingual instruction
program students per teacher. Notwithstanding other provisions of this
subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less intensive intervention, as detailed in the omnibus appropriations act.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a) and (b), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.
(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050.

NEW SECTION. Sec. 207. A new section is added to chapter 43.06B RCW to read as follows:

(1) The office of the education ombuds shall convene a task force on success for students with special needs to:

(a) Define and assess barriers that students with special needs face in earning a high school diploma and fully accessing the educational program provided by the public schools, including but not limited to students with disabilities, dyslexia, and other physical or emotional conditions for which students do not have an individualized education program or section 504 plan but that create limitations to their ability to succeed in school;

(b) Outline recommendations for systemic changes to address barriers identified and successful models for the delivery of education and supportive services for students with special needs;

(c) Recommend steps for coordination of delivery of early learning through postsecondary education and career preparation for students with special needs through ongoing efforts of various state and local education and workforce agencies, including strategies for earlier assessment and identification of disabilities or barriers to learning in early learning programs and in kindergarten through third grade; and

(d) Identify options for state assistance to help school districts
develop course equivalencies for competency-based education or similar systems of personalized learning where students master specific knowledge and skills at their own pace.

(2) The task force shall be composed of at least the following members:

(a) One representative each from the office of the superintendent of public instruction, the workforce training and education coordinating board, the Washington state school directors' association, a statewide organization representing teachers and other certificated instructional staff, the student achievement council, the state board of education, the department of early learning, the educational opportunity gap oversight and accountability committee, a nonprofit organization providing professional development and resources for educators and parents regarding dyslexia, a nonprofit organization of special education parents and teachers, and the Washington association for career and technical education, each to be selected by the appropriate agency or organization; and

(b) At least one faculty member from a public institution of higher education, at least one special education teacher, at least one general education teacher, and at least three parent representatives from special needs families, each to be appointed by the education ombuds.

(3) The office of the education ombuds shall submit an initial report to the superintendent of public instruction, the governor, and the legislature by December 15, 2014, and December 15th of each year thereafter until 2016 detailing its recommendations, including recommendations for specific strategies, programs, and potential changes to funding or accountability systems that are designed to close the opportunity gap, increase high school graduation rates, and assure students with special needs are fully accessing the educational program provided by the public schools.

(4) This section expires June 30, 2017.

NEW SECTION. Sec. 208. Sections 103 and 104 of this act take effect September 1, 2015.

NEW SECTION. Sec. 209. Section 206 of this act takes effect
September 1, 2014.

--- END ---
*21-35A-07 Chronic Care Coordination Act North Carolina

Bill/Act: Session Law 2013-207 (HB 459)

Summary: The legislation requires the state Department of Health and Human Services to coordinate chronic disease care among state agencies and the state health plan for teachers and state employees. Agencies will be required to collaborate to reduce the incidence of chronic disease and improve chronic care coordination within the state by:

- Identifying goals and benchmarks for the reduction of chronic disease;
- Developing tailored wellness and prevention plans; and
- Submitting an annual report on or before January 1 of each odd-numbered year to the legislature.

Status: Signed into law in June 2013.

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Comment: Supporters of the bill note that it was unanimously approved and it will provide benefits to the state by:

- Improved health for the most vulnerable segment of the Medicaid population
- Savings to the state due to reductions in usage of health care services (expect reduced use of ER increased avoidance of hospital admissions)
- Projected savings in state dollars over time due to increased awareness and prevention
- Potential access to enhanced funding under the Affordable Care Act or other federal sources

According to the Partnership to Fight Chronic Disease, 8 out of 10 of the top 1% of high Medicaid utilizers have at least three chronic conditions and that 84% of overall healthcare spending goes towards chronic disease.

http://knowledgecenter.csg.org/drupal/system/files/filearea/medicaid/day_two.dematteis.pdf

Disposition of Entry:

SSL Committee Meeting: 2015 A
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO COORDINATE CHRONIC DISEASE CARE.

Whereas, chronic disease is recognized as the leading cause of disability and death in the United States, and accounts for 1,700,000 deaths or 70% of all deaths in the United States each year; and

Whereas, chronic diseases such as heart disease, hypertension, stroke, cancer, respiratory diseases, diabetes, and obesity are among the most prevalent, costly, and preventable of all health problems in North Carolina; and

Whereas, implementing prevention programs around multiple chronic conditions could help North Carolina reduce the overall financial burden of chronic illness within public programs such as Medicaid and Health Choice for Children and within the State Employees Health Insurance Plan; and

Whereas, the inefficient coordination of care for persons with chronic health conditions has led not only to higher costs but to poorer health outcomes for the most vulnerable populations within North Carolina; and

Whereas, preventing and treating chronic disease is an important public health initiative that will improve the quality of life for North Carolinians affected by these conditions and also reduce State costs for Medicaid, Health Choice, and the State Health Plan; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as The Chronic Care Coordination Act.

SECTION 2. Article 7 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 4A. Chronic Care Coordination.

§ 130A-222.5. Department to coordinate chronic care initiatives.

The Department's Divisions of Public Health and Medical Assistance and the Division in the Department of State Treasurer responsible for the State Health Plan for Teachers and State Employees shall collaborate to reduce the incidence of chronic disease and improve chronic care coordination within the State by doing all of the following:

(1) Identifying goals and benchmarks for the reduction of chronic disease.

(2) Developing wellness and prevention plans specifically tailored to each of the Divisions.

(3) Submitting an annual report on or before January 1 of each odd-numbered year to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, and the Fiscal Research Division that includes at least all of the following:

a. The financial impact and magnitude of the chronic health conditions in this State that are most likely to cause death and disability, including, but not limited to, chronic cardiovascular disease, oncology, stroke, chronic lung disease, and chronic metabolic disease. As used in this subdivision, the term "chronic cardiovascular disease" includes heart disease and hypertension; the term "chronic metabolic disease" includes diabetes and obesity; and the term..."
"chronic lung disease" means asthma and chronic obstructive pulmonary disease.

b. An assessment of the benefits derived from wellness and prevention programs and activities implemented within the State with the goal of coordinating chronic care. This assessment shall include a breakdown of the amount of all State, federal, and other funds appropriated to the Department for wellness and prevention programs and activities for the detection, prevention, and treatment of persons with multiple chronic health conditions, at least one of which is a condition identified in sub-subdivision a. of this subdivision.

c. A description of the level of coordination among the Divisions of Public Health and Medical Assistance and the Division in the Department of State Treasurer responsible for the State Health Plan for Teachers and State Employees with respect to activities, programs, and public education on the prevention, treatment, and management of the chronic health conditions identified in sub-subdivision a. of this subdivision.

d. Detailed action plans for care coordination of multiple chronic health conditions in the same patient, including a range of recommended legislative actions. The action plans shall identify proposed action steps to reduce the financial impact of the chronic health conditions identified in sub-subdivision a. of this subdivision, including (i) adjustment of hospital readmission rates, (ii) development of transitional care plans, (iii) implementation of comprehensive medication management, as described by the Patient-Centered Primary Care Collaborative, to help patients achieve improved clinical and therapeutic outcomes, and (iv) adoption of standards related to quality that are publicly reported evidence-based measures endorsed through a multistakeholder process such as the National Quality Forum. The action plans shall also identify expected outcomes of these proposed action steps during the succeeding fiscal biennium and establish benchmarks for coordinating care and reducing the incidence of multiple chronic health conditions.

e. A detailed budget identifying all costs associated with implementing the action plans identified in sub-subdivision d. of this subdivision.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2013.

s/ Tom Apodaca
    Presiding Officer of the Senate

s/ Thom Tillis
    Speaker of the House of Representatives

s/ Pat McCrory
    Governor

Approved 4:36 p.m. this 26th day of June, 2013
Summary: The bill amends state law to exempt licensed retail pharmacies that are located in Canada, the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia or New Zealand from state licensure requirements if they meet the respective foreign country’s statutory and regulatory requirements, as well as entities that contract to provide or facilitate the exportation of prescription drugs from these licensed retail pharmacies, and authorizes these retail pharmacies and entities to provide prescription drugs by mail or carrier to a resident of this State for that resident’s personal use. It also amends the Maine Pharmacy Act to provide that nothing in the act may be construed to prohibit individuals from ordering or receiving prescription drugs for their personal use from licensed retail pharmacies in the above-mentioned countries or contracting entities or to prohibit such a licensed retail pharmacy or contracting entity from dispensing, providing or facilitating the provision of prescription drugs from outside the United States.

Status: Signed into law in June 2013.

Comment: From Forbes (June 29, 2013)
Will Maine open the floodgates to lower-cost medicines and cause drugmakers unending grief?
After months of debate, state residents can now buy prescription drugs from mail-order pharmacies in a few select countries – the UK, New Zealand, Australia and Canada. The bill had overwhelming support in the state legislature and the Republican governor quietly allowed the legislation to become law.

Known as the ‘Act to Facilitate the Personal Importation of Prescription Drugs From International Mail-Order Pharmacies,’ the bill was introduced after the former attorney general last summer banned Maine businesses from purchasing drugs from mail-order pharmacies, claiming state law was being violated. The move put an end to buying less expensive meds from brokers over the Canadian border.

But many state employees, as well as workers at the city of Portland and one large company, claimed they had saved some $10 million through Internet purchases over several years. For this reason, the bill had some backing from the business community and dissuaded the Republican governor from issuing a veto. Similarly, state and local governments may also save money. The state employee’s union estimates savings of $6 to $10 million, according to Troy Jackson, the state senator who introduced the bill.

“In my area of the state, 15 years ago, people were organizing bus trips to go to Canada to get drugs for a cheaper price. For whatever reason, drug companies are selling same drugs through other countries for less than they do here and the issue is too important for people to pay more for life-saving medicines,” Jackson says. “I’m a big proponent of ‘Buy America,’ but we’re talking about people’s health. If drugs are 40 percent higher in the US, well, I just can’t stomach that. This is one way to rectify the problem.”
Not surprisingly, the trade group for the pharmaceutical industry is incensed. At the time the bill was first introduced and debated, the Pharmaceutical Research & Manufacturers of America argued that passage would jeopardize patient safety for various reasons, including the possibility of counterfeit meds entering the supply chain, and that savings would actually be minimal. And after Maine Governor Paul Le Page let it become law two days ago, PhRMA had this to say:

“Considering PhRMA’s strong stance against counterfeit medicines and related importation concerns, we were very disappointed to hear that Governor Paul LePage has failed Maine’s patients, by allowing (the bill) to become law. Opening our borders to unapproved, imported drugs could increase the flow of counterfeit drugs into the US, putting patients at senseless risk and with little recourse against their injuries. We hope to continue our work advocating for safe medicines for patients in Maine and look forward to ongoing work with Maine legislature and the Governor on this issue.”


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
An Act To Facilitate the Licensing of International Mail Order Prescription Pharmacies by the Maine Board of Pharmacy

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Presented by Senator JACKSON of Aroostook.
Cosponsored by Senator THOMAS of Somerset, Representative TREAT of Hallowell and Senators: CAIN of Penobscot, GRATWICK of Penobscot, HILL of York.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §13702-A, sub-§17, as enacted by PL 2007, c. 402, Pt. DD, §2, is amended to read:

17. Mail order prescription pharmacy. "Mail order prescription pharmacy" means an entity located inside or outside the United States that dispenses prescription medications by mail or carrier from a facility not located in this State to a pharmacy or to a patient who resides in this State.

Sec. 2. 32 MRSA §13721, sub-§2, as amended by PL 1997, c. 245, §8, is further amended to read:

2. Reciprocal inspections. The board may enter into reciprocal inspection agreements with any state or country in which a mail order prescription facility selling drugs to Maine citizens is located.

SUMMARY

The purpose of this bill is to facilitate the licensing of international mail order prescription pharmacies by the Maine Board of Pharmacy. This bill:

1. Specifies that, for the purposes of the Maine Pharmacy Act, "mail order prescription pharmacy" includes an entity located outside the United States that dispenses prescription medications by mail or carrier from a facility not located in this State to a pharmacy or to a patient who resides in this State; and

2. Authorizes the Maine Board of Pharmacy to enter into reciprocal inspection agreements with any country in which a mail order prescription facility that sells drugs to Maine citizens is located.
Summary: The bill directs the state Department of Human Services to establish and administer the Illinois Mental Health First Aid training program so that certified trainers can provide residents, professionals, and members of the public with training on how to identify and assist someone who is believed to be developing or has developed a mental health disorder or an alcohol or substance abuse disorder; or who is believed to be experiencing a mental health or substance abuse crisis. It also creates a grant program to provide training that is subject to an appropriations process as well as provide hardship subsidies for Illinois Mental Health First Aid training fees. The program shall be designed to train individuals to accomplish certain objectives including: (i) building mental health, alcohol abuse, and substance abuse literacy designed to help the public identify, understand, and respond to the signs of mental illness, alcohol abuse, and substance abuse and (ii) knowing how to prevent a mental health disorder or an alcohol or substance abuse disorder from deteriorating into a more serious condition which may lead to more costly interventions and treatments.

Status: Signed into law in August 2013.

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Comment: From Governing (June 2012)
One in four adults and 10 percent of children in the United States will suffer from a mental health illness this year. Mental disorders are more common than heart disease and cancer combined -- the leading causes of death.

“You’re more likely to see someone having a panic attack than you are to see someone having a heart attack,” says Linda Rosenberg, CEO of the National Council for Community Behavioral Healthcare (National Council). Yet most people, she says, don’t know how to react to the former. That’s why in 2008, the National Council, the Maryland Department of Health and Mental Hygiene, and the Missouri Department of Mental Health joined forces to bring the Australian concept of Mental Health First Aid (MHFA) to the U.S.

The idea behind MHFA is no different than that of traditional first aid: to create an environment where people know how to help someone in emergency situations. But instead of learning how to give CPR or how to treat a broken bone, the 12-hour course teaches people how to recognize the signs and symptoms of mental health problems and how to provide initial aid before guiding a person toward appropriate professional help.

Since its introduction in the U.S. four years ago, more than 50,000 people have been trained in 47 states and the District of Columbia. In at least 22 of those states, state or local governments supported the program, usually paying for employees to take the course, says Susan Partain of the National Council. Several states -- including Arizona, Colorado, Georgia, Maryland and Missouri -- already have statewide programs, which require some public workers and citizens to complete training as part of their job.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT concerning health.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Mental Health First Aid Training Act.

Section 5. Purpose. Through the use of innovative strategies, Mental Health First Aid training shall be implemented throughout the State. Mental Health First Aid training is designed to train individuals to assist someone who is developing a mental health disorder or an alcohol or substance abuse disorder, or who is experiencing a mental health or substance abuse crisis and it can be reasonably assumed that a mental health disorder or an alcohol or substance abuse disorder is a contributing or precipitating factor.

Section 10. Definitions.

"Illinois Mental Health First Aid training program" means the Mental Health First Aid training program administered by the Department of Human Services.

"Certified trainers" means individuals who obtain certification in Mental Health First Aid training by successfully completing (i) the Instructor Training Program
offered by the Illinois Mental Health First Aid training program or (ii) the Instructor Training Program offered by the National Authorities of Mental Health First Aid.

Section 15. Illinois Mental Health First Aid training program. The Department of Human Services shall administer the Illinois Mental Health First Aid training program so that certified trainers can provide Illinois residents, professionals, and members of the public with training on how to identify and assist someone who is believed to be developing or has developed a mental health disorder or an alcohol or substance abuse disorder or who is believed to be experiencing a mental health or substance abuse crisis.

Section 20. Mental health first aid training grants. Subject to appropriations made to the Department of Human Services and other State agencies, the Department of Human Services and other State agencies shall support training grants for Illinois Mental Health First Aid training. These training grants may support hardship subsidies for Illinois Mental Health First Aid training fees.

Section 25. Objectives of the training program. The Illinois Mental Health First Aid training program shall be designed to train individuals to accomplish the following objectives as deemed appropriate for the individuals to be
trained, taking into consideration the individual's age:

(1) Build mental health, alcohol abuse, and substance abuse literacy designed to help the public identify, understand, and respond to the signs of mental illness, alcohol abuse, and substance abuse.

(2) Assist someone who is believed to be developing or has developed a mental health disorder or an alcohol or substance abuse disorder or who is believed to be experiencing a mental health disorder or an alcohol or substance abuse crisis. Such assistance shall include the following:

(A) Knowing how to recognize the symptoms of a mental health disorder or an alcohol or substance abuse disorder.

(B) Knowing how to provide initial help.

(C) Knowing how to guide individuals requiring assistance toward appropriate professional help, including help for individuals who may be in crisis.

(D) Knowing how to provide comfort to the person experiencing a mental health disorder or an alcohol or substance abuse disorder.

(E) Knowing how to prevent a mental health disorder or an alcohol or substance abuse disorder from deteriorating into a more serious condition which may lead to more costly interventions and treatments.

(F) Knowing how to promote healing, recovery, and
good mental health.

Section 30. Distribution of training grants. When awarding training grants under this Act, the Department or other appropriate State agency shall distribute training grants equitably among the geographical regions of the State paying particular attention to the training needs of rural areas and areas with underserved populations or professional shortages.

Section 35. Evaluation. The Department of Human Services, as the Illinois Mental Health First Aid training authority, shall ensure that evaluative criteria are established which measure the distribution of the training grants and the fidelity of the training processes to the objective of building mental health, alcohol abuse, and substance abuse literacy designed to help the public identify, understand, and respond to the signs of mental illness, alcohol abuse, and substance abuse.

Section 99. Effective date. This Act takes effect upon becoming law.
Summary: During the 2013 Legislative Session the New York State Legislature passed a new law requiring that hospitals offer Hepatitis C screening tests for baby boomers (those born between 1945 and 1965). According to supporters, this legislation is in alignment with recommendations from the Center for Disease Control (CDC) which were released in August 2012. The bill is modeled after both federal guidelines and New York’s existing HIV testing law, and would require hospitals and health clinics to offer hepatitis C testing to people born between the years 1945 and 1965, the age group with the highest infection rate. In June 2013, the US Preventative Services Task Force (USPSTF) issued its final recommendations for screening for hepatitis C virus (HCV) infection consistent with those of the CDC. The USPSTF recommends screening for HCV infection in persons at high risk for infection, and recommends offering one time screening for HCV infection to adults born between 1945 and 1965.

Status: Signed into law on October 23, 2013.

Comment: From the New York Times (February 28, 2012)
More people in the United States now die from hepatitis C each year than from AIDS, according to a new report from the Centers for Disease Control and Prevention. More than 3.2 million people are currently infected with hepatitis C.

Using data on more than 22 million deaths and their causes, researchers found that hepatitis C death rates increased to almost 5 per 100,000 people in 2007 from fewer than 3 per 100,000 in 1999. Over the same period, the H.I.V. death rate declined to a little more than 4 per 100,000 from more than 6 per 100,000.

There were 15,106 deaths due to hepatitis C in 2007, almost 75 percent of them among people ages 45 to 64. The report appears in the Feb. 21 issue of The Annals of Internal Medicine.

Dr. John W. Ward, director of the Division of Viral Hepatitis at the C.D.C. and an author of the study, said that there was now a treatment that was about 70 percent effective at clearing the virus from the body. But, he said, most infected people are unaware of their condition and do not receive treatment.

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
STATE OF NEW YORK

1286--A

Cal. No. 191

2013-2014 Regular Sessions
IN ASSEMBLY
(PREFILED)
January 9, 2013

Introduced by M. of A. ZEBROWSKI, MILLER, ENGLEBRIGHT, MAISEL, JAFFEE, ROSENTHAL, GIBSON, MILLMAN, TITONE, BENEDETTO, ROBERTS, GALEF, ROBINSON, BOYLAND, O'DONNELL, WEPRIN, HOOPER, STIRPE, RODRIGUEZ, GUNThER, MOSLEY, GOTTFRIED, BRONSON -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, CROUCH, GABRYSZAK, JACOBS, ORTIZ, PERRY, RABBITT, RIVERA, SALADINO, SIMANOWITZ, SWEENEY -- read once and referred to the Committee on Health -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading.

AN ACT to amend the public health law, in relation to requiring hospitals to offer hepatitis C testing; and providing for the repeal of such provisions upon expiration thereof;

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 2171 to read as follows:

S 2171. REQUIRED OFFERING OF HEPATITIS C SCREENING TESTING. 1. EVERY INDIVIDUAL BORN BETWEEN THE YEARS OF NINETEEN HUNDRED FORTY-FIVE AND NINETEEN HUNDRED SIXTY-FIVE WHO RECEIVES HEALTH SERVICES AS AN INPATIENT IN A GENERAL HOSPITAL DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER OR WHO RECEIVES PRIMARY CARE SERVICES IN AN OUTPATIENT DEPARTMENT OF SUCH HOSPITAL OR IN A DIAGNOSTIC AND TREATMENT CENTER LICENSED UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER OR FROM A PHYSICIAN, PHYSICIAN ASSISTANT OR NURSE PRACTITIONER PROVIDING PRIMARY CARE SHALL BE OFFERED A HEPATITIS C SCREENING TEST OR HEPATITIS C DIAGNOSTIC TEST UNLESS THE HEALTH CARE PRACTITIONER PROVIDING SUCH SERVICES REASONABLY BELIEVES THAT:

(A) THE INDIVIDUAL IS BEING TREATED FOR A LIFE MENThREATENING EMERGENCY;

OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) THE INDIVIDUAL HAS PREVIOUSLY BEEN OFFERED OR HAS BEEN THE SUBJECT OF A HEPATITIS C SCREENING TEST (EXCEPT THAT A TEST SHALL BE OFFERED IF OTHERWISE INDICATED); OR

(C) THE INDIVIDUAL LACKS CAPACITY TO CONSENT TO A HEPATITIS C SCREENING TEST.

2. IF AN INDIVIDUAL ACCEPTS THE OFFER OF A HEPATITIS C SCREENING TEST AND THE SCREENING TEST IS REACTIVE, THE HEALTH CARE PROVIDER SHALL EITHER OFFER THE INDIVIDUAL FOLLOW-UP HEALTH CARE OR REFER THE INDIVIDUAL TO A HEALTH CARE PROVIDER WHO CAN PROVIDE FOLLOW-UP HEALTH CARE. THE FOLLOW-UP HEALTH CARE SHALL INCLUDE A HEPATITIS C DIAGNOSTIC TEST.

3. THE OFFERING OF HEPATITIS C SCREENING TESTING UNDER THIS SECTION SHALL BE CULTURALLY AND LINGUISTICALLY APPROPRIATE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

4. THIS SECTION SHALL NOT AFFECT THE SCOPE OF PRACTICE OF ANY HEALTH
15 CARE PRACTITIONER OR DIMINISH ANY AUTHORITY OR LEGAL OR PROFESSIONAL
16 OBLIGATION OF ANY HEALTH CARE PRACTITIONER TO OFFER A HEPATITIS C
17 SCREENING TEST OR HEPATITIS C DIAGNOSTIC TEST OR TO PROVIDE SERVICES OR
18 CARE FOR THE SUBJECT OF A HEPATITIS C SCREENING TEST OR HEPATITIS C
19 DIAGNOSTIC TEST.
20 5. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL
21 HAVE THE FOLLOWING MEANINGS:
22 (A) "HEPATITIS C DIAGNOSTIC TEST" SHALL MEAN ANY LABORATORY TEST OR
23 TESTS THAT DETECT THE PRESENCE OF HEPATITIS C VIRUS IN THE BLOOD AND
24 PROVIDES CONFIRMATION OF WHETHER THE INDIVIDUAL HAS A HEPATITIS C VIRUS
25 INFECTION.
26 (B) "HEPATITIS C SCREENING TEST" SHALL MEAN ANY LABORATORY SCREENING
27 TEST OR TESTS THAT DETECT THE PRESENCE OF HEPATITIS C VIRUS ANTIBODIES
28 IN THE BLOOD.
29 (C) "PRIMARY CARE" MEANS THE MEDICAL FIELDS OF FAMILY MEDICINE, GENER-
30 AL PEDIATRICS, PRIMARY CARE, INTERNAL MEDICINE, PRIMARY CARE OBSTETRICS,
31 OR PRIMARY CARE GYNECOLOGY, WITHOUT REGARD TO BOARD CERTIFICATION.
32 S 2. On or before January 1, 2016, the commissioner of health shall
33 evaluate and report on the impact of this act with respect to the number
34 of persons who are screened for hepatitis C and the number of persons
35 who have accessed care following a positive test. Such report shall be
36 submitted to the governor and to the chairs of the assembly and senate
37 committees on health.
38 S 3. This act shall take effect on the first of January next succeeding
39 the date on which it shall have become a law and shall expire and be
40 deemed repealed January 1, 2020; provided, however, that the commissioner
41 of health is authorized to adopt rules and regulations necessary to
42 implement this act prior to such effective date.
21-35B-04 Emergency Custody, Temporary Detention for Psychiatric Evaluation
Virginia

Bill/Act: SB 260

Summary: Extends the maximum hold time on a temporary detention order for psychiatric evaluation from 48 to 72 hours and lengthens the time limit on emergency custody orders from six to eight hours and requires state facilities to admit patients who qualify for further court-ordered treatment, if a private facility cannot be located. An online bed registry is created. Law enforcement is required to notify local mental health authorities when an emergency custody order is issued.

Status: Signed into law April 6, 2014.

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Comment: From The Daily Progress, Charlottesville, Va. (April 28, 2014)

Gov. Terry McAuliffe pledged that an omnibus bill he ceremonially signed Monday targeting gaps in Virginia’s patchwork mental health network is only the beginning of reforms to a system thrust into the national spotlight by the case of Austin C. “Gus” Deeds.

Seated beside Deeds’ father, state Sen. R. Creigh Deeds, in a second-floor conference room at the University of Virginia Medical Center, McAuliffe renewed his commitment to funding and improving public mental health services.

The legislation, which the governor previously signed into law, targets pressure points in a system lawmakers and mental health advocates say should and could have been fixed long before Gus Deeds, 24, stabbed his father and killed himself at the family’s home in Millboro. Gus Deeds had been released from an emergency custody order 13 hours earlier after a clinician failed to find a hospital where he could undergo further psychiatric evaluation.

An absence of protocols, communications breakdowns resulting in costly delays, barriers to finding care and missteps by the senior clinician tasked with tracking down a psychiatric bed for Deeds all combined to produce a tragic outcome, according to a state inspector general’s report on his case.

The bill spearheaded by Sen. Deeds, D-Bath, shores up flaws his son’s case laid bare. Senate Bill 260 extends the cap on temporary detention orders from 48 hours to 72 hours. It also lengthens the time limit on emergency custody orders from six to eight hours and requires state facilities to admit patients who qualify for further court-ordered treatment, if a suitable private bed cannot be found before time runs out.

State facilities and local clinicians then would have four more hours to find private space. Virginia’s current six-hour limit is the shortest in the nation. Clinicians previously were
discouraged from turning to state facilities, which have limited capacity. Both of those elements factored in Gus Deeds’ case.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
CHAPTER 691

An Act to amend and reenact §§ 16.1-340, 16.1-340.1, 16.1-345.4, 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814, and 37.2-817.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-340.1:1, 37.2-308.1, and 37.2-809.1, relating to emergency custody and temporary detention; duration; facility of temporary detention; acute psychiatric bed registry.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-340, 16.1-340.1, 16.1-345.4, 19.2-169.6, 19.2-182.9, 37.2-808, 37.2-809, 37.2-814, and 37.2-817.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-340.1:1, 37.2-308.1, and 37.2-809.1 as follows:


A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the minor, (3) any past mental health treatment of the minor, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the minor who is the subject of the order has a mental illness and that, as a result of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusional thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider.
that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in
transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,
authorization when the law
him to an appropriate location to assess the need for hospitalization or treatment without prior
limits of the county, city, or town in which he serves may take such minor into custody and transport

Transportation under this section shall include transportation to a medical facility as may be
necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in
accordance with state and federal law. Transportation under this section shall include transportation to a
medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the
emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section,
the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the
community services board that designated the person to perform the evaluation required in subsection B
to execute the order and, in cases in which transportation is ordered to be provided by the primary
law-enforcement agency, provide transportation. If the community services board serves more than one
jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular
jurisdiction within the community services board's service area where the minor who is the subject of
the emergency custody order was taken into custody or, if the minor has not yet been taken into
custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located
to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation
pursuant to this section may transfer custody of the minor to the facility or location to which the minor
is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is
licensed to provide the level of security necessary to protect both the minor and others from harm, (ii) is
actually capable of providing the level of security necessary to protect the minor and others from harm,
and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an
agreement or memorandum of understanding with the law-enforcement agency setting forth the terms
and conditions under which it will accept a transfer of custody, provided, however, that the facility or
location may not require the law-enforcement agency to pay any fees or costs for the transfer of
custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county,
city, or town in which he serves to any point in the Commonwealth for the purpose of executing an
emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has
probable cause to believe that a minor meets the criteria for emergency custody as stated in this section
may take that minor into custody and transport that minor to an appropriate location to assess the need
for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a
person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the
territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for
the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of
custody shall not exceed four eight hours from the time the law-enforcement officer takes the minor
into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the
magistrate shall issue an order extending the period of emergency custody one time for an additional
period not to exceed two hours. Good cause for an extension includes the need for additional time to
allow (i) the community services board to identify a suitable facility in which the minor can be
temporarily detained pursuant to § 16.1-340.1 or (ii) a medical evaluation of the person to be completed
if necessary.

H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be
transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial
limits of the county, city, or town in which he serves may take such minor into custody and transport
him to an appropriate location to assess the need for hospitalization or treatment without prior
authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be
transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations,
that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in
this section. The period of custody shall not exceed four eight hours from the time the law-enforcement
officer takes the minor into custody. However, upon a finding by a magistrate that good cause exists to
grant an extension, the magistrate shall issue an order extending the period of emergency custody one
time for an additional period not to exceed two hours. Good cause for an extension includes the need
for additional time to allow (a) the community services board to identify a suitable facility in which the
minor can be temporarily detained pursuant to § 16.1-340.1 or (b) a medical evaluation of the person to
be completed if necessary.

I. A representative of the primary law-enforcement agency specified to execute an emergency custody
order or a representative of the law-enforcement agency employing a law-enforcement officer who takes
a person into custody pursuant to subsection G or H shall notify the community services board
responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after
execution of the emergency custody order or after the person has been taken into custody pursuant to
subsection G or H.

J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from
obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody
as provided in this section.

K. The minor shall remain in custody until a temporary detention order is issued, until the minor is
released, or until the emergency custody order expires. An emergency custody order shall be valid for a
period not to exceed four eight hours from the time of execution. However, upon a finding by a
magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency
custody order one time for a second period not to exceed two hours. Good cause for an extension
includes the need for additional time to allow (i) the community services board to identify a suitable
facility in which the minor can be temporarily detained pursuant to § 16.1-340.1 or (ii) a medical
evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100,
employee or designee of the community services board, treating physician, or law-enforcement officer
may request the two-hour extension.

L. If an emergency custody order is not executed within six eight hours of its issuance, the order
shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such
office is not open, to any magistrate serving the jurisdiction of the issuing court.

M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K,
if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and
an employee or designee of the community services board may, for an additional four hours, continue to
attempt to identify an alternative facility that is able and willing to provide temporary detention and
appropriate care to the minor.

N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical
screening and assessment services provided to minors with mental illnesses while in emergency custody.

§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.
A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if
the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including
the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile
and domestic relations district court, or upon his own motion and only after an evaluation conducted
in-person or by means of a two-way electronic video and audio communication system as authorized in
§ 16.1-345.1 by an employee or designee of the local community services board to determine whether
the minor meets the criteria for temporary detention, a temporary detention order if it appears from all
evidence readily available, including any recommendation from a physician or clinical psychologist
treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself
or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts
or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a
developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant
impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in
need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed
treatment. The magistrate shall also consider the recommendations of the minor's parents and of any
treating or examining physician licensed in Virginia if available either verbally or in writing prior to
rendering a decision. To the extent possible, the petition shall contain the information required by
§ 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such
time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is
located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order
entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection
B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by
law.

B. When considering whether there is probable cause to issue a temporary detention order, the
magistrate may, in addition to the petition, consider (i) the recommendations of any treating or
examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor,
(iii) any past mental health treatment of the minor, (iv) any relevant hearsay evidence, (v) any medical
records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the
affidavit, and (vii) any other information available that the magistrate considers relevant to the
determination of whether probable cause exists to issue a temporary detention order.

C. A magistrate may issue a temporary detention order without an emergency custody order
proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to
subsection A if (i) the minor has been personally examined within the previous 72 hours by an
employee or designee of the local community services board or (ii) there is a significant physical,
psychological, or medical risk to the minor or to others associated with conducting such evaluation.
D. An employee or designee of the community services board shall determine the facility of temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board of Behavioral Health and Developmental Services. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the minor is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order.

E. Any facility caring for a minor placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the minor within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the minor. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the minor may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified has run.

H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. For purposes of this section a healthcare provider or an employee or designee of the local community services board shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

J. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.


A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the employee or designee of the local community services board shall convey the state facility information
about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

§ 16.1-345.4. Court review of mandatory outpatient treatment plan.
A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 16.1-341. The clerk shall provide notice of the hearing to the minor, his parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment plan, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-345.5, giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad litem for the minor. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.

B. If requested by the minor's parents, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's involuntary treatment, the juvenile and domestic relations district court judge may order an evaluation and appoint a qualified evaluator in accordance with § 16.1-342 who shall personally examine the minor and certify to the court whether or not he has probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and subsection A of § 16.1-345.2. The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons. The return date for the civil show cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A, and the examination of the minor shall be conducted immediately after the hearing thereon, but in no event shall the period for the examination exceed four eight hours.

C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge shall, after consideration of any evidence from the minor, from his parents, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 16.1-340, or (iii) issue a temporary detention order pursuant to § 16.1-340.1.

D. After hearing the evidence regarding the minor's material noncompliance with the mandatory outpatient treatment order and the minor's current condition, and any other relevant information referenced in § 16.1-345 and subsection A of § 16.1-345.2, the juvenile and domestic relations district court judge may make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;

2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment
specified in subsection A of § 16.1-345.2, and that a continued period of mandatory outpatient treatment appears warranted, the judge may renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the court may consider the minor's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order for mandatory outpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 16.1-345.

E. For the purposes of this section, "juvenile and domestic relations district court judge" shall not include a special justice as authorized by § 37.2-803.

§ 19.2-169.6. Inpatient psychiatric hospital admission from local correctional facility.

A. Any inmate of a local correctional facility who is not subject to the provisions of § 19.2-169.2 may be hospitalized for psychiatric treatment at a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge if:

1. The court with jurisdiction over the inmate's case, if it is still pending, on the petition of the person having custody over an inmate or on its own motion, holds a hearing at which the inmate is represented by counsel and finds by clear and convincing evidence that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than the local correctional facility. Prior to making this determination, the court shall consider the examination conducted in accordance with § 37.2-815 and the preadmission screening report prepared in accordance with § 37.2-816 and conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness, who is not providing treatment to the inmate, and who has completed a certification program approved by the Department of Behavioral Health and Developmental Services as provided in § 37.2-809. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report; or

2. Upon petition by the person having custody over an inmate, a magistrate finds probable cause to believe that (i) the inmate has a mental illness; (ii) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (iii) the inmate requires treatment in a hospital rather than a local correctional facility, and the magistrate issues a temporary detention order for the inmate. Prior to the filing of the petition, the person having custody shall arrange for an evaluation of the inmate conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or designee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department as provided in § 37.2-809. After considering the evaluation of the employee or designee of the local community services board or behavioral health authority, and any other information presented, and finding that probable cause exists to meet the criteria, the magistrate may issue a temporary detention order in accordance with the applicable procedures specified in §§ 37.2-809 through 37.2-813. The person having custody over the inmate shall notify the court having jurisdiction over the inmate's case, if it is still pending, and the inmate's attorney prior to the detention pursuant to a temporary detention order or as soon thereafter as is reasonable.

Upon detention pursuant to this subdivision, a hearing shall be held either (a) before the court having jurisdiction over the inmate's case or (b) before a district court judge or a special justice, as defined in § 37.2-100, in accordance with the provisions of §§ 37.2-815 through 37.2-821, in which case the inmate shall be represented by counsel as specified in § 37.2-814. The hearing shall be held within 48 72 hours of execution of the temporary detention order issued pursuant to this subdivision. If the 48-hour 72-hour
period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the inmate may be detained until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. Any employee or designee of the local community services board or behavioral health authority, as defined in § 37.2-809, representing the board or authority that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio communication system as authorized in § 37.2-804.1. When the hearing is held outside the service area of the community services board or behavioral health authority that prepared the preadmission screening report, and it is not practicable for a representative of the board or authority to attend or participate in the hearing, arrangements shall be made by the board or authority for an employee or designee of the board or authority serving the area in which the hearing is held to attend or participate on behalf of the board or authority that prepared the preadmission screening report. The judge or special justice conducting the hearing may order the inmate hospitalized if, after considering the examination conducted in accordance with § 37.2-815, the preadmission screening report prepared in accordance with § 37.2-816, and any other available information as specified in subsection C of § 37.2-817, he finds by clear and convincing evidence that (1) the inmate has a mental illness; (2) there exists a substantial likelihood that, as a result of a mental illness, the inmate will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; and (3) the inmate requires treatment in a hospital rather than a local correctional facility. The examiner appointed pursuant to § 37.2-815, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. The examination and the preadmission screening report shall be admitted into evidence at the hearing.

B. In no event shall an inmate have the right to make application for voluntary admission as may be otherwise provided in § 37.2-805 or 37.2-814 or be subject to an order for mandatory outpatient treatment as provided in § 37.2-817.

C. If an inmate is hospitalized pursuant to this section and his criminal case is still pending, the court having jurisdiction over the inmate’s case may order that the admitting hospital evaluate the inmate's competency to stand trial and his mental state at the time of the offense pursuant to §§ 19.2-169.1 and 19.2-169.5.

D. An inmate may not be hospitalized longer than 30 days under subsection A unless the court which has criminal jurisdiction over him or a district court judge or a special justice, as defined in § 37.2-100, holds a hearing and orders the inmate's continued hospitalization in accordance with the provisions of subdivision A 2. If the inmate's hospitalization is continued under this subsection by a court other than the court which has jurisdiction over his criminal case, the facility at which the inmate is hospitalized shall notify the court with jurisdiction over his criminal case and the inmate's attorney in the criminal case, if the case is still pending.

E. Hospitalization may be extended in accordance with subsection D for periods of 60 days for inmates awaiting trial, but in no event may such hospitalization be continued beyond trial, nor shall such hospitalization act to delay trial, as long as the inmate remains competent to stand trial. Hospitalization may be extended in accordance with subsection D for periods of 180 days for an inmate who has been convicted and not yet sentenced, or for an inmate who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, but in no event may such hospitalization be continued beyond the date upon which his sentence would have expired had he received the maximum sentence for the crime charged. Any inmate who has not completed service of his sentence upon discharge from the hospital shall serve the remainder of his sentence.

F. For any inmate who has been convicted and not yet sentenced, or who has been convicted of a crime and is in the custody of a local correctional facility after sentencing, the time the inmate is confined in a hospital for psychiatric treatment shall be deducted from any term for which he may be sentenced to any penal institution, reformatory or elsewhere.

G. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to an inmate who is the subject of a proceeding under this section, upon request, shall disclose to a magistrate, the court, the inmate's attorney, the inmate's guardian ad litem, the examiner appointed pursuant to § 37.2-815, the community service board or behavioral health authority preparing the preadmission screening pursuant to § 37.2-816, or the sheriff or administrator of the local correctional facility any and all information that is necessary and appropriate to enable each of them to perform his duties under this section. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the inmate and to monitor that care and treatment. Health records disclosed to a sheriff or administrator of the local correctional facility shall be limited to information necessary to protect the sheriff or administrator of the local correctional facility and his employees, the inmate, or the public from physical injury or to address the health care needs of the inmate. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.
Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

H. Any order entered where an inmate is the subject of proceedings under this section shall provide for the disclosure of medical records pursuant to subsection G. This subsection shall not preclude any other disclosures as required or permitted by law.


When exigent circumstances do not permit compliance with revocation procedures set forth in § 19.2-182.8, any district court judge or a special justice, as defined in § 37.2-100, or a magistrate may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion based upon probable cause to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency custody order shall require the acquittee within his judicial district to be taken into custody and transported to a convenient location where a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need for inpatient hospitalization.

A law-enforcement officer who, based on his observation or the reliable reports of others, has probable cause to believe that any acquittee on conditional release has violated the conditions of his release and is no longer a proper subject for conditional release and requires emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody and transport him to an appropriate location to assess the need for hospitalization without prior judicial authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody until a temporary detention order is issued or until he is released, but in no event shall the period of custody exceed forty-eight hours. However, upon a finding by a district court judge, special justice as defined in § 37.2-100, or magistrate that good cause exists to grant an extension, the district court judge, special justice, or magistrate shall extend the emergency custody order, or shall issue an order extending the period of emergency custody, one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to this section or (b) a medical evaluation of the person to be completed if necessary. If it appears from all evidence readily available (i) (a) that the acquittee has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) (b) that he requires emergency evaluation to assess the need for inpatient hospitalization, the district court judge or a special justice, as defined in § 37.2-100, or magistrate, upon the advice of such person skilled in the diagnosis and treatment of mental illness, may issue a temporary detention order authorizing the executive officer to place the acquittee in an appropriate institution for a period not to exceed forty-eight (48) hours prior to a hearing. If the forty-eight (48) hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the acquittee may be detained until the next day which is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

The committing court or any district court judge or a special justice, as defined in § 37.2-100, shall have jurisdiction to hear the matter. Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist, provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a preponderance of the evidence presented at the hearing, that the acquittee (i) (1) has violated the conditions of his release or is no longer a proper subject for conditional release and (ii) (2) has mental illness or intellectual disability and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional release and place him in the custody of the Commissioner.

When an acquittee on conditional release pursuant to this chapter is taken into emergency custody, detained, or hospitalized, such action shall be considered to have been taken pursuant to this section, notwithstanding the fact that his status as an insanity acquittee was not known at the time of custody, detention, or hospitalization. Detention or hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity acquitees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's status as an insanity acquittee on conditional release is not recognized at the time of emergency custody or detention, at the time his status as such is verified, the provisions applicable to such persons shall be applied and the court hearing the matter shall notify the committing court of the proceedings.

§ 37.2-308.1. Acute psychiatric bed registry.

A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect, aggregate, and display information about available acute beds in public and private inpatient psychiatric facilities and public and private residential crisis stabilization units to facilitate the
identification and designation of facilities for the temporary detention and treatment of individuals who meet the criteria for temporary detention pursuant to § 37.2-809.

B. The acute psychiatric bed registry created pursuant to subsection A shall:

1. Include descriptive information for every public and private inpatient psychiatric facility and every public and private residential crisis stabilization unit in the Commonwealth, including contact information for the facility or unit;

2. Provide real-time information about the number of beds available at each facility or unit and, for each available bed, the type of patient that may be admitted, the level of security provided, and any other information that may be necessary to allow employees or designees of community services boards and employees of inpatient psychiatric facilities or public and private residential crisis stabilization units to identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary detention; and

3. Allow employees and designees of community services boards, employees of inpatient psychiatric facilities or public and private residential crisis stabilization units, and health care providers as defined in § 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering emergency medical care to perform searches of the registry to identify available beds that are appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.

C. Every state facility, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate such employees as may be necessary to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry.

D. The Commissioner may enter into a contract with a private entity for the development and administration of the acute psychiatric bed registry established pursuant to subsection A.

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, in cases in which the emergency custody order is based upon a finding that the person who is the subject of the order has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs but there is no substantial likelihood that the person will cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative
transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board’s service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed four eight hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary.

H. A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed four eight hours from the time the law-enforcement officer takes the person into custody. However, upon a finding by a magistrate that
good cause exists to grant an extension, the magistrate shall issue an order extending the period of emergency custody one time for an additional period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (a) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809, or (b) a medical evaluation of the person to be completed if necessary.

I. Nothing herein shall preclude a law enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

J. A representative of the primary law enforcement agency specified to execute an emergency custody order or a representative of the law enforcement agency employing a law enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

K. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four eight hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, the magistrate shall extend the emergency custody order one time for a second period not to exceed two hours. Good cause for an extension includes the need for additional time to allow (i) the community services board to identify a suitable facility in which the person can be temporarily detained pursuant to § 37.2-809 or (ii) a medical evaluation of the person to be completed if necessary. Any family member, as defined in § 37.2-100, employee or designee of the local community services board as defined in § 37.2-809, treating physician, or law enforcement officer may request the two-hour extension.

L. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.

M. If an emergency custody order is not executed within six eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

N. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board as defined in § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.

O. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider...
the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed. The person may be released, pursuant to § 37.2-813, before the 48-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a
magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section, a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. The employee or designee of the community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the person should not be subject to a temporary detention order, inform the petitioner and an onsite treating physician of his recommendation.

§ 37.2-809.1. Facility of temporary detention.
A. In each case in which an employee or designee of the local community services board as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the individual for temporary detention and the individual shall not during the duration of the temporary detention order be released from the custody of the community services board except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.

§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner.
A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing or purchasing a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a
community services board as provided in § 37.2-805.

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth day is a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday, or day on which the court is lawfully closed. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary
detention order is issued or until the person is released, but in no event shall the period exceed four
eight hours.

C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence
from the person, from the community services board, or from any treatment provider identified in the
mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the
hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order
pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory
outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
inpatient treatment and the person's current condition, and any other relevant information referenced in
subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary
admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order
the person's involuntary admission to a facility designated by the community services board for a period
of treatment not to exceed 30 days;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient
treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient
treatment, making any necessary modifications that are acceptable to the community services board or
treatment provider responsible for the person's treatment. In determining the appropriateness of
outpatient treatment, the court may consider the person's material noncompliance with the previous
mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall
rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory
outpatient treatment following inpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
accordance with § 37.2-829.

2. That an emergency exists and the provisions of § 37.2-308.1 as created by this act are in force
from the passage of this act and that the remaining provisions of this act shall become effective in
due course except as provided in the third enactment.

3. That the provisions of this act adding subsection M to § 16.1-340 and subsection N to § 37.2-808

4. That the Department of Behavioral Health and Developmental Services shall submit an annual
report on or before June 30 of each year on the implementation of this act to the Governor and
the Chairmen of the House Appropriations and Senate Finance Committees. The report shall
include the number of notifications of individuals in need of facility services by the community
services boards, the number of alternative facilities contacted by community services boards and
state facilities, the number of temporary detentions provided by state facilities and alternative
facilities, the length of stay in state facilities and alternative facilities, and the cost of the
detentions in state facilities and alternative facilities.

5. That the Governor's Task Force on Improving Mental Health Services and Crisis Response
created on December 10, 2013, by Executive Order 68 shall identify and examine issues related to
the use of law enforcement in the involuntary admission process. The task force shall consider
options to reduce the amount of resources needed to detain individuals during the emergency
custody order period, including the amount of time spent providing transportation throughout the
admission process. Such options shall include developing crisis stabilization units in all regions of
the Commonwealth and contracting for retired officers to provide needed transportation. The task
force shall report its findings and recommendations to the Governor and the General Assembly by
October 1, 2014.
Bill/Act: **SB 459**

**Summary:** This bill specifies that any pregnant woman referred for drug abuse or drug dependence treatment at any treatment resource that receives public funding would be a priority user of available treatment. The department of mental health and substance abuse services must ensure that family-oriented drug abuse or drug dependence treatment is available, as appropriations allow. A treatment resource that receives public funds may not refuse to treat a person solely because the person is pregnant as long as appropriate services are offered by the treatment resource.

If during prenatal care, the attending obstetrical provider determines by the 20th week of pregnancy that the patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, then the provider must encourage counseling, drug abuse or drug dependence treatment and other assistance to the patient. If the patient initiates drug abuse treatment or drug dependence treatment based upon a clinical assessment prior to her next regularly-scheduled prenatal visit and maintains compliance with such treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children's services may not file any petition to terminate the mother's parental rights or otherwise seek protection of the newborn solely because of the patient's use of prescription drugs for non-medical purposes during the term of her pregnancy.

Any physician or other health care provider who does not recognize that the pregnant woman has used prescription drugs that place the fetus in jeopardy, or who complies with the provisions of this bill, or any physician or facility that initiates substance abuse treatment consistent with community standards of care pursuant to this bill, would be presumed to be acting in good faith and would have immunity from any civil liability that might otherwise result by reason of such actions.

**Status:** The bill was signed into law on May 14, 2013.

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**Comments:**  [Tennessee Medical Association](http://www.tennessee-medical-association.org) (May 29, 2013)

Doctors who treat pregnant women with drug abuse issues need to know about a new state law that protects these patients if they voluntarily seek and stay in treatment for their addiction.

The Safe Harbor Act of 2013 appears to be the first of its kind in the nation aimed at addressing the rising incidence of neonatal abstinence syndrome. The legislation was brought by the Tennessee Medical Association and sponsored by State Senator Ken Yager (R-Harriman) and State Representative Bill Dunn (R-Knoxville); it was signed into law and took effect on May 14, 2013.
Prioritizes Treatment
Under the Safe Harbor Act, a pregnant abuser of prescription drugs no longer risks losing custody of her newborn if she seeks treatment and certain requirements are met for the remainder of the pregnancy. The Act states that if the attending obstetrical provider determines before the end of the 20th week of pregnancy that the patient is abusing prescription drugs, which may place the fetus in jeopardy, the provider must encourage counseling, treatment and discuss other assistance with the patient.

If the patient begins drug treatment before her next prenatal appointment, maintains compliance with the treatment throughout the pregnancy and continues prenatal care, the Department of Children’s Services (DCS) may not try to terminate the parental rights of the mother or seek other protection for the newborn solely for the abuse of prescription drugs for non-medical purposes during pregnancy. This new law does not prevent DCS from filing an action to remove the child from the custody of the mother or other caregiver if it determines the baby is not properly cared for by the mother or caregiver.

Grants Immunity
Under the new law, immunity from civil liability is provided to:
- A physician or other healthcare provider who does not recognize that the pregnant patient has used prescription drugs and placed the fetus in jeopardy after a reasonable inquiry;
- A physician or other healthcare provider who complies with this law; or
- A facility or physician that initiates substance abuse treatment consistent with community standards present in the Alcohol and Drug Treatment Act of 1973.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to amend Tennessee Code Annotated, Title 33; Title 36 and Title 37, relative to Neonatal Abstinence Syndrome.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, the Tennessee General Assembly declares that the growing misuse of prescription drugs by pregnant women leads too often to drug-affected infants with neonatal abstinence syndrome, that adversely affects the health and welfare of the newborn and places a heavy financial burden on Tennessee's taxpayers and those who pay for health care, so it is the policy of this state to take effective action that will minimize these costs; and

WHEREAS, special attention must be focused on preventive programs and services directed at pregnant women at risk of becoming prescription drug abusers and misusers as well as on pregnant women who use these substances or who are at risk of substance use or abuse; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as the "Safe Harbor Act of 2013".

SECTION 2. Tennessee Code Annotated, Section 33-10-104, is amended by adding the following new subsection:

(f)(1) Notwithstanding subsection (e), a pregnant woman referred for drug abuse or drug dependence treatment at any treatment resource that receives public funding shall be a priority user of available treatment. All records and reports regarding such pregnant woman shall be kept confidential. The department of mental health and substance abuse services shall ensure that family-oriented drug abuse or drug dependence treatment is available, as appropriations allow. A treatment resource that receives public funds shall not refuse to treat a person solely because the person is pregnant as long as appropriate services are offered by the treatment resource.

(2) If during prenatal care, the attending obstetrical provider determines no later than the end of the twentieth week of pregnancy that the patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, the provider shall encourage counseling, drug abuse or drug dependence treatment and other assistance to the patient.

(A) If the patient initiates drug abuse or drug dependence treatment based upon a clinical assessment prior to her next regularly scheduled prenatal visit and maintains compliance with both drug abuse or drug dependence treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children's services shall not file any petition to terminate the mother's parental rights or otherwise seek protection of the newborn solely because of the patient's use of prescription drugs for non-medical purposes during the term of her pregnancy.

(B) Notwithstanding subdivision (f)(2)(A), nothing shall prevent the department of children's services from filing any petition to terminate the mother's parental rights or seek protection of the newborn should the
department determine that the newborn's mother, or any other adult caring for
the newborn, is unfit to properly care for such child.

(3) Any physician or other health care provider who does not recognize that
the pregnant woman has used prescription drugs that place the fetus in jeopardy after
a reasonable inquiry, or who complies with the provisions of this subsection, or any
physician or facility that initiates substance abuse treatment consistent with
community standards of care pursuant to this subsection, shall be presumed to be
acting in good faith and shall have immunity from any civil liability that might
otherwise result by reason of such actions.

(4) The commissioner of mental health and substance abuse services is
authorized to promulgate emergency rules and regulations to effectuate the purposes
of this act. All such rules and regulations shall be promulgated in accordance with
Tennessee Code Annotated, title 4, chapter 5.

SECTION 3. This act shall take effect on becoming law, the public welfare requiring it.
Prosecution for Illegal Use of a Narcotic While Pregnant

Tennessee

Bill/Act: **SB 1391**

Summary: The legislation provides that a woman may be prosecuted for assault for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drug.

Status: Signed into law on April 29, 2014.

**GO TO TABLE OF CONTENTS**

Comments: *The Tennessean* (April 30, 2014)

Tennessee women who use drugs while pregnant can be criminally charged for harm done to their infants beginning July 1.

Gov. Bill Haslam signed the legislation Tuesday after "extensive conversations with experts including substance abuse, mental health, health and law enforcement officials," he wrote in a statement. "The intent of this bill is to give law enforcement and district attorneys a tool to address illicit drug use among pregnant women through treatment programs."

The governor's decision comes after a week of mounting nationwide opposition from civil and reproductive rights groups. They argued that criminalization would drive vulnerable women away from drug addiction treatment.

"I understand the concerns about this bill, and I will be monitoring the impact of the law through regular updates with the court system and health professionals," Haslam wrote.

The law brings back criminalization, which lawmakers had eliminated two years ago as the state moved toward programs that incentivize expecting mothers to get into treatment.

Tennessee officials have wrestled with what to do about the growing numbers of infants born dependent on drugs and who often suffer from a condition known as neonatal abstinence syndrome.

The legislation would allow mothers to avoid criminal charges if they get into one of the state's few treatment programs. Haslam said he wants doctors to encourage women to get into treatment before delivering their babies so they can avoid charges.

The proposal also includes an unusual sunset provision, which means the criminal penalty will be in effect until 2016. At that time, lawmakers will have to revisit the issue.

Opponents, including five national medical organizations and local doctors who treat pregnant women, worry that criminalization will scare women away from treatment and reverse last year's Safe Harbor Act, which protected the custody rights of mothers and gave them priority placement into the state's limited number of treatment programs.
The director of the American Civil Liberties Union of Tennessee — joined by the national ACLU — said she was "extremely disappointed" by the governor's decision.

"A pregnant woman struggling with drug or alcohol dependency will now be deterred from seeking the prenatal care she needs," said Hedy Weinberg.

Abuse of prescription painkillers has fueled a tenfold increase in such births in the past decade, sending health officials scrambling. There were 921 drug-dependent births in 2013 and 253 so far this year.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT to amend Tennessee Code Annotated, Title 39, relative to criminal law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-107(c), in amended by inserting the word "lawful" before the word "act" and inserting the word "lawful" before the word "omission".

SECTION 2. Tennessee Code Annotated, Section 39-13-107(c), is further amended by adding a new sentence at the end of this subsection as follows:

However, nothing in the section shall preclude prosecution of a woman for an assaultive offense for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drug or for criminal homicide if her child dies as a result of her illegal use of a narcotic drug taken while pregnant.

SECTION 3. Tennessee Code Annotated, Section 39-13-214(c), is amended by inserting the word "lawful" before the word “act” and inserting the word “lawful” before the word “omission”.

SECTION 4. Tennessee Code Annotated, Section 39-13-214(c), is further amended by adding a new sentence at the end of this subsection as follows:

However, nothing in the section shall preclude prosecution of a woman for an assaultive offense for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drugs or for criminal homicide if her child dies as a result of her illegal use of a narcotic drug taken while pregnant.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the
act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6  This act shall take effect July 1, 2013, the public welfare requiring it.
Summary: Maine is the second state to create a new midlevel dental provider. Minnesota was the first in 2009 and the Indian Health Service in Alaska uses a midlevel provider. Dental hygiene therapists are required to have a bachelor’s degree in dental hygiene, pass a competency-based clinical examination and complete 2,000 hours of supervised clinical practice under the supervision of a dentist. The dental hygiene therapist practices under the supervision of a dentist.

Status: Signed into law April 28, 2014.

Comment: From the Bellingham Herald (April 29, 2014)

A bill creating a new level of dental hygienists in Maine will become law.

House Speaker Mark Eves’ office said Monday that Gov. Paul LePage signed the Democrat from North Berwick's bill that establishes a new license for dental hygiene therapists.

They will be able to do procedures like filling cavities and pulling teeth. Dental hygienists can become dental hygiene therapists after schooling, clinical hours and an exam. They'll have to work under a dentists' supervision.

Eves says the bill will ensure that kids and seniors get the dental care they need in Maine, which faces a dentist shortage throughout much of the state.

Critics of the bill said the problem is not a lack of access to dental care, but peoples' inability to show up at appointments.

Read more here: http://www.bellinghamherald.com/2014/04/29/3613873/lepage-signs-bill-for-dental-hygiene.html#storylink=cpy

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
An Act To Improve Access to Oral Health Care

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §3174-XX is enacted to read:

§3174-XX. Dental hygiene therapy reimbursement

1. Reimbursement. By October 1, 2015, the department shall provide for the reimbursement under the MaineCare program of dental hygiene therapists practicing as authorized under Title 32, chapter 16, subchapter 3-C for the procedures identified in their scope of practice. Reimbursement must be provided to dental hygiene therapists directly or to a federally qualified health center pursuant to section 3174-V when a dental hygiene therapist is employed as a core provider at the center.

2. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 2. 24 MRSA §2317-B, sub-§19, as enacted by PL 1999, c. 256, Pt. M, §10, is amended to read:

19. Title 24-A, chapter 67. Medicare supplement insurance policies, Title 24-A, chapter 67; and

Sec. 3. 24 MRSA §2317-B, sub-§20, as amended by PL 2003, c. 428, Pt. G, §1, is further amended to read:

20. Title 24-A, chapters 68 and 68-A. Long-term care insurance, nursing home care insurance and home health care insurance, Title 24-A, chapters 68 and 68-A; and

Sec. 4. 24 MRSA §2317-B, sub-§21 is enacted to read:

21. Title 24-A, sections 2765-A and 2847-U. The practice of dental hygiene by a dental hygiene therapist, Title 24-A, sections 2765-A and 2847-U.
Sec. 5. 24-A MRSA §2765-A is enacted to read:

§2765-A. Coverage for services provided by dental hygiene therapist

1. Services provided by dental hygiene therapist. An insurer that issues individual dental insurance or health insurance that includes coverage for dental services shall provide coverage for dental services performed by a dental hygiene therapist licensed under Title 32, chapter 16, subchapter 3-C when those services are covered services under the contract and when they are within the lawful scope of practice of the dental hygiene therapist.

2. Limits; coinsurance; deductibles. A contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

3. Coordination of benefits with dental insurance. If an enrollee eligible for coverage under this section is eligible for coverage under a dental insurance policy or contract and a health insurance policy or contract, the insurer providing dental insurance is the primary payer responsible for charges under subsection 1 and the insurer providing individual health insurance is the secondary payer.

4. Application. The requirements of this section apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed in this State. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

Sec. 6. 24-A MRSA §2847-U is enacted to read:

§2847-U. Coverage for services provided by dental hygiene therapist

1. Services provided by dental hygiene therapist. An insurer that issues group dental insurance or health insurance that includes coverage for dental services shall provide coverage for dental services performed by a dental hygiene therapist licensed under Title 32, chapter 16, subchapter 3-C when those services are covered services under the contract and when they are within the lawful scope of practice of the dental hygiene therapist.

2. Limits; coinsurance; deductibles. A contract that provides coverage for the services required by this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

3. Coordination of benefits with dental insurance. If an enrollee eligible for coverage under this section is eligible for coverage under a dental insurance policy or contract and a health insurance policy or contract, the insurer providing dental insurance is the primary payer responsible for charges under subsection 1 and the insurer providing group health insurance is the secondary payer.

Sec. 7. 32 MRSA c. 16, sub-c. 3-C is enacted to read:
SUBCHAPTER 3-C

DENTAL HYGIENE THERAPIST

§1094-AA. Dental hygiene therapist

A dental hygienist or independent practice dental hygienist licensed by the board pursuant to this chapter may practice as a licensed dental hygiene therapist to the extent permitted by this subchapter. To qualify for licensure under this subchapter as a dental hygiene therapist, a person shall apply to the board on forms provided by the board, pay the application fee under section 1094-DD and demonstrate to the board that the applicant:

1. **Licensure.** Possesses a valid license to practice dental hygiene or independent practice dental hygiene pursuant to this chapter or qualifies for licensure to practice by endorsement pursuant to section 1094-L;

2. **Educational program standards and requirements.** Has successfully completed a dental hygiene therapy education program that:
   A. Is accredited by the American Dental Association Commission on Dental Accreditation or a successor organization;
   B. Is a minimum of 4 semesters;
   C. Is consistent with the model curriculum for educating dental hygiene therapists adopted by the American Association of Public Health Dentistry, or a successor organization, is consistent with existing dental hygiene therapy programs in other states and is approved by the board; and
   D. Meets the requirements for dental hygiene therapy education programs adopted by the board;

3. **Bachelor of Science degree.** Has been awarded a Bachelor of Science degree in dental hygiene. In order to meet the requirements of this subsection, an applicant must hold at least an associate degree in dental hygiene before entering a dental hygiene therapy education program that meets the requirements of subsection 2, which may be completed concurrently or consecutively with a Bachelor of Science degree in dental hygiene;

4. **Examination.** Has passed a comprehensive, competency-based clinical examination approved by the board and administered independently of an institution providing dental hygiene therapy education and has passed an examination of the applicant's knowledge of Maine laws and rules relating to the practice of dentistry. An applicant who fails the clinical examination twice may not take the clinical examination again until further education and training, as specified by the board, are obtained; and

5. **Supervised clinical practice.** Has completed 2,000 hours of supervised clinical practice under the supervision of a dentist licensed under this chapter and in conformity with rules adopted by the board, during which supervised clinical practice the applicant holds a provisional dental hygiene therapy license pursuant to section 1094-BB. For
purposes of meeting the requirements of this subsection, an applicant's hours of supervised clinical experience while enrolled in the 4-semester dental training therapy program may be included.

§1094-BB. Provisional dental hygiene therapy license

The board shall issue a provisional dental hygiene therapy license to an applicant for licensure under this subchapter who has met the requirements of section 1094-AA, subsections 1 to 4 and rules adopted by the board and who has paid a fee established by the board of not more than $175. During the period of provisional licensure, which may not exceed 3 years, the applicant shall maintain in good standing the applicant's license to practice as a dental hygienist or an independent practice dental hygienist. During the period of provisional licensure the applicant may be compensated for services performed as a dental hygiene therapist.

§1094-CC. Dental coverage and reimbursement

Notwithstanding the requirements of Title 24-A, section 2752, any service performed by a dentist, dental assistant or dental hygienist licensed in this State that is reimbursed by private insurance, a dental service corporation, the MaineCare program under Title 22 or the Cub Care program under Title 22, section 3174-T must also be covered and reimbursed when performed by a dental hygiene therapist authorized to practice under this subchapter.

§1094-DD. License; fees; discontinuation of license

The board shall issue a license to practice as a dental hygiene therapist to an applicant for licensure under this subchapter who has met the requirements of this subchapter and rules adopted pursuant to the subchapter for licensure and has paid the application fee of not more than $175. A dental hygiene therapist shall publicly exhibit the license at the therapist's place of business or employment. The initial date of expiration of the license must be the original expiration date of the dental hygiene therapist's dental hygienist license issued by the board pursuant to subchapter 4 or, for an independent practice dental hygienist licensed by endorsement, January 1st of the first odd-numbered year following initial licensure. On or before January 1st of each odd-numbered year, a dental hygiene therapist shall pay to the board a license renewal fee. The board may renew the license of a dental hygiene therapist who meets the requirements for continued licensure and pays a renewal fee and a late fee by February 1st in the year in which renewal is due. The board shall suspend the license of a dental hygiene therapist who does not renew a license by February 1st in the year that renewal is due. The board may renew the license of a dental hygiene therapist who pays a renewal fee and a reinstatement fee as required by the board.

§1094-EE. Continuing education

As a condition of renewal of a license to practice under this subchapter, a dental hygiene therapist shall submit evidence of successful completion of 35 hours of continuing education in the 2 years prior to renewal. Continuing education under this section must be in conformity with the provisions of section 1084-A and must include
board-approved courses, including but not limited to a course in cardiopulmonary resuscitation. The board may refuse renewal to an applicant who has not satisfied the requirements of this section or may renew a license on terms and conditions set by the board.

§1094-FF. Limitation of practice

Upon completion of 2,000 hours of supervised clinical practice under section 1094-AA, subsection 4 a dental hygiene therapist may provide services within the scope of practice provided in section 1094-HH and under the direct supervision of a dentist who is licensed in this State in the following health settings: a hospital; a public school, as defined in Title 20-A, section 1, subsection 24; a nursing facility licensed under Title 22, chapter 405; a residential care facility licensed under Title 22, chapter 1663; a clinic; a health center reimbursed as a federally qualified health center as defined in 42 United States Code, Section 1395x(aa)(4) (1993) or that has been determined by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services to meet the requirements for funding under Section 330 of the Public Health Service Act, 42 United States Code, Section 254(b); a federally qualified health center licensed in this State; a public health setting that serves underserved populations as recognized by the federal Department of Health and Human Services; or a private dental practice in which at least 50% of the patients who are provided services by that dental hygiene therapist are covered by the MaineCare program under Title 22 or are underserved adults.

§1094-GG. Written practice agreement; standing orders

A dental hygiene therapist may practice only under the direct supervision of a dentist who is licensed in this State, referred to in this subchapter as “the supervising dentist,” and through a written practice agreement signed by both parties. For the purposes of this section, a written practice agreement is a signed document that, in conformity with the legal scope of practice provided in section 1094-HH, outlines the functions that the dental hygiene therapist is authorized to perform. A dental hygiene therapist may practice only under the standing order of a dentist, may provide only care that follows written protocols and may provide only services that the dental hygiene therapist is authorized to provide by that dentist.

1. Minimum written practice agreement requirements. A written practice agreement between a supervising dentist and a dental hygiene therapist must include the following elements:

A. The services and procedures and the practice settings for those services and procedures that the dental hygiene therapist may provide, together with any limitations on those services and procedures;
B. Any age-specific and procedure-specific practice protocols, including case selection criteria, assessment guidelines and imaging frequency;
C. Procedures to be used with patients treated by the dental hygiene therapist for obtaining informed consent and for creating and maintaining dental records;
D. A plan for review of patient records by the supervising dentist and the dental hygiene therapist;
E. A plan for managing medical emergencies in each practice setting in which the dental hygiene therapist provides care;

F. A quality assurance plan for monitoring care, including patient care review, referral follow-up and a quality assurance chart review;

G. Protocols for administering and dispensing medications, including the specific circumstances under which medications may be administered and dispensed;

H. Criteria for providing care to patients with specific medical conditions or complex medical histories, including requirements for consultation prior to initiating care; and

I. Specific written protocols, including a plan for providing clinical resources and referrals, governing situations in which the patient requires treatment that exceeds the scope of practice or capabilities of the dental hygiene therapist.

2. Responsibility. The supervising dentist shall accept responsibility for all authorized services and procedures performed by the dental hygiene therapist pursuant to the written agreement. A dental hygiene therapist who provides services or procedures beyond those authorized in the written agreement engages in unprofessional conduct for the purposes of this chapter.

3. Revision. Revisions to the written practice agreement must be documented in a new written practice agreement signed by the supervising dentist and the dental hygiene therapist.

4. Requirements. A supervising dentist and a dental hygiene therapist who sign a written practice agreement shall each file a copy of the agreement with the board, keep a copy for the dentist's or dental hygiene therapist's own records and make a copy available to patients of the dental hygiene therapist upon request. The copy of the written practice agreement in the records of the board must be made available to the public upon request.

§1094-HH. Scope of practice

A dental hygiene therapist may provide the care and services listed in this section and may provide them only under the direct supervision of a dentist licensed in this State. A dental hygiene therapist practicing under general supervision of a dentist may perform all duties of a dental hygiene therapist listed in rules adopted by the board. A dental hygiene therapist who is licensed as a dental hygienist may perform all of the duties of a dental hygienist under this chapter. A dental hygiene therapist who is licensed as an independent practice dental hygienist may perform all of the duties of an independent practice dental hygienist. A dental hygiene therapist may:

1. Assessments and treatments; preparations; restorations. Perform oral health assessments, pulpal disease assessments for primary and young teeth, simple cavity preparations and restorations and simple extractions;

2. Crowns; space maintainers. Prepare and place stainless steel crowns and aesthetic anterior crowns for primary incisors and prepare, place and remove space maintainers;

3. Referrals. Provide referrals;
4. **Anesthesia.** Administer local anesthesia and nitrous oxide analgesia.

5. **Preventive services.** Perform preventive services;

6. **Management of dental trauma and suturing; extractions.** Conduct urgent management of dental trauma, perform suturing and extract primary teeth and perform nonsurgical extractions of periodontally diseased permanent teeth if authorized in advance by the supervising dentist;

7. **Medications.** Provide, dispense and administer, within the parameters of the written practice agreement entered into under section 1094-GG and with the authorization of the supervising dentist, anti-inflammatories, nonprescription analgesics, antimicrobials, antibiotics and anticaries materials;

8. **Radiographs.** Administer radiographs; and

9. **Other related services and functions.** Perform other related services and functions authorized by the supervising dentist and for which the dental hygiene therapist is trained.

§1094-II. **Supervision of dental hygienists and dental assistants**

A dental hygiene therapist may supervise dental assistants and dental hygienists to the extent permitted in the written practice agreement entered into under section 1094-GG. A dental hygiene therapist may not supervise more than 3 dental assistants and 2 dental hygienists in any one practice setting.

§1094-JJ. **Referrals**

A supervising dentist shall arrange for another dentist or specialist to provide any services needed by a patient of a dental hygiene therapist supervised by that dentist that are beyond the scope of practice of the dental hygiene therapist and that the supervising dentist is unable to provide. A dental hygiene therapist, in accordance with a written practice agreement entered into under section 1094-GG, shall refer patients to another qualified dental or health care professional to receive needed services that exceed the scope of practice of the dental hygiene therapist.

§1094-KK. **Rulemaking**

The board shall adopt rules to implement this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 8. Board of Dental Examiners.** By January 1, 2015, the Department of Professional and Financial Regulation, Board of Dental Examiners shall adopt rules setting requirements for dental hygiene therapy education programs. Prior to adopting rules, the board shall consult with:

1. A member of the Maine Dental Association;

2. A member of the Maine Dental Hygienists' Association;
3. A dentist who practices at a dental clinic at which at least 50% of that dentist's patients are eligible for the MaineCare program;

4. A dental hygienist who practices at a dental clinic at which at least 50% of that dental hygienist's patients are eligible for the MaineCare program;

5. A person whose area of expertise is in public health; and

6. A member of an organization that advocates for low-income persons.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. Notwithstanding Title 32, section 1094-AA, subsection 2, paragraph A, until a dental hygiene therapy education program has been accredited by the American Dental Association Commission on Dental Accreditation or a successor organization, the Board of Dental Examiners may approve the dental hygiene therapy education program.

Sec. 9. Exemption from review. Notwithstanding the Maine Revised Statutes, Title 24-A, section 2752, this Act is enacted without review and evaluation by the Department of Professional and Financial Regulation, Bureau of Insurance.

Sec. 10. Application. Those sections of this Act that enact the Maine Revised Statutes, Title 22, section 3174-XX; Title 24, section 2317-B, subsection 21; and Title 24-A, sections 2765-A and 2847-U apply to all policies, contracts and certificates executed, delivered, issued for delivery, continued or renewed on or after January 1, 2015 in this State. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.
Summary: Prohibits smoking in a car if any passenger in under the age of 18. The law is enforceable only as a secondary offense. Four states and Puerto Rico have similar laws, although they may differ on the age of the child and range from 13 to 18 years as the upper limit.

Status: Signed into law June 11, 2013.

Comment: From the *Seattle Times* (June 11, 2013)
Oregon drivers caught smoking in cars with kids may face hefty fines under a new state law. Gov. John Kitzhaber signed into law on Tuesday a bill that prohibits drivers from lighting up if a person under 18 is also in the car.

The bill was the subject of a fiery debate in the Legislature.

Supporters said secondhand smoke is a health hazard and children shouldn’t be harmed by their parents’ bad decision to smoke.

Critics said the state shouldn’t regulate what drivers do in their own cars.

A police officer could enforce the ban only if the driver had been pulled over for a separate traffic violation. A maximum fine for the first offense would be $250.

The law also covers marijuana and regulated narcotics.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Enrolled

Senate Bill 444

Sponsored by Senator STEINER HAYWARD, Representatives THOMPSON, CLEM; Senators BOQUIST, BURDICK, DINGFELDER, MONNES ANDERSON, MONROE, ROSENBAUM, SHIELDS, Representatives GELSER, GREENLICK, KENY-GUYER, TOMEI (Presession filed.)

CHAPTER .................................................

AN ACT

Relating to smoking in a motor vehicle.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 2. (1)(a) A person commits the offense of smoking in a motor vehicle if the person smokes in a motor vehicle while a person under 18 years of age is in the motor vehicle.

(b) As used in this subsection, “smokes” means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance.

(2) Notwithstanding ORS 810.410, a police officer may enforce this section only if the police officer has already stopped and detained the driver operating the motor vehicle for a separate traffic violation or other offense.

(3) Smoking in a motor vehicle is a:

(a) Class D traffic violation for a first offense.

(b) Class C traffic violation for a second or subsequent offense.
Bill/Act: SB 20

Summary: Persons who summon medical help for drug overdose victims are protected from certain criminal charges and overdose victims are also protected from certain charge. Health officials who provide the antidote naloxone are exempt from liability. The intent of the law is to reduce overdose deaths through faster reporting. Less than half of states have similar laws (see CSG Research Brief).

Status: Signed into law April 9, 2013.

Comment: From the Charlotte News Observer (April 3, 2013)

Good Samaritans who summon medical help for drug overdose victims will be given protection from certain criminal charges under legislation approved unanimously Wednesday by the N.C. Senate.

The House passed the bill last week by a vote of 102-11.

Deaths from drug overdoses have grown from fewer than 500 in 1999 to more than 1,100 in 2011, the latest figures reported by the state Department of Health and Human Services. More than half of overdose deaths are from prescription pain medications, typically opioids such as OxyContin or Vicodin, which Allran said have become easily available throughout the state.

Public health officials expect the new law to encourage faster reporting of overdose cases, giving first responders a better shot at arriving in time to provide lifesaving medical assistance. Kay Sanford, a drug abuse specialist who spoke at the recent N.C. Overdose Prevention Summit, said 60 percent of deaths from drug overdoses occur before medical help arrives, partly due to bystanders’ fear of criminal charges.

The new law will also limit prosecution on certain types of charges for overdose victims themselves and for bystanders who administer prescription antidote medication in an emergency. Additionally, medical providers who supply friends and family members of drug abusers with antidote medication, typically Naloxone, will be exempt from liability.

Allran points out that the law does not relieve bystanders or victims of overdose of prosecution from major charges, such as felony possession of controlled substances or trafficking in drugs.

The proposal to limit immunity in these cases came out of the state Task Force on Child Fatalities, which found that prescription drug deaths are the second-most-common cause of death in people under 18, just behind vehicle crashes. But youth are not the only victims, Allran said.

Read more here: http://www.newsobserver.com/2013/04/03/2799663/nc-general-assembly-passes-good.html#storylink=cpy
Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT TO PROVIDE LIMITED IMMUNITY FROM PROSECUTION FOR (1) CERTAIN DRUG-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A DRUG-RELATED OVERDOSE AND (2) CERTAIN DRUG-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG-RELATED OVERDOSE AND IN NEED OF MEDICAL ASSISTANCE; TO PROVIDE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY FOR (1) PRACTITIONERS WHO PRESCRIBE AN OPIOID ANTAGONIST TO CERTAIN THIRD PARTIES AND (2) CERTAIN INDIVIDUALS WHO ADMINISTER AN OPIOID ANTAGONIST TO A PERSON EXPERIENCING A DRUG-RELATED OVERDOSE; AND TO PROVIDE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN ALCOHOL-RELATED OFFENSES COMMITTED BY PERSONS UNDER THE AGE OF 21 WHO SEEK MEDICAL ASSISTANCE FOR ANOTHER PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read: 

"§ 90-96.2. Drug-related overdose treatment; limited immunity. 

(a) As used in this section, "drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose.

(c) A person who experiences a drug-related overdose and is in need of medical assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained as a result of the drug-related overdose and need for medical assistance.

(d) Nothing in this section shall be construed to bar the admissibility of any evidence obtained in connection with the investigation and prosecution of other crimes committed by a person who otherwise qualifies for limited immunity under this section."

SECTION 2. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read: 

"§ 90-106.2. Treatment of overdose with opioid antagonist; immunity. 

(a) As used in this section, "opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:

a. A family member, friend, or other person.

b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(c) A person who receives an opioid antagonist that was prescribed pursuant to subsection (b) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the
use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

1. Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.
2. Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 3. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-302.2. Medical treatment; limited immunity.
Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following:

1. Acted in good faith, upon a reasonable belief that he or she was the first to call for assistance.
2. Used his or her own name when contacting authorities.
3. Remained with the individual needing medical assistance until help arrived."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of April, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

____________________________________
Pat McCrory
Governor

Approved __________ m. this __________ day of ________________, 2013
Summary: The bill adds physicians, nurses, physical therapists, physician assistants to a list of mental health professionals required to complete training in suicide assessment, treatment and management every six years. It requires content specific to veterans. The bill also requires the state to complete a suicide prevention plan.

Status: Signed into law March 27, 2014.

Comment: From the Kent Reporter (March 6, 2014)
The Senate on Thursday in Olympia unanimously passed House Bill 2315, which requires certain health professionals in Washington state to complete six hours of training in suicide assessment, treatment, and management as part of their education requirements.

When it is signed into law, the measure will become the third prong in the suicide-prevention call for action started in 2011 by Rep. Tina Orwall, D-Des Moines. “We know that with early interventions suicide can often be prevented," Orwall said in a media release. "In a person’s darkest hour, when they have the courage to reach out for help, they will get the help they need and deserve. This bill is about saving lives.”

The legislation expands the list of professionals who must complete suicide-prevention training to include chiropractors, naturopaths, osteopathic physicians and assistants, physical therapists and assistants, physicians and nurses.

“There are some things in state government that can wait another year, and there are some things that need to be dealt with immediately,” he said. "This is an issue that we must address right now, while we still have the opportunity. Suicide prevention, particularly for our brave service men and women who often deal with underlying post-traumatic stress disorder issues after returning from deployment, should be one of our top priorities and this bill is an excellent step in that direction.”


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT Relating to suicide prevention; amending 2012 c 181 s 1 (uncodified); reenacting and amending RCW 43.70.442; adding new sections to chapter 43.70 RCW; creating a new section; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. 2012 c 181 s 1 (uncodified) is amended to read as follows:

(1) The legislature finds that:

(a) According to the centers for disease control and prevention:

(i) In 2008, more than thirty-six thousand people died by suicide in the United States, making it the tenth leading cause of death nationally.

(ii) During 2007-2008, an estimated five hundred sixty-nine thousand people visited hospital emergency departments with self-inflicted injuries in the United States, seventy percent of whom had attempted suicide.

(iii) During 2008-2009, the average percentages of adults who thought, planned, or attempted suicide in Washington were higher than the national average.
According to a national study, veterans face an elevated risk of suicide as compared to the general population, more than twice the risk among male veterans. Another study has indicated a positive correlation between posttraumatic stress disorder and suicide.

(i) Washington state is home to more than sixty thousand men and women who have deployed in support of the wars in Iraq and Afghanistan.

(ii) Research continues on how the effects of wartime service and injuries, such as traumatic brain injury, posttraumatic stress disorder, or other service-related conditions, may increase the number of veterans who attempt suicide.

(iii) As more men and women separate from the military and transition back into civilian life, community mental health providers will become a vital resource to help these veterans and their families deal with issues that may arise.

(c) Suicide has an enormous impact on the family and friends of the victim as well as the community as a whole.

(d) Approximately ninety percent of people who die by suicide had a diagnosable psychiatric disorder at the time of death, such as depression. Most suicide victims exhibit warning signs or behaviors prior to an attempt.

(e) Improved training and education in suicide assessment, treatment, and management has been recommended by a variety of organizations, including the United States department of health and human services and the institute of medicine.

(2) It is therefore the intent of the legislature to help lower the suicide rate in Washington by requiring certain health professionals to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.

(3) The legislature does not intend to expand or limit the existing scope of practice of any health professional affected by this act.

Sec. 2. RCW 43.70.442 and 2013 c 78 s 1 and 2013 c 73 s 6 are each reenacted and amended to read as follows:

(1)(a) (Beginning January 1, 2014) Each of the following professionals certified or licensed under Title 18 RCW shall, at least once every six years, complete training in suicide assessment,
treatment, and management that is approved, in rule, by the relevant
disciplining authority:

(i) An adviser or counselor certified under chapter 18.19 RCW;
(ii) A chemical dependency professional licensed under chapter
18.205 RCW;
(iii) A marriage and family therapist licensed under chapter 18.225
RCW;
(iv) A mental health counselor licensed under chapter 18.225 RCW;
(v) An occupational therapy practitioner licensed under chapter
18.59 RCW;
(vi) A psychologist licensed under chapter 18.83 RCW;
(vii) An advanced social worker or independent clinical social
worker licensed under chapter 18.225 RCW; and
(viii) A social worker associate--advanced or social worker
associate--independent clinical licensed under chapter 18.225 RCW.

(b) The requirements in (a) of this subsection apply to a person
holding a retired active license for one of the professions in (a) of
this subsection.

(c) The training required by this subsection must be at least six
hours in length, unless a ((disciplinary)) disciplining authority has
determined, under subsection ((9)(b)) (9)(b) of this section, that
training that includes only screening and referral elements is
appropriate for the profession in question, in which case the training
must be at least three hours in length.

(2)(a) Except as provided in (b) of this subsection, a professional
listed in subsection (1)(a) of this section must complete the first
training required by this section during the first full continuing
education reporting period after January 1, 2014, or the first full
continuing education reporting period after initial licensure or
certification, whichever occurs later.

(b) A professional listed in subsection (1)(a) of this section
applying for initial licensure ((on or after January 1, 2014,)) may
delay completion of the first training required by this section for six
years after initial licensure if he or she can demonstrate successful
completion of the training required in subsection (1) of this section
no more than six years prior to the application for initial licensure.

(3) The hours spent completing training in suicide assessment,
treatment, and management under this section count toward meeting any
applicable continuing education or continuing competency requirements
for each profession.

(4)(a) A disciplining authority may, by rule, specify minimum
training and experience that is sufficient to exempt a professional
from the training requirements in subsections (1) and (5) of this
section.

(b) (The board of occupational therapy practice) A disciplining
authority may exempt (an occupational therapy practitioner) a
professional from the training requirements of subsections (1) and (5)
of this section if the (occupational therapy practitioner) professional has only brief or limited patient contact.

(5)(a) Each of the following professionals credentialed under Title
18 RCW shall complete a one-time training in suicide assessment,
treatment, and management that is approved by the relevant disciplining
authority:

(i) A chiropractor licensed under chapter 18.25 RCW;
(ii) A naturopath licensed under chapter 18.36A RCW;
(iii) A licensed practical nurse, registered nurse, or advanced
registered nurse practitioner licensed under chapter 18.79 RCW;
(iv) An osteopathic physician and surgeon licensed under chapter
18.57 RCW;
(v) An osteopathic physician assistant licensed under chapter
18.57A RCW;
(vi) A physical therapist or physical therapist assistant licensed
under chapter 18.74 RCW;
(vii) A physician licensed under chapter 18.71 RCW;
(viii) A physician assistant licensed under chapter 18.71A RCW; and
(ix) A person holding a retired active license for one of the
professions listed in (a)(i) through (viii) of this subsection.

(b) A professional listed in (a) of this subsection must complete
the one-time training during the first full continuing education
reporting period after the effective date of this section or the first
full continuing education reporting period after initial licensure,
whichever is later.

(c) The training required by this subsection must be at least six
hours in length, unless a disciplining authority has determined, under
subsection (9)(b) of this section, that training that includes only
screening and referral elements is appropriate for the profession in
question, in which case the training must be at least three hours in
length.

(6) (a) The secretary and the disciplining authorities shall work
collaboratively to develop a model list of training programs in suicide
assessment, treatment, and management.

(b) When developing the model list, the secretary and the
disciplining authorities shall:

(i) Consider suicide assessment, treatment, and management training
programs of at least six hours in length listed on the best practices
registry of the American foundation for suicide prevention and the
suicide prevention resource center; and

(ii) Consult with public and private institutions of higher
education, experts in suicide assessment, treatment, and management,
and affected professional associations.

(c) The secretary and the disciplining authorities shall report the
model list of training programs to the appropriate committees of the
legislature no later than December 15, 2013.

((6)) (d) The secretary and the disciplining authorities shall
update the list at least once every two years. When updating the list,
the secretary and the disciplining authorities shall, to the extent
practicable, endeavor to include training on the model list that
includes content specific to veterans. When identifying veteran-
specific content under this subsection, the secretary and the
disciplining authorities shall consult with the Washington department
of veterans affairs.

(7) Nothing in this section may be interpreted to expand or limit
the scope of practice of any profession regulated under chapter 18.130
RCW.

((7)) (8) The secretary and the disciplining authorities affected
by this section shall adopt any rules necessary to implement this
section.

((8)) (9) For purposes of this section:

(a) "Disciplining authority" has the same meaning as in RCW
18.130.020.

(b) "Training in suicide assessment, treatment, and management"
means empirically supported training approved by the appropriate
disciplining authority that contains the following elements: Suicide
assessment, including screening and referral, suicide treatment, and suicide management. However, the disciplining authority may approve training that includes only screening and referral elements if appropriate for the profession in question based on the profession's scope of practice. The board of occupational therapy may also approve training that includes only screening and referral elements if appropriate for occupational therapy practitioners based on practice setting.

A state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

An employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

NEW SECTION. Sec. 3. (1) The department of social and health services and the health care authority shall jointly develop a plan for a pilot program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of individuals with mental or other behavioral health disorders and track outcomes of the program.

(2) The program must, at a minimum, include the following:

(a) Two pilot sites, one in an urban setting and one in a rural setting; and

(b) Timely case consultation between primary care providers and psychiatric specialists.

(3) The plan must address timely access to care coordination and appropriate treatment services, including next day appointments for urgent cases.
(4) The plan must include:
(a) A description of the recommended program design, staffing model, and projected utilization rates for the two pilot sites and for statewide implementation; and
(b) Detailed fiscal estimates for the pilot sites and for statewide implementation, including:
   (i) A detailed cost breakdown of the elements in subsections (2) and (3) of this section, including the proportion of anticipated federal and state funding for each element; and
   (ii) An identification of which elements and costs would need to be funded through new resources and which can be financed through existing funded programs.
(5) When developing the plan, the department and the authority shall consult with experts and stakeholders, including, but not limited to, primary care providers, experts on psychiatric interventions, institutions of higher education, tribal governments, the state department of veterans affairs, and the partnership access.
(6) The department and the authority shall provide the plan to the appropriate committees of the legislature no later than November 15, 2014.

NEW SECTION. Sec. 4. A new section is added to chapter 43.70 RCW to read as follows:
(1) The secretary, in consultation with the steering committee convened in subsection (3) of this section, shall develop a Washington plan for suicide prevention. The plan must, at a minimum:
   (a) Examine data relating to suicide in order to identify patterns and key demographic factors;
   (b) Identify key risk and protective factors relating to suicide; and
   (c) Identify goals, action areas, and implementation strategies relating to suicide prevention.
(2) When developing the plan, the secretary shall consider national research and practices employed by the federal government, tribal governments, and other states, including the national strategy for suicide prevention. The plan must be written in a manner that is accessible, and useful to, a broad audience. The secretary shall periodically update the plan as needed.
(3) The secretary shall convene a steering committee to advise him or her in the development of the Washington plan for suicide prevention. The committee must consist of representatives from the following:

(a) Experts on suicide assessment, treatment, and management;
(b) Institutions of higher education;
(c) Tribal governments;
(d) The department of social and health services;
(e) The state department of veterans affairs;
(f) Suicide prevention advocates, at least one of whom must be a suicide survivor and at least one of whom must be a survivor of a suicide attempt;
(g) Primary care providers;
(h) Local health departments or districts; and
(i) Any other organizations or groups the secretary deems appropriate.

(4) The secretary shall complete the plan no later than November 15, 2015, publish the report on the department's web site, and submit copies to the governor and the relevant standing committees of the legislature.

NEW SECTION. Sec. 5. A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary shall update the report required by section 3, chapter 181, Laws of 2012 in 2018 and again in 2022 and report the results to the governor and the appropriate committees of the legislature by November 15, 2018, and November 15, 2022.

(2) This section expires December 31, 2022.

--- END ---
Summary: The bill requires public schools to have automated external defibrillators for youth athletic events and to establish certain plans relating to sudden cardiac events.

Comments: From the *NJ Independent Press* (September 21, 2012)
Acting to safeguard the lives of New Jersey’s K-12 students, Governor Chris Christie today signed “Janet’s Law,” requiring all public and non-public schools to have automated external defibrillators (AED) on site. In addition, the new law calls for schools to establish emergency action plans to respond to sudden cardiac events, in order to be as prepared as possible to deal with life-threatening emergencies. The law is named in memory of Janet Zilinski, an 11-year-old resident from Warren who died of sudden cardiac arrest following cheerleading squad practice.

As a result of Janet’s Law, all public and non-public schools, K-12, will have an automated external defibrillator on school property that is properly identified in an unlocked location beginning September 1, 2014. The defibrillator must be accessible during the school day as well as during school-sponsored athletic events or team practices and within reasonable proximity to the school athletic field or gymnasium.

A school’s emergency action plan must contain a list of at least five school employees, team coaches or athletic trainers who have certifications in cardio-pulmonary resuscitation and the use of a defibrillator from either the American Red Cross, American Heart Association, or other training program recognized by the New Jersey Department of Health. Further, the detailed response procedure must identify the appropriate school official responsible for responding to the person experiencing the sudden cardiac event, calling 911, starting cardio-pulmonary resuscitation, retrieving and using the defibrillator, and assisting emergency responders in getting to the individual experiencing the sudden cardiac event.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
§§1-3 -
C.18A:40-41a to 18A:40-41c

Assembly Committee Substitute for
Assembly, No. 1608

AN ACT concerning sudden cardiac events and schools and
supplementing Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. a. Notwithstanding the provisions of any law, rule, or
regulation to the contrary, beginning on September 1, 2014, the
board of education of a public school district and the governing
board or chief school administrator of a nonpublic school that
includes any of the grades kindergarten through 12 shall ensure
that:
(1) each public or nonpublic school has an automated external
defibrillator, as defined in section 2 of P.L.1999, c.34 (C.2A:62A-
24), which is made available in an unlocked location on school
property with an appropriate identifying sign. The defibrillator
shall be accessible during the school day and any other time when a
school-sponsored athletic event or team practice is taking place in
which pupils of the district or nonpublic school are participating.
The defibrillator shall be within reasonable proximity of the school
athletic field or gymnasium, as applicable;
(2) a team coach, licensed athletic trainer, or other designated
staff member if there is no coach or licensed athletic trainer, who is
present during the athletic event or team practice, is trained in
cardio-pulmonary resuscitation and the use of the defibrillator in
accordance with the provisions of section 3 of P.L.1999, c.34
(C.2A:62A-25). A school district or nonpublic school shall be
deemed to be in compliance with this requirement if a State-
certified emergency services provider or other certified first
responder is on site at the event or practice; and
(3) each defibrillator is tested and maintained according to the
manufacturer’s operational guidelines and notification is provided to
the appropriate first aid, ambulance, or rescue squad or other
appropriate emergency medical services provider regarding the
defibrillator, the type acquired, and its location in accordance with

b. A school district or nonpublic school and its employees shall
be immune from civil liability in the acquisition and use of
defibrillators pursuant to the provisions of section 5 of P.L.1999,
2. a. The board of education of a public school district and the governing body or chief school administrator of a nonpublic school that includes any of the grades kindergarten through 12 shall establish and implement an emergency action plan for responding to a sudden cardiac event including, but not limited to, an event in which the use of an automated external defibrillator may be necessary.

b. The emergency action plan shall be consistent with the provisions of section 1 of this act and also, at minimum, include the following:

(1) a list of no less than five school employees, team coaches, or licensed athletic trainers who hold current certifications from the American Red Cross, American Heart Association, or other training program recognized by the Department of Health and Senior Services, in cardio-pulmonary resuscitation and in the use of a defibrillator. The list shall be updated, as necessary, at least once in each semester of the school year; and

(2) detailed procedures on responding to a sudden cardiac event including, but not limited to, the identification of the persons in the school who will be responsible for: responding to the person experiencing the sudden cardiac event, calling 911, starting cardio-pulmonary resuscitation, retrieving and using the defibrillator, and assisting emergency responders in getting to the individual experiencing the sudden cardiac event.

3. The State Board of Education, in consultation with the Commissioner of Health and Senior Services, and in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations as may be necessary to implement the provisions of this act.

4. This act shall take effect immediately.

“Janet’s Law”; requires public and nonpublic schools to have automated external defibrillators and to establish emergency action plans for responding to sudden cardiac events.
Summary: The Mississippi law is the first in the nation to require health insurance reimbursement for telehealth services at the same rate as services provided in-person. The reimbursement requirement extends to Medicaid and state employee based health plans. The bill also allows prescriptions to be written after a patient examination using telemedicine.

Status: Signed into law March 27, 2014.

Comment: From USA Today (April 18, 2014)

Diabetes afflicts more than 22 million Americans, or 7% of the total population, and the number of people diagnosed every year is skyrocketing.

Mississippi, which ranks second after West Virginia in the percentage of residents affected by the chronic disease, is taking steps to reduce devastating effects on the state economy and the overall health of Mississippians. Nearly 9% of Mississipians were diagnosed in 2012 with diabetes, and the $2.7 billion annual cost of diabetes represents nearly 3% of the state's economy (gross state product).

In January, Republican Gov. Phil Bryant, the University of Mississippi Medical Center and three private technology partners announced a plan to help low-income residents manage their diabetes remotely through the use of telemedicine. The goal is to help them keep the disease in check and avoid unnecessary hospitalizations while remaining as active and productive as possible.

To make the project possible, Bryant signed a first-of-its-kind law, enacted in March, requiring private insurers, Medicaid and state employee health plans to reimburse medical providers for services dispensed via computer screens and telecommunications at the same rate they would pay for in-person medical care.

The diabetes disease management services offered in the telemedicine project will be free to the poor uninsured participants. But under the new law, the costs of remote monitoring of other participants with insurance coverage or Medicaid will be reimbursed.

As part of the project, health workers will help uninsured participants sign up for coverage. Mississippi has not expanded Medicaid to more low-income adults under the Affordable Care Act, but some participants may qualify for traditional Medicaid or premium tax credits.

Mississippi's telemedicine law, said Gary Capistrant, public policy director at the American Telemedicine Association, goes further than any other state to remove what the telehealth industry considers its biggest impediment – lack of insurance reimbursement.
So far, 20 states and the District of Columbia have required private insurers to pay for some telemedicine services. In addition, most states pay for certain services through Medicaid. But until Mississippi enacted its law, no state had required parity from all insurers for all types of telemedicine services. Tennessee just passed a similar law this month, Capistrant said.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Senate Bill 2646
(As Sent to Governor)

AN ACT TO CREATE NEW SECTION 83-9-353, MISSISSIPPI CODE OF 1972, TO REQUIRE HEALTH INSURANCE AND EMPLOYEE BENEFIT PLANS IN THIS STATE TO PROVIDE COVERAGE AND REIMBURSEMENT FOR "STORE-AND-FORWARD TELEMEDICINE SERVICES" AND "REMOTE PATIENT MONITORING SERVICES" TO THE SAME EXTENT THAT THE SERVICES WOULD BE COVERED AND REIMBURSED IF THEY WERE PROVIDED THROUGH IN-PERSON CONSULTATION; TO DEFINE "STORE-AND-FORWARD TELEMEDICINE" AND "REMOTE PATIENT MONITORING"; TO AMEND SECTION 83-9-351, MISSISSIPPI CODE OF 1972, TO INCLUDE EMPLOYEE BENEFIT PLANS IN THE REQUIREMENT FOR INSURANCE REIMBURSEMENT FOR TELEMEDICINE SERVICES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 83-9-353, Mississippi Code of 1972:

83-9-353. (1) As used in this section:

(a) "Employee benefit plan" means any plan, fund or program established or maintained by an employer or by an employee organization, or both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, hospital care or other benefits.

(b) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, and includes the State and School Employees Health Insurance Plan and any other public health care assistance program offered or administered by the state or any political subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(c) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, health maintenance organization, preferred provider organization, managed care organization, pharmacy benefit manager, and, to the extent permitted under federal law, any administrator of
an insured, self-insured or publicly funded health care benefit plan offered by public and private entities, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(d) "Store-and-forward telemedicine services" means the use of asynchronous computer based communication between a patient and a consulting provider or a referring health care provider and a medical specialist at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients who otherwise have no access to specialty care. Store-and-forward telemedicine services involve the transferring of medical data from one site to another through the use of a camera or similar device that records an image that is sent (forwarded) via telecommunication to another site for consultation.

(e) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including:

(i) Monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry and other condition-specific data, such as blood glucose;

(ii) Medication adherence monitoring; and

(iii) Interactive video conferencing with or without digital image upload as needed.

(f) "Mediation adherence management services" means the monitoring of a patient's conformance with the clinician's medication plan with respect to timing, dosing and frequency of medication-taking through electronic transmission of data in a home telemonitoring program.

(2) Store-and-forward telemedicine services allow a health care provider trained and licensed in his or her given specialty to review forwarded images and patient history in order to provide diagnostic and therapeutic assistance in the care of the patient without the patient being present in real time.
Treatment recommendations made via electronic means shall be held to the same standards of appropriate practice as those in traditional provider-patient setting.

(3) Any patient receiving medical care by store-and-forward telemedicine services shall be notified of the right to receive interactive communication with the distant specialist health care provider and shall receive an interactive communication with the distant specialist upon request. If requested, communication with the distant specialist may occur at the time of the consultation or within thirty (30) days of the patient's notification of the request of the consultation. Telemedicine networks unable to offer the interactive consultation shall not be reimbursed for store-and-forward telemedicine services.

(4) Remote patient monitoring services aim to allow more people to remain at home or in other residential settings and to improve the quality and cost of their care, including prevention of more costly care. Remote patient monitoring services via telehealth aim to coordinate primary, acute, behavioral and long-term social service needs for high-need, high-cost patients. Specific patient criteria must be met in order for reimbursement to occur.

(5) Qualifying patients for remote patient monitoring services must meet all the following criteria:

(a) Be diagnosed, in the last eighteen (18) months, with one or more chronic conditions, as defined by the Centers for Medicare and Medicaid Services (CMS), which include, but are not limited to, sickle cell, mental health, asthma, diabetes, and heart disease;

(b) Have a recent history of costly service use due to one or more chronic conditions as evidenced by two (2) or more hospitalizations, including emergency room visits, in the last twelve (12) months; and

(c) The patient's health care provider recommends disease management services via remote patient monitoring.

(6) A remote patient monitoring prior authorization request form must be
submitted to request telemonitoring services. The request must include the following:

(a) An order for home telemonitoring services, signed and dated by the prescribing physician;

(b) A plan of care, signed and dated by the prescribing physician, that includes telemonitoring transmission frequency and duration of monitoring requested;

(c) The client's diagnosis and risk factors that qualify the client for home telemonitoring services;

(d) Attestation that the client is sufficiently cognitively intact and able to operate the equipment or has a willing and able person to assist in completing electronic transmission of data; and

(e) Attestation that the client is not receiving duplicative services via disease management services.

(7) The entity that will provide the remote monitoring must be a Mississippi-based entity and have protocols in place to address all of the following:

(a) Authentication and authorization of users;

(b) A mechanism for monitoring, tracking and responding to changes in a client's clinical condition;

(c) A standard of acceptable and unacceptable parameters for client's clinical parameters, which can be adjusted based on the client's condition;

(d) How monitoring staff will respond to abnormal parameters for client's vital signs, symptoms and/or lab results;

(e) The monitoring, tracking and responding to changes in client's clinical condition;

(f) The process for notifying the prescribing physician for significant changes in the client's clinical signs and symptoms;

(g) The prevention of unauthorized access to the system or
information;

(h) System security, including the integrity of information that is collected, program integrity and system integrity;

(i) Information storage, maintenance and transmission;

(j) Synchronization and verification of patient profile data; and

(k) Notification of the client's discharge from remote patient monitoring services or the de-installation of the remote patient monitoring unit.

(8) The telemonitoring equipment must:

(a) Be capable of monitoring any data parameters in the plan of care; and

(b) Be a FDA Class II hospital-grade medical device.

(9) Monitoring of the client's data shall not be duplicated by another provider.

(10) To receive payment for the delivery of remote patient monitoring services via telehealth, the service must involve:

(a) An assessment, problem identification, and evaluation that includes:

   (i) Assessment and monitoring of clinical data including, but not limited to, appropriate vital signs, pain levels and other biometric measures specified in the plan of care, and also includes assessment of response to previous changes in the plan of care; and

   (ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care.

(b) Implementation of a management plan through one or more of the following:

   (i) Teaching regarding medication management as appropriate based on the telemedicine findings for that encounter;

   (ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;
(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering health care provider regarding telemedicine findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral for an in-person visit or the emergency room as needed.

(11) The telemedicine equipment and network used for remote patient monitoring services should meet the following requirements:

(a) Comply with applicable standards of the United States Food and Drug Administration;

(b) Telehealth equipment be maintained in good repair and free from safety hazards;

(c) Telehealth equipment be new or sanitized before installation in the patient's home setting;

(d) Accommodate non-English language options; and

(e) Have 24/7 technical and clinical support services available for the patient user.

(12) All health insurance and employee benefit plans in this state must provide coverage and reimbursement for the asynchronous telemedicine services of store-and-forward telemedicine services and remote patient monitoring services based on the criteria set out in this section. Store-and-forward telemedicine services shall be reimbursed to the same extent that the services would be covered if they were provided through in-person consultation.

(13) Remote patient monitoring services shall include reimbursement for a daily monitoring rate at a minimum of Ten Dollars ($10.00) per day each month and Sixteen Dollars ($16.00) per day when medication adherence management services are included, not to exceed thirty-one (31) days per month. These reimbursement rates are only eligible to Mississippi-based telehealth programs
affiliated with a Mississippi health care facility.

(14) A one-time telehealth installation/training fee for remote patient monitoring services will also be reimbursed at a minimum rate of Fifty Dollars ($50.00) per patient, with a maximum of two (2) installation/training fees/calendar year. These reimbursement rates are only eligible to Mississippi-based telehealth programs affiliated with a Mississippi health care facility.

(15) No geographic restrictions shall be placed on the delivery of telemedicine services in the home setting other than requiring the patient reside within the State of Mississippi.

(16) Health care providers seeking reimbursement for store-and-forward telemedicine services must be licensed Mississippi providers that are affiliated with an established Mississippi health care facility in order to qualify for reimbursement of telemedicine services in the state. If a service is not available in Mississippi, then a health insurance or employee benefit plan may decide to allow a non-Mississippi-based provider who is licensed to practice in Mississippi reimbursement for those services.

(17) A health insurance or employee benefit plan may charge a deductible, co-payment, or coinsurance for a health care service provided through store-and-forward telemedicine services or remote patient monitoring services so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(18) A health insurance or employee benefit plan may limit coverage to health care providers in a telemedicine network approved by the plan.

(19) Nothing in this section shall be construed to prohibit a health insurance or employee benefit plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(20) In a claim for the services provided, the appropriate procedure code for the covered service shall be included with the appropriate modifier
indicating telemedicine services were used. A "GQ" modifier is required for asynchronous telemedicine services such as store-and-forward and remote patient monitoring.

(21) The originating site is eligible to receive a facility fee, but facility fees are not payable to the distant site.

SECTION 2. Section 83-9-351, Mississippi Code of 1972, is amended as follows:

83-9-351. (1) As used in this section:

(a) "Employee benefit plan" means any plan, fund or program established or maintained by an employer or by an employee organization, or both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, hospital care or other benefits.

(b) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, and includes the State and School Employees Health Insurance Plan and any other public health care assistance program offered or administered by the state or any political subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(c) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, health maintenance organization, preferred provider organization, managed care organization, pharmacy benefit manager, and, to the extent permitted under federal law, any administrator of an insured, self-insured or publicly funded health care benefit plan offered by public and private entities, and other parties that are by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(d) "Telemedicine" means the delivery of health care services
such as diagnosis, consultation, or treatment through the use of interactive audio, video, or other electronic media. Telemedicine must be "real-time" consultation, and it does not include the use of audio-only telephone, e-mail, or facsimile.

(2) All health insurance and employee benefit plans in this state must provide coverage for telemedicine services to the same extent that the services would be covered if they were provided through in-person consultation.

(3) A health insurance or employee benefit plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(4) A health insurance or employee benefit plan may limit coverage to health care providers in a telemedicine network approved by the plan.

(5) Nothing in this section shall be construed to prohibit a health insurance or employee benefit plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(6) In a claim for the services provided, the appropriate procedure code for the covered services shall be included with the appropriate modifier indicating interactive communication was used.

(7) The originating site is eligible to receive a facility fee, but facility fees are not payable to the distant site.

SECTION 3. This act shall take effect and be in force from and after July 1, 2014.
Summary: The Multi-State Internet Gaming Agreement is an interstate compact signed between Delaware and Nevada that allows poker players physically located in either Nevada or Delaware to compete online against one another. The goal of the new agreement is to create a larger market of online players and potentially larger pots. While the compact will open up games to players in both Nevada and Delaware, players will be subject to the laws of the state in which they are located. Revenue will be distributed based on where the player is located.

Status: Signed into law on February 25, 2014.

Comment: From the Washington Post (February 26, 2012)
Poker players in Delaware and Nevada will soon be able to play each other from thousands of miles away under a first-of-its-kind agreement. The Multi-State Internet Gaming Agreement, signed by Delaware Gov. Jack Markell (D) and Nevada Gov. Brian Sandoval (R), establishes a framework by which the two states will hammer out regulatory standards for online poker games. The agreement lets both states control the number of entities that offer online gaming.

Companies seeking licenses to operate online poker games must prove they have the capital to cover any bets on their site, that they have the ability to verify that users are actually located within the borders of member states, and that users are of legal age to play poker.

Other states are free to join the multi-state agreement, provided current member states agree to allow them access. Each state would be eligible to receive a share of the revenue generated by players inside their own borders.

Both states will have to set up oversight boards to finalize rules and issue licenses before the first cards are dealt.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT relating to gaming; defining certain terms related to interactive gaming; requiring the Nevada Gaming Commission to adopt regulations authorizing the Governor to enter into agreements with other states to conduct interactive gaming; prohibiting the issuance of licenses to operate interactive gaming to certain persons; revising provisions related to interactive gaming; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes certain gaming establishments to obtain a license to operate interactive gaming. (NRS 463.750) Sections 2-5 of this bill define certain terms for the purposes of determining whether a person may be found suitable for a license to operate interactive gaming. Section 6 of this bill requires the Nevada Gaming Commission to adopt regulations authorizing the Governor to enter into agreements with other states to allow patrons of those states to participate in interactive gaming.

Existing law requires the Commission to establish by regulation 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. (NRS 463.750) Section 10 of this bill removes the condition that a license to operate interactive gaming does not become effective until the passage of federal legislation or notice providing that interactive gaming is permissible under federal law. Section 10 also prohibits the issuance of a license to operate interactive gaming for a period of 5 years after the effective date of this bill for certain entities that, after December 31, 2006, operated interactive gaming involving patrons located in the United States. Finally, section 10 authorizes the Commission to waive such prohibition if the Commission determines that those entities complied with all applicable provisions of federal law or the law of any state when, after December 31, 2006, those entities operated interactive gaming involving patrons located in the United States.

Section 11 of this bill authorizes the Commission to adopt regulations to increase or decrease the fees for the initial issuance and the renewal of a license for an establishment to operate interactive gaming under certain circumstances. (NRS 463.765)
THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 463 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. “Covered asset” means any tangible or intangible asset specifically designed for use in, and used in connection with, the operation of an interactive gaming facility that, after December 31, 2006, knowingly and intentionally operated interactive gaming that involved patrons located in the United States, unless and to the extent such activity was licensed at all times by a state or the Federal Government, including, without limitation:

1. Any trademark, trade name, service mark or similar intellectual property under which an interactive gaming facility was identified to the patrons of the interactive gaming facility;
2. Any information regarding persons via a database, customer list or any derivative of a database or customer list; and
3. Any software or hardware relating to the management, administration, development, testing or control of an interactive gaming facility.

Sec. 3. 1. “Covered person” means any person who:
(a) Has at any time owned, in whole or in significant part, an interactive gaming facility or an entity operating an interactive gaming facility that after December 31, 2006, knowingly and intentionally operated interactive gaming that involved patrons located in the United States, unless and to the extent such activity was licensed at all times by a state or the Federal Government;
(b) After December 31, 2006, acted, or proposed to act, on behalf of a person described in paragraph (a) and knowingly and intentionally provided, or proposed to provide, to such person any services as an interactive gaming service provider, with knowledge that the interactive gaming facility’s operation of interactive gaming involved patrons located in the United States; or
(c) Purchased or acquired, directly or indirectly:
(1) In whole or in significant part, a person described in paragraph (a) or (b); or
(2) Any covered assets, in whole or in part, of such person.
2. As used in this section:
(a) “Interactive gaming service provider” has the meaning ascribed to it in NRS 463.677.

(b) “Significant part” means with respect to ownership, purchase or acquisition of an entity, interactive gaming facility or person, holding 5 percent or more of the entity, interactive gaming facility or person, or any amount of ownership that provides control over the entity, interactive gaming facility or person.

Sec. 4. 1. “Interactive gaming facility” means any Internet website, or similar communications facility in which transmissions may cross any state’s boundaries, through which any person operates interactive gaming through the use of communications technology.

2. As used in this section, “communications technology” has the meaning ascribed to it in NRS 463.016425.

Sec. 5. “Operate interactive gaming” means to operate, carry on, conduct, maintain or expose for play interactive gaming.

Sec. 6. 1. The Commission shall, by regulation, authorize the Governor, on behalf of the State of Nevada, to:

(a) Enter into agreements with other states, or authorized agencies thereof, to enable patrons in the signatory states to participate in interactive gaming offered by licensees in those signatory states; and

(b) Take all necessary actions to ensure that any agreement entered into pursuant to this section becomes effective.

2. Any regulations adopted pursuant to subsection 1 must:

(a) Set forth provisions for any potential arrangements to share revenue between this State and any other state or agency within another state.

(b) Be adopted in accordance with the provisions of chapter 233B of NRS.

Sec. 7. NRS 463.013 is hereby amended to read as follows:

463.013 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 463.0133 to 463.01967, inclusive, and sections 2 to 5, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 463.745 is hereby amended to read as follows:

463.745 The Legislature hereby finds and declares that:

1. The State of Nevada leads the nation in gaming regulation and enforcement, such that the State of Nevada is uniquely positioned to develop an effective and comprehensive regulatory structure related to interactive gaming.
2. A comprehensive regulatory structure, coupled with strict licensing standards, will ensure the protection of consumers, including minors and vulnerable persons, prevent fraud, guard against underage and problem gambling, avoid unauthorized use by persons located in jurisdictions that do not authorize interactive gaming and aid in law enforcement efforts.

3. To provide for licensed and regulated interactive gaming, the State of Nevada must develop the necessary structure for licensure, regulation and enforcement.

Sec. 10. NRS 463.750 is hereby amended to read as follows:

463.750 1. The Commission shall, with the advice and assistance of the Board, adopt regulations governing the licensing and operation of interactive gaming.

2. The regulations adopted by the Commission pursuant to this section must:

   (a) Establish the investigation fees for:

   (1) A license to operate interactive gaming;

   (2) A license for a manufacturer of interactive gaming systems;

   (3) A license for a manufacturer of equipment associated with interactive gaming; and

   (4) A license for a service provider to perform the actions described in paragraph (a) of subsection 5 of NRS 463.677.

   (b) Provide that:

   (1) A person must hold a license for a manufacturer of interactive gaming systems to supply or provide any interactive gaming system, including, without limitation, any piece of proprietary software or hardware;

   (2) A person may be required by the Commission to hold a license for a manufacturer of equipment associated with interactive gaming; and

   (3) A person must hold a license for a service provider to perform the actions described in paragraph (a) of subsection 5 of NRS 463.677.

   (c) [Repeal Except as otherwise provided in subsections 6 to 10, inclusive, set forth standards for the suitability of a person to be licensed as a manufacturer of interactive gaming systems, manufacturer of equipment associated with interactive gaming or a service provider as described in paragraph (b) of subsection 5 of NRS 463.677 that are as stringent as the standards for a nonrestricted license.

   (d) Set forth provisions governing:
(1) The initial fee for a license for a service provider as described in paragraph (b) of subsection 5 of NRS 463.677.

(2) The fee for the renewal of such a license for such a service provider and any renewal requirements for such a license.

(3) Any portion of the license fee paid by a person licensed to operate interactive gaming, pursuant to subsection 1 of NRS 463.770, for which a service provider may be liable to the person licensed to operate interactive gaming.

(e) Provide that gross revenue received by an establishment from the operation of interactive gaming is subject to the same license fee provisions of NRS 463.370 as the games and gaming devices of the establishment, unless federal law otherwise provides for a similar fee or tax.

(f) Set forth standards for the location and security of the computer system and for approval of hardware and software used in connection with interactive gaming.

(g) Define “equipment associated with interactive gaming,” “interactive gaming system,” “manufacturer of equipment associated with interactive gaming,” “manufacturer of interactive gaming systems,” “operate interactive gaming” and “proprietary hardware and software” as the terms are used in this chapter.

(h) Provide that any license to operate interstate interactive gaming does not become effective until:

- (1) A federal law authorizing the specific type of interactive gaming for which the license was granted is enacted; or
- (2) The United States Department of Justice notifies the Board or Commission in writing that it is permissible under federal law to operate the specific type of interactive gaming for which the license was granted.

3. Except as otherwise provided in subsections 4 and 5, the Commission shall not approve a license for an establishment to operate interactive gaming unless:

(a) In a county whose population is 700,000 or more, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices.

(b) In a county whose population is 45,000 or more but less than 700,000, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices or the establishment:

- (1) Holds a nonrestricted license for the operation of games and gaming devices;
- (2) Has more than 120 rooms available for sleeping accommodations in the same county;
(3) Has at least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;

(4) Has at least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and

(5) Has a gaming area that is at least 18,000 square feet in area with at least 1,600 slot machines, 40 table games, and a sports book and race pool.

(c) In all other counties, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices or the establishment:

(1) Has held a nonrestricted license for the operation of games and gaming devices for at least 5 years before the date of its application for a license to operate interactive gaming;

(2) Meets the definition of group 1 licensee as set forth in the regulations of the Commission on the date of its application for a license to operate interactive gaming; and

(3) Operates either:
   (I) More than 50 rooms for sleeping accommodations in connection therewith; or
   (II) More than 50 gaming devices in connection therewith.

4. The Commission may:

(a) Issue a license to operate interactive gaming to an affiliate of an establishment if:

(1) The establishment satisfies the applicable requirements set forth in subsection 3;

(2) The affiliate is located in the same county as the establishment; and

(3) The establishment has held a nonrestricted license for at least 5 years before the date on which the application is filed; and

(b) Require an affiliate that receives a license pursuant to this subsection to comply with any applicable provision of this chapter.

5. The Commission may issue a license to operate interactive gaming to an applicant that meets any qualifications established by federal law regulating the licensure of interactive gaming.

6. Except as otherwise provided in subsections 7, 8 and 9:

(a) A covered person may not be found suitable for licensure under this section within 5 years after the effective date of this act;

(b) A covered person may not be found suitable for licensure under this section unless such covered person expressly submits to the jurisdiction of the United States and of each state in which
patrons of interactive gaming operated by such covered person after December 31, 2006, were located, and agrees to waive any statutes of limitation, equitable remedies or laches that otherwise would preclude prosecution for a violation of any provision of federal law or the law of any state in connection with such operation of interactive gaming after that date;

(c) A person may not be found suitable for licensure under this section within 5 years after the effective date of this act if such person uses a covered asset for the operation of interactive gaming; and

(d) Use of a covered asset is grounds for revocation of an interactive gaming license, or a finding of suitability, issued under this section.

7. The Commission, upon recommendation of the Board, may waive the requirements of subsection 6 if the Commission determines that:

(a) In the case of a covered person described in paragraphs (a) and (b) of subsection 1 of section 3 of this act:

(1) The covered person did not violate, directly or indirectly, any provision of federal law or the law of any state in connection with the ownership and operation of, or provision of services to, an interactive gaming facility that, after December 31, 2006, operated interactive gaming involving patrons located in the United States; and

(2) The assets to be used or that are being used by such person were not used after that date in violation of any provision of federal law or the law of any state;

(b) In the case of a covered person described in paragraph (c) of subsection 1 of section 3 of this act, the assets that the person will use in connection with interactive gaming for which the covered person applies for a finding of suitability were not used after December 31, 2006, in violation of any provision of federal law or the law of any state; and

(c) In the case of a covered asset, the asset was not used after December 31, 2006, in violation of any provision of federal law or the law of any state, and the interactive gaming facility in connection with which the asset was used was not used after that date in violation of any provision of federal law or the law of any state.

8. With respect to a person applying for a waiver pursuant to subsection 7, the Commission shall afford the person an opportunity to be heard and present relevant evidence. The Commission shall act as finder of fact and is entitled to evaluate
the credibility of witnesses and persuasiveness of the evidence. The affirmative votes of a majority of the whole Commission are required to grant or deny such waiver. The Board shall make appropriate investigations to determine any facts or recommendations that it deems necessary or proper to aid the Commission in making determinations pursuant to this subsection and subsection 7.

9. The Commission shall make a determination pursuant to subsections 7 and 8 with respect to a covered person or covered asset without regard to whether the conduct of the covered person or the use of the covered asset was ever the subject of a criminal proceeding for a violation of any provision of federal law or the law of any state, or whether the person has been prosecuted and the prosecution terminated in a manner other than with a conviction.

10. It is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others, to operate interactive gaming:
   (a) Until the Commission adopts regulations pursuant to this section; and
   (b) Unless the person first procures, and thereafter maintains in effect, all appropriate licenses as required by the regulations adopted by the Commission pursuant to this section.

11. A person who violates subsection 6 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years or by a fine of not more than $50,000, or both.

Sec. 11. NRS 463.765 is hereby amended to read as follows:

463.765 1. Unless a different fee is established pursuant to this section:
   (a) Before issuing an initial license for an establishment to operate interactive gaming, the Commission shall charge and collect from the establishment a license fee of $500,000.
   (b) Each initial license for an establishment to operate interactive gaming must be issued for a 2-year period beginning on January 1 of the first year and ending on December 31 of the second year.
   (c) Notwithstanding the provisions of paragraphs (a) and (b) to the contrary, a license for an establishment to operate interactive gaming may be issued after January 1 of a calendar year for a period beginning on the date of issuance of the license and ending on the second December 31
following the date of issuance of the license. Before issuing an initial license pursuant to this subsection, the Commission shall charge and collect from the establishment a license fee of $500,000 prorated by 1/24 for each full month between January 1 of the calendar year and the date of issuance of the license.  

4. (d) Before renewing a license issued pursuant to this section, but in no case later than the second December 31 after the license was issued or previously renewed, the Commission shall charge and collect a renewal fee of $250,000 for the renewal of the license for the immediately following 1-year period.

2. The Commission may, by regulation, increase the license fee pursuant to this section to not more than $1,000,000 and the renewal fee to not more than $500,000 if the Commission determines one or more of the following:

(a) A higher fee is necessary to ensure licensees have the financial capacity to operate interactive gaming;
(b) Regulatory costs to carry out the duties of the Commission and the Board, outside of investigative costs, require additional personnel or other regulatory expenditures;
(c) A higher fee is necessary because of costs incurred or other conditions associated with entering into an interactive gaming agreement with one or more other states; or
(d) Federal legislation requires a higher fee or imposes requirements necessitating the higher fee or making it advisable.

3. The Commission may, by regulation, reduce the license fee pursuant to this section to not less than $150,000 and the renewal fee to not less than $75,000 in the manner provided in this subsection. Any regulation adopted pursuant to this subsection must be adopted in accordance with the provisions of chapter 233B of NRS, and the Commission must not reduce the fees unless it determines two or more of the following:

(a) The fee is not competitive with fees charged in other jurisdictions;
(b) The low number of applicants demonstrates that the fee is too high;
(c) A lower fee would generate greater competition in the market;
(d) A lower fee is necessary because of conditions associated with entering into an interactive gaming agreement with one or more other states; or
(e) Federal legislation requires a lower fee or makes a lower fee advisable.
4. Any increase or decrease in fees established by the Commission pursuant to this section applies to the issuance or renewal of a license on or after the effective date of the increase or decrease.

Sec. 12. (Deleted by amendment.)

Sec. 12.5. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:
(a) The Governor.
(b) Except as otherwise provided in NRS 209.221, the Department of Corrections.
(c) The Nevada System of Higher Education.
(d) The Office of the Military.
(e) The State Gaming Control Board.
(f) Except as otherwise provided in NRS 368A.140 and 463.765 and section 6 of this act, the Nevada Gaming Commission.
(g) The Division of Welfare and Supportive Services of the Department of Health and Human Services.
(h) Except as otherwise provided in NRS 422.390, the Division of Health Care Financing and Policy of the Department of Health and Human Services.
(i) The State Board of Examiners acting pursuant to chapter 217 of NRS.
(j) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.
(k) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.
(l) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.
(m) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.
(n) The Silver State Health Insurance Exchange.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees’ Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:
(a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;
(b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;
(c) Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and
(d) NRS 90.800 for the use of summary orders in contested cases,
prevail over the general provisions of this chapter.
4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Health and Human Services in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.
5. The provisions of this chapter do not apply to:
(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;
(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184;
(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694; or
(d) The judicial review of decisions of the Public Utilities Commission of Nevada.
6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.
Sec. 13. This act becomes effective upon passage and approval.
Summary: Iowa’s Animal Facility Interference Bill is intended to curb the videotaping of animal feeding operations in Iowa. The bill makes it illegal to deceive agricultural production facilities and criminalizes the act of gaining access to an agricultural facility under false pretense. Additional the bill makes it illegal to make false statements on an employment application for the purpose of committing an unauthorized act.

Status: Signed into law on March 2, 2012.

Comment: From the *Los Angeles Times* (March 5, 2012)
Iowa Gov. Terry Branstad signed into law a bill designed to thwart activists who go undercover to report animal abuse. This makes Iowa the first state in the country to pass such a law; Illinois, Indiana, Minnesota, Missouri, Nebraska, New York and Utah are considering them.

Undercover investigations, including videos and photographs, are a principal tool used by activists of all stripes to document abuse cases and have led to legislative reforms, prosecutions and even facility closures around the country. In December, state authorities raided a Butterball turkey farm in North Carolina and filed charges against six employees and an official with the North Carolina Department of Agriculture, based on investigation by animal welfare group Mercy for Animals.

Iowa’s House File 589 focuses on how activists gain access to facilities and what they do there. Of course, it is already illegal for activists to trespass on any facility, which is often how documentation occurs. The bill, however, makes it a crime to lie to gain access to the facility, using the following wording:

Agricultural production facility fraud. 1. A person is guilty of agricultural production facility fraud if the person willfully does any of the following: a. Obtains access to an agricultural production facility by false pretenses. b. Makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized.

“These are deeply flawed, misdirected laws that can set a dangerous precedent nationwide by throwing shut the doors of factory farms and allowing animal abuse, environmental violations and all sorts of other criminal activities that we know often occur at these facilities, and keep those criminal activities hidden from public view,” says Matt Rice, director of investigations at Mercy for Animals.

“It’s often whistle-blowers and undercover investigators that are the only watchdogs making sure that these violations don’t happen in industrial factory farms,” he adds.
In an Associated Press story, Gov. Branstad replied to outrage by animal groups by saying that gaining access to property under false pretenses is a serious matter and property owners deserve protections.

Activists stopped a similar so-called “ag-gag” law from becoming part of Florida’s omnibus agriculture bill earlier this year by raising local resistance. Utah’s bill, however, looks to be gaining support and has a chance at passage. That, says Rice and others, will be the next battleground.


Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
    ( ) next SSL mtg.
    ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
AN ACT
RELATING TO AN OFFENSE INVOLVING AGRICULTURAL OPERATIONS,
AND PROVIDING PENALTIES, AND INCLUDING EFFECTIVE DATE
PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 717A.1, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. "Agricultural production facility" means an animal facility as defined in subsection 4, paragraph "a", or a crop operation property.

Sec. 2. NEW SECTION. 717A.3A Agricultural production facility fraud.

1. A person is guilty of agricultural production facility fraud if the person willfully does any of the following:
   a. Obtains access to an agricultural production facility by false pretenses.
   b. Makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized.

2. A person who commits agricultural production facility fraud under subsection 1 is guilty of the following:
   a. For the first conviction, a serious misdemeanor.
   b. For a second or subsequent conviction, an aggravated misdemeanor.

3. a. A person who conspires to commit agricultural production facility fraud under subsection 1 is subject to the provisions of chapter 706. A person who aids and abets in the
commission of agricultural production facility fraud under subsection 1 is subject to the provisions of chapter 703. When two or more persons, acting in concert, knowingly participate in committing agricultural production facility fraud under subsection 1, each person is responsible for the acts of the other person as provided in section 703.2. A person who has knowledge that agricultural production facility fraud under subsection 1 has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person committing the agricultural production facility fraud under subsection 1, and who harbors, aids, or conceals the person committing the agricultural production facility fraud under subsection 1, with the intent to prevent the apprehension of the person committing the agricultural production facility fraud under subsection 1, is subject to section 703.3.

b. A trial information or an indictment relating to agricultural production facility fraud under subsection 1 need not contain allegations of vicarious liability as provided in chapter 703.

Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

______________________________
KRAIG PAULSEN
Speaker of the House

______________________________
JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 589, Eighty-fourth General Assembly.

______________________________
W. CHARLES SMITHSON
Chief Clerk of the House

Approved ________________, 2012

______________________________
TERRY E. BRANSTAD
Governor
Summary: The legislation allows active duty service members to cancel and reinstate services like cable, internet, and health club memberships. In order to cancel or reinstate services, a member of the armed services must provide orders proving they have been called into active duty. Qualifying active duty members may be able to reinstate services under the same terms and conditions before cancelation due to active duty call-up.

Status: Signed into law on June 18, 2013.

Comment: From an analysis prepared for the Oregon Senate Committee on Veterans and Emergency Preparedness:

WHAT THE MEASURE DOES: Allows active servicemembers to suspend or terminate telecommunications services, internet services, television services, health spa services, and health club exercise or athletic activities via written notice to service providers. Requires servicemember to provide proof of official orders showing active status with written notice of suspension or termination. Permits proof of active status to be provided within 90 days of written notice if delay prompted by military necessity or other reasonable circumstances. Makes suspension or termination effective upon day written notice given. Authorizes servicemembers to reinstate suspended or terminated services on same terms and conditions with written notice to provider within 90 days of termination of active status. Requires providers reinstate same or substantially similar services within 30 days of receipt of written notice. Prohibits providers from charging for termination, suspension or reinstatement. Relieves servicemembers from liability for payment during suspension. Incorporates provision of Servicemember Civil Relief Act by reference, for termination of commercial mobile radio services.

Read more: https://olis.leg.state.or.us/liz/2013R1/Measures/Analysis/HB2083

Disposition of Entry:

SSL Committee Meeting: 2015 B
( ) Include in Volume
( ) Defer consideration:
   ( ) next SSL mtg.
   ( ) next SSL cycle
( ) Reject

Comments/Note to staff:
Enrolled

House Bill 2083

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Military Department)

CHAPTER .................................................

AN ACT

Relating to the provision of services to active duty service members.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 399.

SECTION 2. (1) As used in this section, “service member” means:

(a) A member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(b) A member of the Armed Forces of the United States, as that term is defined in ORS 348.282, who is called into active federal service under Title 10 of the United States Code.

(2)(a) Except as provided in subsection (6) of this section, a service member who has obtained the following services from a telecommunications service provider, an Internet service provider, a health club as defined in ORS 431.680, a health spa as defined in ORS 646A.030 or a provider of television services may terminate or suspend the provision of services upon written notice and as provided in paragraph (b) of this subsection:

(A) Telecommunications services.

(B) Internet services.

(C) Health spa services as defined in ORS 646A.030.

(D) Exercise or athletic activities offered by a health club.

(E) Television services, including but not limited to cable television, direct satellite and other television-like services.

(b) The service member must provide proof to the service provider of the official orders showing that the service member has been called into active service:

(A) At the time written notice is given; or

(B) If precluded by military necessity or circumstances that make the provision of proof at the time of giving written notice unreasonable or impossible, within 90 days after written notice has been given.

(3) A termination or suspension of services under this section is effective on the day written notice is given under subsection (2) of this section.

(4)(a) A service member who terminates or suspends the provision of services under this section and who is no longer in active service may reinstate the provision of services on the same terms and conditions as originally agreed to with the service provider before the termination or suspension upon written notice to the provider that the service member is no longer in active service. Written notice under this subsection must be given within 90 days after termination of the service member's active service.
(b) Upon receipt of the written notice of reinstatement, the service provider shall resume
the provision of services or, if the services are no longer available, provide substantially
similar services within a reasonable time not to exceed 30 days from the date of receipt of
the written notice of reinstatement.

(5) A service member who terminates, suspends or reinstates the provision of services under this section:
   (a) May not be charged a penalty, fee, loss of deposit or any other additional cost because
       of the termination, suspension or reinstatement; and
   (b) Is not liable for payment for any services after the effective date of the termination
       or suspension, or until the effective date of a reinstatement of services as described in sub-
       section (4) of this section.

(6) A service member may terminate a contract for any service provided by a commercial
mobile radio services provider in accordance with 50 U.S.C. 535a.