Senate Bill No. 270  
CHAPTER 850  

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste, and making an appropriation therefor.  

[ Approved by Governor September 30, 2014. Filed with Secretary of State September 30, 2014. ]  

LEGISLATIVE COUNSEL'S DIGEST  

SB 270, Padilla. Solid waste: single-use carryout bags.  

(1) Existing law, until 2020, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store.  

This bill, as of July 1, 2015, would prohibit stores that have a specified amount of sales in dollars or retail floor space from providing a single-use carryout bag to a customer, with specified exceptions. The bill would also prohibit those stores from selling or distributing a recycled paper bag at the point of sale unless the store makes that bag available for purchase for not less than $0.10. The bill would also allow those stores, on or after July 1, 2015, to distribute compostable bags at the point of sale only in jurisdictions that meet specified requirements and at a cost of not less than $0.10. The bill would require these stores to meet other specified requirements on and after July 1, 2015, regarding providing reusable grocery bags to customers, including distributing those bags only at a cost of not less than $0.10. The bill would require all moneys collected pursuant to these provisions to be retained by the store and be used only for specified purposes.  

The bill, on and after July 1, 2016, would additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and entities engaged in the sale of a limited line of goods, or goods intended to be consumed off premises, and that hold a specified license with regard to alcoholic beverages.  

The bill would allow a retail establishment to voluntarily comply with these requirements, if the retail establishment provides the department with irrevocable written notice. The bill would require the department to post on its Internet Web site, organized by county, the name and physical location of each retail establishment that has elected to comply with these requirements.  

The bill would require the operator of a store that has a specified amount of sales in dollars or retail floor space and a retail establishment that voluntarily complies with the requirements of this bill to comply with the existing at-store recycling program requirements.  

The bill would require, on and after July 1, 2015, a reusable grocery bag sold by certain stores to a customer at the point of sale to be made by a certified reusable grocery bag producer and to meet specified requirements with regard to the bag’s durability, material, labeling, heavy metal content, and, with regard to reusable grocery bags made from plastic film on and after January 1, 2016, recycled material content. The bill would impose these requirements as of July 1, 2016, on the stores that are otherwise subject to the bill’s requirements.  

The bill would prohibit a producer of reusable grocery bags made from plastic film from selling or distributing
those bags on and after July 1, 2015, unless the producer is certified by a 3rd-party certification entity, as specified. The bill would require a reusable grocery bag producer to provide proof of certification to the department. The bill would require the department to provide a system to receive proofs of certification online.

The department would be required to publish on its Internet Web site a list of reusable grocery bag producers that have submitted the required certification and their reusable grocery bags. The bill would require the department to establish an administrative certification fee schedule, which would require a reusable grocery bag producer providing proof to the department of certification or recertification to pay a fee. The bill would require that all moneys submitted to the department pursuant to these fee provisions be deposited into the Reusable Grocery Bag Fund, which would be established by the bill, and continuously appropriated for purposes of implementing these proof of certification and Internet Web site provisions, thereby making an appropriation. The bill would also require a reusable grocery bag producer to submit applicable certified test results to the department. The bill would authorize a person to object to a certification of a reusable grocery bag producer by filing an action for review of that certification in the superior court of a county that has jurisdiction over the reusable grocery bag producer. The bill would require the court to determine if the reusable grocery bag producer is in compliance with the provisions of the bill and, based on the court’s determination, would require the court to direct the department to either remove or retain the reusable grocery bag producer on its published Internet Web site list.

The bill would allow a city, county, or city and county, or the state to impose civil penalties on a person or entity that knows or reasonably should have known it is in violation of the bill’s requirements. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill’s provisions.

The bill would declare that it occupies the whole field of the regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags provided by a store and would prohibit a local public agency from enforcing or implementing an ordinance, resolution, regulation, or rule, or any amendment thereto, adopted on or after September 1, 2014, relating to those bags, against a store, except as provided.

(2) The California Integrated Waste Management Act of 1989 creates the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account and continuously appropriates the funds deposited in the subaccount to the department for making loans for the purposes of the Recycling Market Development Revolving Loan Program. Existing law makes the provisions regarding the loan program, the creation of the subaccount, and expenditures from the subaccount inoperative on July 1, 2021, and repeals them as of January 1, 2022.

This bill would appropriate $2,000,000 from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans for the creation and retention of jobs and economic activity in California for the manufacture and recycling of plastic reusable grocery bags that use recycled content. The bill would require a recipient of a loan to agree, as a condition of receiving the loan, to take specified actions.

(3) The bill would require the department, no later than March 1, 2018, to provide a status report to the Legislature on the implementation of the bill’s provisions.

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

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

SECTION 1. Chapter 5.3 (commencing with Section 42280) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. Single-Use Carryout Bags

Article 1. Definitions

42280. (a) "Department" means the Department of Resources Recycling and Recovery.

(b) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing
and fabrication process.

(c) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(3) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) “Reusable grocery bag” means a bag that is provided by a store to a customer at the point of sale that meets the requirements of Section 42281.

(e) (1) “Reusable grocery bag producer” means a person or entity that does any of the following:

(A) Manufactures reusable grocery bags for sale or distribution to a store.

(B) Imports reusable grocery bags into this state, for sale or distribution to a store.

(C) Sells or distributes reusable bags to a store.

(2) “Reusable grocery bag producer” does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).

(f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.

(2) A single-use carryout bag does not include either of the following:

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

(B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.

(C) A bag provided to contain an unwrapped food item.

(D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.

(g) “Store” means a retail establishment that meets any of the following requirements:

(1) A full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000) or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.

(2) Has at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(3) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(4) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(5) Is not otherwise subject to paragraph (1), (2), (3), or (4), if the retail establishment voluntarily agrees to
comply with the requirements imposed upon a store pursuant to this chapter, irrevocably notifies the department of its intent to comply with the requirements imposed upon a store pursuant to this chapter, and complies with the requirements established pursuant to Section 42284.

**Article 2. Reusable Grocery Bags**

**42281.** (a) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may sell or distribute a reusable grocery bag to a customer at the point of sale only if the reusable bag is made by a producer certified pursuant to this article to meet all of the following requirements:

(1) Has a handle and is designed for at least 125 uses, as provided in this article.

(2) Has a volume capacity of at least 15 liters.

(3) Is machine washable or made from a material that can be cleaned and disinfected.

(4) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:

(A) The name of the manufacturer.

(B) The country where the bag was manufactured.

(C) A statement that the bag is a reusable bag and designed for at least 125 uses.

(D) If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term “recyclable,” consistent with the Federal Trade Commission guidelines use of that term, as updated.

(5) Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.

(6) Complies with Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.

(b) (1) In addition to the requirements in subdivision (a), a reusable grocery bag made from plastic film shall meet all of the following requirements:

(A) On and after January 1, 2016, it shall be made from a minimum of 20 percent postconsumer recycled material.

(B) On and after January 1, 2020, it shall be made from a minimum of 40 percent postconsumer recycled material.

(C) It shall be recyclable in this state, and accepted for return at stores subject to the at-store recycling program (Chapter 5.1 (commencing with Section 42250)) for recycling.

(D) It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (4) of subdivision (a), a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.

(E) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and be at least 2.25 mils thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13.

(2) A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, is not required to meet the requirements of subparagraph (A) or (B) of paragraph (1), but shall be labeled in
according with the applicable state law regarding compostable plastics.

(c) In addition to the requirements of subdivision (a), a reusable grocery bag that is not made of plastic film and that is made from any other natural or synthetic fabric, including, but not limited to, woven or nonwoven nylon, polypropylene, polyethylene-terephthalate, or Tyvek, shall satisfy all of the following:

(1) It shall be sewn.

(2) It shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses.

(3) It shall have a minimum fabric weight of at least 80 grams per square meter.

(d) On and after July 1, 2016, a store as defined in paragraph (3), (4), or (5) of subdivision (g) of Section 42280, shall comply with the requirements of this section.

42281.5. On and after July 1, 2015, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to Section 42282. A producer shall provide proof of certification to the department demonstrating that the reusable grocery bags produced by the producer comply with the provisions of this article. The proof of certification shall include all of the following:

(a) Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.

(b) Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.

(c) How the postconsumer recycled material is obtained.

(d) Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.

42282. (a) Commencing on or before July 1, 2015, the department shall accept from a reusable grocery bag producer proof of certification conducted by a third-party certification entity, submitted under penalty of perjury, for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution, at the point of sale, that meets all the applicable requirements of this article. The proof of certification shall be accompanied by a certification fee, established pursuant to Section 42282.1.

(b) A reusable grocery bag producer shall resubmit to the department proof of certification as described in subdivision (a) on a biennial basis. A reusable grocery bag producer shall provide the department with an updated proof of certification conducted by a third-party certification entity if any modification that is not solely aesthetic is made to a previously certified reusable bag. Failure to comply with this subdivision shall result in removal of the relevant information posted on the department's Internet Web site pursuant to paragraphs (1) and (2) of subdivision (e) for each reusable bag that lacks an updated proof of certification conducted by a third-party certification entity.

(c) A third-party certification entity shall be an independent, accredited (ISO/IEC 17025) laboratory. A third-party certification entity shall certify that the producer's reusable grocery bags meet the requirements of Section 44281.

(d) The department shall provide a system to receive proofs of certification online.

(e) On and after July 1, 2015, the department shall publish a list on its Internet Web site that includes all of the following:

(1) The name, location, and appropriate contact information of certified reusable grocery bag producers.

(2) The reusable grocery bags of producers that have provided the required certification.

(f) A reusable grocery bag producer shall submit applicable certified test results to the department confirming that the reusable grocery bag meets the requirements of this article for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution.

(1) A person may object to the certification of a reusable grocery bag producer pursuant to this section by
filing an action for review of that certification in the superior court of a county that has jurisdiction over the reusable grocery bag producer. The court shall determine if the reusable grocery bag producer is in compliance with the requirements of this article.

(2) A reusable grocery bag producer whose certification is being objected to pursuant to paragraph (1) shall be deemed in compliance with this article pending a determination by the court.

(3) Based on its determination, the court shall direct the department to remove the reusable grocery bag producer from, or retain the reusable grocery bag producer on, its list published pursuant to subdivision (e).

(4) If the court directs the department to remove a reusable grocery bag producer from its published list, the reusable grocery bag producer shall remain off of the published list for a period of one year from the date of the court’s determination.

42282.1. (a) A reusable grocery bag producer shall submit the fee established pursuant to subdivision (b) to the department when providing proof of certification or recertification pursuant to Sections 42281.5 and 42282.

(b) The department shall establish an administrative certification fee schedule that will generate fee revenues sufficient to cover, but not exceed, the department’s reasonable costs to implement this article. The department shall deposit all moneys submitted pursuant to this section into the Reusable Grocery Bag Fund, which is hereby established in the State Treasury. Notwithstanding Section 11340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal year, to the department for the purpose of implementing this article.

Article 3. Single-Use Carryout Bags

42283. (a) Except as provided in subdivision (e), on and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(b) (1) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not sell or distribute a reusable grocery bag at the point of sale except as provided in this subdivision.

(2) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may make available for purchase at the point of sale a reusable grocery bag that meets the requirements of Section 42281.

(3) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, that makes reusable grocery bags available for purchase pursuant to paragraph (2) shall not sell the reusable grocery bag for less than ten cents ($0.10) in order to ensure that the cost of providing a reusable grocery bag is not subsidized by a customer who does not require that bag.

(c) (1) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not sell or distribute a recycled paper bag except as provided in this subdivision.

(2) A store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may make available for purchase a recycled paper bag. On and after July 1, 2015, the store shall not sell a recycled paper bag for less than ten cents ($0.10) in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.

(d) Notwithstanding any other law, on and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, that makes reusable grocery bags or recycled paper bags available for purchase at the point of sale shall provide a reusable grocery bag or a recycled paper bag at no cost at the point of sale to a customer using a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code or an electronic benefit transfer card issued pursuant to Section 10072 of the Welfare and Institutions Code.

(e) On and after July 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, may distribute a compostable bag at the point of sale, if the compostable bag is provided to the consumer at the cost specified pursuant to paragraph (2), the compostable bag, at a minimum, meets the American Society
for Testing and Materials (ASTM) International Standard Specification for Compostable Plastics D6400, as updated, and in the jurisdiction where the compostable bag is sold and in the jurisdiction where the store is located, both of the following requirements are met:

(1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.

(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to consumers at the point of sale a compostable bag at a cost not less than the actual cost of the bag, which the Legislature hereby finds to be not less than ten cents ($0.10) per bag.

(f) A store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, compostable bag, or reusable grocery bag as a condition of sale of any product.

42283.5. On and after July 1, 2016, a store, as defined in paragraph (3), (4), or (5) of subdivision (g) of Section 42280, shall comply with the same requirements of Section 42283 that are imposed upon a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280.

42283.6. (a) The operator of a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280 that makes recycled paper or reusable grocery bags available at the point of sale, shall be subject to the provisions of the at-store recycling program (Chapter 5.1 (commencing with Section 42250)).

(b) A store that voluntarily agrees to comply with the provisions of this article pursuant to subdivision (g) of Section 42280, shall also comply with the provisions of the at-store recycling program (Chapter 5.1 (commencing with Section 42250)).

42283.7. All moneys collected pursuant to this article shall be retained by the store and may be used only for the following purposes:

(a) Costs associated with complying with the requirements of this article.

(b) Actual costs of providing recycled paper bags or reusable grocery bags.

(c) Costs associated with a store’s educational materials or educational campaign encouraging the use of reusable grocery bags.

42284. (a) A retail establishment not specifically required to comply with the requirements of this chapter is encouraged to reduce its distribution of single-use plastic carryout bags.

(b) Pursuant to the provisions of subdivision (g) of Section 42280, any retail establishment that is not a “store,” that provides the department with the irrevocable written notice as specified in subdivision (c), shall be regulated as a “store” for the purposes of this chapter.

(c) The irrevocable written notice shall be dated and signed by an authorized representative of the retail establishment, and shall include the name and physical address of all retail locations covered by the notice. The department shall acknowledge receipt of the notice in writing and shall specify the date the retail establishment will be regulated as a “store,” which shall not be less than 30 days after the date of the department’s acknowledgment. The department shall post on its Internet Web site, organized by county, the name and physical location or locations of each retail establishment that has elected to be regulated as a “store.”

Article 4. Enforcement

42285. (a) A city, a county, a city and county, or the state may impose civil liability on a person or entity that knowingly violated this chapter, or reasonably should have known that it violated this chapter, in the amount of one thousand dollars ($1,000) per day for the first violation of this chapter, two thousand dollars ($2,000) per day for the second violation, and five thousand dollars ($5,000) per day for the third and subsequent violations.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation
5/21/2015

by the Legislature, to enforce this chapter.

Article 5. Preemption

42287. (a) Except as provided in subdivision (c), this chapter is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this chapter occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags, as defined in this chapter, provided by a store, as defined in this chapter.

(b) On and after January 1, 2015, a city, county, or other local public agency shall not enforce, or otherwise implement, an ordinance, resolution, regulation, or rule, or any amendment thereto, adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags, against a store, as defined in this chapter, unless expressly authorized by this chapter.

(c) (1) A city, county, or other local public agency that has adopted, before September 1, 2014, an ordinance, resolution, regulation, or rule relating to reusable grocery bags, single-use carryout bags, or recycled paper bags may continue to enforce and implement that ordinance, resolution, regulation, or rule that was in effect before that date. Any amendments to that ordinance, resolution, regulation, or rule on or after January 1, 2015, shall be subject to subdivision (b), except the city, county, or other local public agency may adopt or amend an ordinance, resolution, regulation, or rule to increase the amount that a store shall charge with regard to a recycled paper bag, compostable bag, or reusable grocery bag to no less than the amount specified in Section 42283.

(2) A city, county, or other local public agency not covered by paragraph (1) that, before September 1, 2014, has passed a first reading of an ordinance or resolution expressing the intent to restrict single-use carryout bags and, before January 1, 2015, adopts an ordinance to restrict single-use carryout bags, may continue to enforce and implement the ordinance that was in effect before January 1, 2015.


42288. (a) Notwithstanding Section 42023.2, the sum of two million dollars ($2,000,000) is hereby appropriated from the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account to the department for the purposes of providing loans for the creation and retention of jobs and economic activity in this state for the manufacture and recycling of plastic reusable grocery bags that use recycled content, including postconsumer recycled material.

(b) The department may expend, if there are applicants eligible for funding from the Recycling Market Development Revolving Loan Subaccount, the funds appropriated pursuant to this section to provide loans for both of the following:

(1) Development and conversion of machinery and facilities for the manufacture of single-use plastic bags into machinery and facilities for the manufacturer of durable reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

(2) Development of equipment for the manufacture of reusable grocery bags, that, at a minimum, meet the requirements of Section 42281.

(c) A recipient of a loan authorized by this section shall agree, as a condition of receiving the loan, to retain and retrain existing employees for the manufacturing of reusable grocery bags that, at a minimum, meet the requirements of Section 42281.

(d) Any moneys appropriated pursuant to this section not expended by the end of the 2015–16 fiscal year shall revert to the Recycling Market Development Revolving Loan Subaccount for expenditure pursuant to Article 3 (commencing with Section 42010) of Chapter 1.

(e) Applicants for funding under this section may also apply for funding or benefits from other economic development programs for which they may be eligible, including, but not limited to, both of the following:

(1) An income tax credit, as described in Sections 17059.2 and 23689 of the Revenue and Taxation Code.

(2) A tax exemption pursuant to Section 6377.1 of the Revenue and Taxation Code.
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1761, Arizona Revised Statutes, is amended to read:

44-1761. Definitions
In this article, unless the context otherwise requires:
1. "Collector" means a component of a solar energy device that is used to absorb solar radiation, convert it to heat or electricity and transfer the heat to a heat transfer fluid or to storage.
2. "DISTRIBUTED ENERGY GENERATION SYSTEM":
   (a) MEANS A DEVICE OR SYSTEM THAT IS USED TO GENERATE OR STORE ELECTRICITY, THAT HAS A CAPACITY, SINGLY OR IN CONNECTION WITH OTHER SIMILAR DEVICES OR SYSTEMS, GREATER THAN ONE KILOWATT THAT IS PRIMARILY FOR ON-SITE CONSUMPTION.
   (b) DOES NOT INCLUDE AN ELECTRIC GENERATOR THAT IS INTENDED FOR OCCASIONAL USE.
3. "Heat exchanger" means a component of a solar energy device that is used to transfer heat from one fluid to another.
4. "SELLER OR MARKETER" MEANS AN INDIVIDUAL OR A COMPANY ACTING THROUGH ITS OFFICERS, EMPLOYEES OR AGENTS THAT MARKETS, SELLS OR SOLICITS THE SALE, FINANCING OR LEASE OF DISTRIBUTED ENERGY GENERATION SYSTEMS OR NEGOTIATES OR ENTERS INTO AGREEMENTS FOR THE SALE, FINANCING OR LEASE OF DISTRIBUTED ENERGY GENERATION SYSTEMS.
5. "Solar daylighting" means a device THAT IS specifically designed to capture and redirect the visible portion of the solar beam spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.
6. "Solar energy device" means a system or series of mechanisms THAT IS designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Such systems may also have the capability of storing such energy for future utilization. Passive systems shall clearly be designed as a solar energy device such as a trombe wall and not merely a part of a normal structure such as a window.
7. "Storage unit" means a component of a solar energy device that is used to store solar generated electricity or heat for later use.

Sec. 2. Title 44, chapter 11, article 11, Arizona Revised Statutes, is amended by adding section 44-1763, to read:

44-1763. Distributed energy generation system agreements; disclosures; exception
A. AN AGREEMENT GOVERNING THE FINANCING, SALE OR LEASE OF A DISTRIBUTED ENERGY GENERATION SYSTEM TO ANY PERSON OR A POLITICAL SUBDIVISION OF THIS STATE MUST:
1. BE SIGNED BY THE PERSON BUYING, FINANCING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM AND MUST BE DATED. ANY AGREEMENT THAT
CONTAINS BLANK SPACES AFFECTING THE TIMING, VALUE OR OBLIGATIONS OF THE AGREEMENT IN A MATERIAL MANNER WHEN SIGNED BY THE BUYER OR LESSEE IS VOIDABLE AT THE OPTION OF THE BUYER OR LESSEE UNTIL THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED.

2. BE IN AT LEAST TEN-POINT TYPE.

3. INCLUDE A PROVISION GRANTING THE BUYER OR LESSEE THE RIGHT TO RESCIND THE FINANCING, SALE OR LEASE AGREEMENT FOR A PERIOD OF NOT LESS THAN THREE BUSINESS DAYS AFTER THE AGREEMENT IS SIGNED BY THE BUYER OR LESSEE AND BEFORE THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED.

4. PROVIDE A DESCRIPTION, INCLUDING THE MAKE AND MODEL OF THE DISTRIBUTED ENERGY GENERATION SYSTEM'S MAJOR COMPONENTS OR A GUARANTEE CONCERNING ENERGY PRODUCTION OUTPUT THAT THE DISTRIBUTED ENERGY GENERATION SYSTEM BEING SOLD OR LEASED WILL PROVIDE OVER THE LIFE OF THE AGREEMENT.

5. SEPARATELY SET FORTH THE FOLLOWING ITEMS, IF APPLICABLE:

(a) THE TOTAL PURCHASE PRICE OR TOTAL COST TO THE BUYER OR LESSEE UNDER THE AGREEMENT FOR THE DISTRIBUTED ENERGY GENERATION SYSTEM OVER THE LIFE OF THE AGREEMENT.

(b) ANY INTEREST, INSTALLATION FEES, DOCUMENT PREPARATION FEES, SERVICE FEES OR OTHER COSTS TO BE PAID BY THE BUYER OR LESSEE OF THE DISTRIBUTED ENERGY GENERATION SYSTEM.

(c) IF THE DISTRIBUTED ENERGY GENERATION SYSTEM IS BEING FINANCED OR LEASED, THE TOTAL NUMBER OF PAYMENTS, THE PAYMENT FREQUENCY, THE AMOUNT OF THE PAYMENT EXPRESSED IN DOLLARS AND THE PAYMENT DUE DATE.

6. PROVIDE A DISCLOSURE IN THE SALE AND FINANCING AGREEMENTS, TO THE EXTENT THEY ARE USED BY THE SELLER OR MARKETER IN DETERMINING THE PURCHASE PRICE OF THE AGREEMENT, IDENTIFY ALL CURRENT TAX INCENTIVES AND REBATES OR OTHER STATE OR FEDERAL INCENTIVES FOR WHICH THE BUYER MAY BE ELIGIBLE AND ANY CONDITIONS OR REQUIREMENTS PURSUANT TO THE AGREEMENT TO OBTAIN THESE TAX INCENTIVES, REBATES OR OTHER INCENTIVES.

7. IDENTIFY THE TAX OBLIGATIONS THAT THE BUYER OR LESSEE MAY BE REQUIRED TO PAY AS A RESULT OF BUYING, FINANCING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING:

(a) THE ASSESSED VALUE AND THE PROPERTY TAX ASSESSMENTS ASSOCIATED WITH THE DISTRIBUTED ENERGY GENERATION SYSTEM CALCULATED IN THE YEAR THE AGREEMENT IS SIGNED.

(b) TRANSACTION PRIVILEGE TAXES THAT MAY BE ASSESSED AGAINST THE PERSON BUYING OR LEASING THE DISTRIBUTED ENERGY GENERATION SYSTEM.

(c) ANY OBLIGATION OF THE BUYER OR LESSEE TO TRANSFER TAX CREDITS OR TAX INCENTIVES OF THE DISTRIBUTED ENERGY GENERATION SYSTEM TO ANY OTHER PERSON.

8. DISCLOSE WHETHER THE WARRANTY OR MAINTENANCE OBLIGATIONS RELATED TO THE DISTRIBUTED ENERGY GENERATION SYSTEM MAY BE SOLD OR TRANSFERRED TO A THIRD PARTY.

9. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, IF A TRANSFER OF THE SALE, LEASE OR FINANCING AGREEMENT CONTAINS ANY RESTRICTIONS PURSUANT TO THE AGREEMENT ON
THE LESSEE'S OR BUYER'S ABILITY TO MODIFY OR TRANSFER OWNERSHIP OF A DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING WHETHER ANY MODIFICATION OR TRANSFER IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY. IF THE MODIFICATION OR TRANSFER OF THE DISTRIBUTED ENERGY GENERATION SYSTEM IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY, THE AGREEMENT MUST IDENTIFY THE NAME, ADDRESS AND TELEPHONE NUMBER OF, AND PROVIDE FOR UPDATING ANY CHANGE IN, THE ENTITY RESPONSIBLE FOR APPROVING THE MODIFICATION OR TRANSFER.

10. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, IF A MODIFICATION OR TRANSFER OF OWNERSHIP OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS OR WILL BE AFFIXED CONTAINS ANY RESTRICTIONS PURSUANT TO THE AGREEMENT ON THE LESSEE'S OR BUYER'S ABILITY TO MODIFY OR TRANSFER OWNERSHIP OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS INSTALLED OR AFFIXED, INCLUDING WHETHER ANY MODIFICATION OR TRANSFER IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY. IF THE MODIFICATION OR TRANSFER OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS AFFIXED OR INSTALLED IS SUBJECT TO REVIEW OR APPROVAL BY A THIRD PARTY, THE AGREEMENT MUST IDENTIFY THE NAME, ADDRESS AND TELEPHONE NUMBER, AND PROVIDE FOR UPDATING ANY CHANGE IN, THE ENTITY RESPONSIBLE FOR APPROVING THE MODIFICATION OR TRANSFER.

11. PROVIDE A FULL AND ACCURATE SUMMARY OF THE TOTAL COSTS UNDER THE AGREEMENT FOR MAINTAINING AND OPERATING THE DISTRIBUTED ENERGY GENERATION SYSTEM OVER THE LIFE OF THE DISTRIBUTED ENERGY GENERATION SYSTEM, INCLUDING FINANCING, MAINTENANCE AND CONSTRUCTION COSTS RELATED TO THE DISTRIBUTED ENERGY GENERATION SYSTEM.

12. IF THE AGREEMENT CONTAINS AN ESTIMATE OF THE BUYER'S OR LESSEE'S FUTURE UTILITY CHARGES BASED ON PROJECTED UTILITY RATES AFTER THE INSTALLATION OF A DISTRIBUTED ENERGY GENERATION SYSTEM, PROVIDE AN ESTIMATE OF THE BUYER'S OR LESSEE'S ESTIMATED UTILITY CHARGES DURING THE SAME PERIOD AS IMPACTED BY POTENTIAL UTILITY RATE CHANGES RANGING FROM AT LEAST A FIVE PERCENT ANNUAL DECREASE TO AT LEAST A FIVE PERCENT ANNUAL INCREASE FROM CURRENT UTILITY COSTS. THE COMPARATIVE ESTIMATES MUST BE CALCULATED BASED ON THE SAME UTILITY RATES.

13. INCLUDE A DISCLOSURE, THE RECEIPT OF WHICH SHALL BE SEPARATELY ACKNOWLEDGED BY THE BUYER OR LESSEE, THAT STATES: UTILITY RATES AND UTILITY RATE STRUCTURES ARE SUBJECT TO CHANGE. THESE CHANGES CANNOT BE ACCURATELY PREDICTED. PROJECTED SAVINGS FROM YOUR DISTRIBUTED ENERGY GENERATION SYSTEM ARE THEREFORE SUBJECT TO CHANGE. TAX INCENTIVES ARE SUBJECT TO CHANGE OR TERMINATION BY EXECUTIVE, LEGISLATIVE OR REGULATORY ACTION.

B. BEFORE THE MAINTENANCE OR WARRANTY OBLIGATIONS OF A DISTRIBUTED ENERGY GENERATION SYSTEM UNDER AN EXISTING LEASE, FINANCING OR PURCHASE AGREEMENT IS TRANSFERRED, THE PERSON WHO IS CURRENTLY OBLIGATED TO MAINTAIN OR WARRANT THE DISTRIBUTED ENERGY GENERATION SYSTEM MUST DISCLOSE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON WHO WILL BE ASSUMING THE MAINTENANCE OR WARRANTY OF THE DISTRIBUTED ENERGY GENERATION SYSTEM.
C. IF THE SELLER'S OR MARKETER'S MARKETING MATERIALS CONTAIN AN ESTIMATE OF THE BUYER'S OR LESSEE'S FUTURE UTILITY CHARGES BASED ON PROJECTED UTILITY RATES AFTER THE INSTALLATION OF A DISTRIBUTED ENERGY GENERATION SYSTEM, THE MARKETING MATERIALS MUST CONTAIN AN ESTIMATE OF THE BUYER'S OR LESSEE'S ESTIMATED UTILITY CHARGES DURING THE SAME PERIOD AS IMPACTED BY POTENTIAL UTILITY RATE CHANGES RANGING FROM AT LEAST A FIVE PERCENT ANNUAL DECREASE TO AT LEAST A FIVE PERCENT ANNUAL INCREASE FROM CURRENT UTILITY COSTS.

D. THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL OR COMPANY, ACTING THROUGH ITS OFFICERS, EMPLOYEES OR AGENTS, THAT MARKETS, SELLS, SOLICITS, NEGOTIATES OR ENTERS INTO AN AGREEMENT FOR THE SALE, FINANCING OR LEASE OF A DISTRIBUTED ENERGY GENERATION SYSTEM AS PART OF A TRANSACTION INVOLVING THE SALE OR TRANSFER OF THE REAL PROPERTY TO WHICH THE DISTRIBUTED ENERGY GENERATION SYSTEM IS OR WILL BE AFFIXED.

Sec. 3. Effective date
This act is effective from and after December 31, 2015.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

Senate Bill No. 863

CHAPTER 363

An act to amend Sections 11435.30 and 11435.35 of the Government Code, and to amend Sections 62.5, 139.2, 3201.5, 3201.7, 3700.1, 3701, 3701.3, 3701.5, 3701.7, 3701.8, 3702, 3702.2, 3702.5, 3702.8, 3702.10, 3742, 3744, 3745, 3746, 4061, 4062, 4062.2, 4062.3, 4063, 4064, 4453, 4600, 4603.2, 4603.4, 4604, 4604.5, 4605, 4610, 4610.1, 4616, 4616.1, 4616.2, 4616.3, 4616.7, 4620, 4622, 4650, 4658, 4658.5, 4658.6, 4660, 4701, 4903, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4905, 4907, 5307.1, 5307.7, 5402, 5502, 5703, 5710, and 5811 of, to add Sections 139.32, 139.48, 139.5, 3701.9, 4603.3, 4603.6, 4610.5, 4610.6, 4658.7, 4660.1, 4903.05, 4903.06, 4903.07, 4903.8, 5307.8, and 5307.9 to, to add and repeal Section 3702.4 of, and to repeal Sections 4066 and 5318 of, the Labor Code, relating to workers’ compensation, and making an appropriation therefor.

[Approved by Governor September 19, 2012. Filed with Secretary of State September 19, 2012.]

LEGISLATIVE COUNSEL’S DIGEST

SB 863, De León. Workers’ compensation.

Existing law establishes a workers’ compensation system, administered by the Administrative Director of the Division of Workers’ Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

(1) Existing law establishes certain requirements relating to qualified medical evaluators who perform the evaluation of medical-legal issues.

This bill would modify the requirements of a qualified medical evaluator with respect to doctors of chiropractic, and would prohibit a qualified medical evaluator from conducting qualified medical evaluations at more than 10 locations.

(2) Existing law provides that it is unlawful for a physician to refer a person for specified medical goods or services, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral, except as specified.

This bill would additionally prohibit, except as specified, an interested party, as defined, from referring a person for certain services relating to workers’ compensation provided by another entity, if the interested party has a financial interest in the other entity, as defined. The bill would provide that a violation of these provisions is a misdemeanor, and would authorize civil penalties of up to $15,000 for each offense. By creating a new crime, this bill would impose a state-mandated local program.
(3) Existing law establishes the Workers’ Compensation Administration Revolving Fund for the administration of the workers’ compensation program, and other specified purposes.

This bill would establish in the Department of Industrial Relations a return-to-work program, to be funded by non-General Fund revenues of one hundred twenty million dollars ($120,000,000) that the bill would annually appropriate from the Workers’ Compensation Administration Revolving Fund.

(4) Existing law requires the Department of Industrial Relations and the courts of this state, except as provided, to recognize as valid and binding any labor-management agreement that meets certain requirements. Existing law applies this recognition only in relation to employers that meet specified requirements.

This bill would add the State of California to the list of authorized employers for these purposes.

(5) Existing law authorizes an employer to secure the payment of workers’ compensation by securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers upon furnishing proof satisfactory to the director of the ability to self-insure and to pay any compensation that may become due to employees.

This bill would change the amount of a prescribed security deposit required of private self-insured employers, would delete a related audit requirement, and would, commencing January 1, 2013, prohibit a certificate of consent to self-insure from being issued to specified employers.

This bill would require public self-insured employers to provide certain information to the director, and would require the Commission on Health and Safety and Workers’ Compensation to conduct an examination of the public self-insured program, and to publish a preliminary and final report on its Internet Web site, as specified.

Existing law requires that the cost of administration of the public self-insured program be a General Fund item.

This bill would instead require that the cost be borne by the Workers’ Compensation Administration Revolving Fund.

Existing law establishes the Self-Insurers’ Security Fund for purposes related to the payment of the workers’ compensation obligations of self-insurers.

This bill would revise the composition of the board of trustees of the Self-Insurers’ Security Fund, would revise duties of the Self-Insurers’ Security Fund, and would make related changes.

(6) Existing law establishes certain procedures that govern the determination of an employee’s eligibility for permanent disability indemnity commencing with the final payment of the employee’s temporary disability indemnity.

This bill would revise and recast these provisions.
(7) Existing law establishes procedures for the resolution of disputes regarding the compensability of an injury. Existing law prescribes certain requirements relating to recommendations regarding spinal surgery. This bill would delete the provisions relating to spinal surgery.

Existing law prescribes a specified procedure that governs dispute resolution relating to injuries occurring on or after January 1, 2005, when the employee is represented by an attorney. This procedure includes various requirements relating to the selection of agreed medical evaluators. This bill would revise and recast these provisions.

(8) Existing law provides certain methods for determining workers’ compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in case of death. This bill would revise the method for determining benefits for purposes of permanent partial disability for injuries occurring on or after January 1, 2013, and on or after January 1, 2014.

This bill would provide, prior to an award of permanent disability indemnity, that no permanent disability indemnity payment be required if the employer has offered the employee a position that pays at least 85% of the wages and compensation paid to the employee at the time of injury, or if the employee is employed in a position that pays at least 100% of the wages and compensation paid to the employee at the time of injury, as specified.

This bill would revise the method for determining benefits for purposes of permanent disability for injuries occurring on or after January 1, 2013. This bill would revise the amount of the award for burial expenses.

Existing law, for injuries that cause permanent partial disability and occur on or after January 1, 2004, provides supplemental job displacement benefits in the form of a nontransferable voucher for education-related retraining or skill enhancement for an injured employee who does not return to work for the employer within 60 days of the termination of temporary disability, in accordance with a prescribed schedule based on the percentage of an injured employee’s disability. Existing law provides an exception for employers who meet specified criteria.

This bill would provide that the above provisions shall apply to injuries occurring on or after January 1, 2004, and before January 1, 2013.

This bill would provide, for injuries that cause permanent partial disability and occur on or after January 1, 2013, for a supplemental job displacement benefit in the form of a voucher for up to $6,000 to cover various education-related retraining and skill enhancement expenses, as specified, which would expire 2 years after the date the voucher is furnished to the employee or 5 years after the date of injury, whichever is later. The bill would exempt employers who make an offer of employment, as specified, from providing vouchers.

Existing law requires that, in determining the percentages of permanent disability, account be taken of the nature of the injury, the occupation of the injured employee, and his or her age at the time of the injury, and requires
that specified factors be considered in determining an employee’s diminished earning capacity for these purposes.

This bill would provide that the above provisions shall apply to injuries occurring before January 1, 2013. This bill would, for injuries occurring on or after January 1, 2013, revise the factors to be considered in determining impairment and disability ratings for these purposes.

(9) Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury.

This bill would limit the provision of home health care services as medical treatment to specified circumstances.

(10) Existing law generally provides for the reimbursement of medical providers for services rendered in connection with the treatment of a worker’s injury.

This bill would revise and recast these provisions, and would establish certain procedures to govern billing procedures and disputes.

(11) Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services.

This bill would require the administrative director to contract with one or more independent medical review organizations and one or more independent bill review organizations to conduct reviews in accordance with specified criteria. The bill would require that the independent review organizations retained to conduct reviews meet specified criteria and comply with specified requirements. The bill would require that final determinations made pursuant to the independent bill review and independent medical review processes be presumed to be correct and be set aside only as specified.

The independent medical review process established by the bill would be used to resolve disputes over a utilization review decision for injuries occurring on or after January 1, 2013, and for any decision that is communicated to the requesting physician on or after July 1, 2013, regardless of the date of injury. The bill would require an independent medical review organization to conduct the review in accordance with specified provisions, and would limit this review to an examination of the medical necessity of the disputed medical treatment. The bill would prohibit an employer from engaging in any conduct that delays the medical review process, and would authorize the administrative director to levy certain administrative penalties in connection with this prohibition, to be deposited in the Workers’ Compensation Administration Revolving Fund. The bill would require that the costs of independent medical review and the administration of the independent medical review system be borne by employers through a fee system established by the administrative director.

(12) Existing law authorizes an insurer or employer to establish or modify a medical provider network for the provision of medical treatment to injured employees.
This bill, commencing January 1, 2014, would require that a treating physician be included in the network only if the physician or authorized employee of the physician gives a separate written acknowledgment that the physician is a member of the network, and would require every medical provider network to include one or more persons employed as medical access assistants to help an injured employee find an available physician and assist employees in scheduling appointments.

Existing law requires an employer or insurer to submit a plan for the medical provider network to the administrative director for approval. This bill, commencing January 1, 2014, would require that existing approved plans be deemed approved for a period of 4 years from the most recent application or modification approval date. The bill would authorize any person contending that a medical provider network is not validly constituted to petition the administrative director to suspend or revoke the approval of the medical provider network. The bill would authorize the administrative director to adopt regulations establishing a schedule of administrative penalties, not to exceed $5,000 per violation, or probation, or both, in lieu of revocation or suspension.

(13) Existing law requires an employer to pay medical-legal expenses for which the employer is liable in accordance with specified provisions. This bill would establish a secondary review process to govern billing disputes relating to medical-legal expenses.

(14) Existing law authorizes the Workers’ Compensation Appeals Board to determine and allow specified expenses as liens against any sum to be paid as compensation. This bill would revise procedures relating to liens, including requiring that any payment of a lien for the reasonable expenses incurred by an injured employee be made only to the person who was entitled to payment for the expenses at the time the expenses were incurred, and not to an assignee, except as specified. The bill would require that certain documentation relating to a lien filing include certain declarations made under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program. This bill would require that all liens filed on or after January 1, 2013, for certain expenses, be subject to a filing fee, and that all liens and costs that were filed as liens, filed before January 1, 2013, for certain expenses, be subject to an activation fee, except as specified. The bill would dismiss by operation of law on January 1, 2014, all liens and costs filed as liens for which the filing fee or activation fee is not paid. This bill would require that all fees collected pursuant to these provisions be deposited in the Workers’ Compensation Administration Revolving Fund. This bill would provide for the reimbursement of a lien filing fee or lien activation fee under specified circumstances. This bill would make related changes with respect to liens.

(15) Existing law requires the administrative director, after public hearings, to adopt and revise periodically an official medical fee schedule that establishes reasonable maximum fees paid for medical services, other
than physician services, and other prescribed goods and services in
accordance with specified requirements.

This bill would require the administrative director, after public hearings,
to adopt and review periodically an official medical fee schedule based on
the resource-based relative value scale for physician services and
nonphysician practitioner services, as defined by the administrative director,
in accordance with specified requirements. The bill would require,
commencing January 1, 2014, and until the time the administrative director
has adopted an official medical fee schedule in accordance with the
resource-based relative value scale, that the maximum reasonable fees for
physician services and nonphysician practitioner services be in accordance
with the fee-related structure and rules of the Medicare payment system for
physician services, and that the fees include specified conversion factors.

This bill would require the administrative director, on or before July 1,
2013, to adopt, after public hearings, a schedule for payment of home health
care services that are not otherwise covered, as specified.

This bill would require the administrative director, on or before December
31, 2013, in consultation with the Commission on Health and Safety and
Workers’ Compensation, to adopt, after public hearings, a schedule of
reasonable maximum fees payable for copy and related services.

(16) Existing law authorizes the appeals board to receive as evidence
and use as proof of any fact in dispute various reports and publications.
This bill would add reports of vocational experts, as specified.

(17) Existing law provides for the reimbursement of specified expenses
for a deponent in connection with a deposition requested by the employer
or insurer.

This bill would require the employer to pay for the services of a language
interpreter if interpretation services are required because the injured
employee or deponent does not proficiently speak or understand the English
language.

(18) Existing law requires the State Personnel Board to establish,
maintain, administer, and publish annually an updated list of certified
administrative hearing interpreters and medical examination interpreters it
has determined meet certain minimum standards.

This bill would also authorize the administrative director or an independent
organization designated by the administrative director to establish, maintain,
administer, and publish annually an updated list of certified administrative
hearing interpreters who, based on testing by an independent organization
designated by the administrative director, have been determined to meet
certain minimum standards, for purposes of certain workers’ compensation
proceedings and medical examinations. This bill would require a reasonable
fee to be collected from each interpreter seeking certification, to cover the
reasonable regulatory costs of administering the program.

(19) This bill would delete certain reporting requirements, delete obsolete
provisions, and make conforming and clarifying changes.

(20) This bill would incorporate additional changes in Section 4903.1 of
the Labor Code proposed by SB 1105 that would become operative only if
Assembly Bill No. 2127

CHAPTER 165

An act to amend Section 49475 of, and to add Section 35179.5 to, the Education Code, relating to interscholastic sports.

[ Approved by Governor July 21, 2014. Filed with Secretary of State July 21, 2014. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 2127, Cooley. Interscholastic sports: full-contact football practices: concussions and head injuries.

(1) Existing law establishes a system of public elementary and secondary schools operated by local educational agencies throughout this state. Under existing law, public and private secondary schools participate in interscholastic sports, and are authorized to enter into associations or consortia to enact and enforce rules relating to eligibility for, and participation in, these activities. Existing law acknowledges the role of the California Interscholastic Federation in the regulation of interscholastic sports in this state.

This bill would express legislative findings and declarations relating to head injuries sustained by high school pupil-athletes, particularly those who play football. The bill would prohibit high school and middle school football teams of school districts, charter schools, or private schools that elect to offer an athletic program from conducting more than 2 full-contact practices, as defined, per week during the preseason and regular season, as defined. The bill would also prohibit the full-contact portion of a practice from exceeding 90 minutes in any single day, and completely prohibit full-contact practice during the off-season, as defined. The bill would urge the California Interscholastic Federation to develop and adopt rules to implement this provision.

The bill would provide that these provisions do not prohibit the California Interscholastic Federation, an interscholastic athletic league, a school, a school district, or any other appropriate entity from adopting and enforcing rules intended to provide a higher standard of safety for athletes than the standard established under the bill.

(2) Existing law requires a school district, charter school, or private school, if it offers an athletic program, to immediately remove an athlete from an athletic activity for the remainder of the day if the athlete is suspected of sustaining a concussion or head injury, and prohibits the athlete from returning to the athletic activity until the athlete is evaluated by a licensed health care provider, trained in the management of concussions and acting within the scope of his or her practice, and the athlete receives written clearance from the licensed health care provider to return to the athletic activity. Existing law also requires, on a yearly basis, a concussion and head injury information sheet to be signed and returned by the athlete and athlete’s parent or guardian before the athlete initiates practice or competition.

This bill would provide that an athlete suspected of sustaining a concussion or head injury is prohibited from returning to the athletic activity until the athlete is evaluated by a licensed health care provider, as defined to mean a licensed health care provider trained in the management of concussions and acting within the scope of his or her practice, and the athlete receives written clearance from a licensed health care provider. The bill would further provide that, if a licensed health care provider determines that the athlete sustained a concussion or a head injury, the athlete is required to complete a graduated return-to-play protocol of no less
than 7 days in duration under the supervision of a licensed health care provider. The bill would urge the California Interscholastic Federation to develop and adopt rules and protocols to implement this provision.

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

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

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

(a) Concussions and other mild traumatic brain injuries affect thousands of California's high school pupil-athletes each year. Many concussions or head injuries go undetected due to a lack of recognition of symptoms or intentional underreporting of symptoms.

(b) Most concussions do not involve a loss of consciousness, according to the federal Centers for Disease Control and Prevention.

(c) The symptoms of concussions vary, and most symptoms are not necessarily specific to concussion. Symptoms may include dizziness, sensitivity to light, and loss of consciousness.

(d) Pupil-athletes who suffer a concussion are more likely to suffer an additional concussion than someone who has never been concussed.

(e) Children and adolescents are skeletally immature, and are thus more likely to be concussed or suffer a brain injury than adults.

(f) Many athletes want to keep playing despite a concussion or head injury. In a study published by the American Academy of Pediatrics in October 2012, 32 percent of high school football players reported that they had experienced symptoms of concussion but did not pursue medical attention.

(g) Many high schools lack the standard of care afforded to college and professional players. At the collegiate and professional level, neurologists and other physicians are available. High schools cannot afford this. In California, coaches or athletic trainers are required to remove any player from practice or competition if that player is exhibiting signs or symptoms of a concussion or head injury.

(h) Medical experts recommend that the recovery and rehabilitation process from a concussion proceed conservatively. Experts suggest that the recovery and rehabilitation process should have six stages, which should be supervised and should last at least 24 hours each, and that athletes should be prohibited from proceeding until they are asymptomatic. According to the American Academy of Pediatrics, adolescents suffer from post-concussive symptoms longer than adults or college students.

(i) Researchers agree that there is no way to "condition" the brain for hits to the head. Researchers strongly contend that hits to the brain should be minimized as much as possible.

(j) Several academic and scientific studies have asserted that the cumulative effects of sub-concussive blows to the brain due to football may contribute to long-term brain damage and early-onset dementia, including chronic traumatic encephalopathy (CTE).

(k) A Boston University study in 2012 studied the brains of 85 deceased athletes and military veterans with histories of repeated mild traumatic brain injuries. Eighty percent of those studied had CTE. Six of the deceased were football players who had not played past high school.

(l) In 2010, a 21-year-old University of Pennsylvania football player committed suicide. After a subsequent brain study, he was found to have early stages of CTE. The athlete had never been diagnosed with a concussion, and had never even complained of a headache. Doctors contend that his CTE must have developed from concussions he dismissed or from the thousands of sub-concussive collisions he endured while playing football, most of which occurred while his brain was still developing.

(m) Nineteen states have banned off-season full-contact high school football practices. California allows each of its 10 sections to make its own determination. Several of those sections still allow full-contact summer and spring practices.

(n) Several states have limited full-contact practices during the preseason and regular season.

(o) Maryland and Connecticut require that a supervised return-to-play protocol be followed in the event of a
5/21/2015

Bill Text - AB-2127 Interscholastic sports: full-contact football practices: concussions and head injuries.

concussion or head injury.

SEC. 2. Section 35179.5 is added to the Education Code, to read:

35179.5. (a) (1) If a school district, charter school, or private school elects to offer an athletic program, it shall comply with all of the following:

(A) A high school or middle school football team shall not conduct more than two full-contact practices per week during the preseason and regular season.

(B) The full-contact portion of a practice shall not exceed 90 minutes in any single day.

(C) A high school or middle school football team shall not hold a full-contact practice during the off-season.

(2) For purposes of this section, a team camp session shall be deemed to be a practice.

(b) The California Interscholastic Federation is urged to develop and adopt rules to implement this section.

(c) As used in this section:

(1) “Full-contact practice” means a practice where drills or live action is conducted that involves collisions at game speed, where players execute tackles and other activity that is typical of an actual tackle football game.

(2) “Off-season” means a period extending from the end of the regular season until 30 days before the commencement of the next regular season.

(3) “Preseason” means a period of 30 days before the commencement of the regular season.

(4) “Regular season” means the period from the first interscholastic football game or scrimmage until the completion of the final interscholastic football game of that season.

(d) This section shall not prohibit the California Interscholastic Federation, an interscholastic athletic league, a school, a school district, or any other appropriate entity from adopting and enforcing rules intended to provide a higher standard of safety for athletes than the standard established under this section.

SEC. 3. Section 49475 of the Education Code is amended to read:

49475. (a) If a school district, charter school, or private school elects to offer an athletic program, the school district, charter school, or private school shall comply with both of the following:

(1) An athlete who is suspected of sustaining a concussion or head injury in an athletic activity shall be immediately removed from the athletic activity for the remainder of the day, and shall not be permitted to return to the athletic activity until he or she is evaluated by a licensed health care provider. The athlete shall not be permitted to return to the athletic activity until he or she receives written clearance to return to the athletic activity from a licensed health care provider. If the licensed health care provider determines that the athlete sustained a concussion or a head injury, the athlete shall also complete a graduated return-to-play protocol of no less than seven days in duration under the supervision of a licensed health care provider. The California Interscholastic Federation is urged to work in consultation with the American Academy of Pediatrics and the American Medical Society for Sports Medicine to develop and adopt rules and protocols to implement this paragraph.

(2) On a yearly basis, a concussion and head injury information sheet shall be signed and returned by the athlete and the athlete’s parent or guardian before the athlete initiates practice or competition.

(b) As used in this section, “licensed health care provider” means a licensed health care provider who is trained in the management of concussions and is acting within the scope of his or her practice.

(c) This section does not apply to an athlete engaging in an athletic activity during the regular schoolday or as part of a physical education course required pursuant to subdivision (d) of Section 51220.
Substitute Senate Bill No. 209

Public Act No. 14-53

AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF THE DO NOT CALL REGISTRY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 42-288a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2014):

(a) As used in this section and section 2 of this act:

(1) "Commissioner" means the Commissioner of Consumer Protection;

(2) "Consumer" means any individual who is a resident of this state and a prospective recipient of consumer goods or services;

(3) "Consumer goods or services" means any article or service that is purchased, leased, exchanged or received primarily for personal, family or household purposes, and includes, but is not limited to, stocks, bonds, mutual funds, annuities and other financial products;

(4) "Department" means the Department of Consumer Protection;

(5) "Doing business in this state" means conducting telephonic sales calls (A) from a location in this state, or (B) from a location outside of
Substitute Senate Bill No. 209

this state to consumers residing in this state;

(6) "Prior express written consent" has the meaning provided in 47 CFR 64.1200, as amended from time to time;

[(6)] (7) "Marketing or sales solicitation" means the initiation of a telephone call or message, including, but not limited to, a text or media message, to encourage the purchase or rental of, or investment in, property, goods or services, that is transmitted to any consumer, but does not include a telephone call or message, including, but not limited to, a text or media message (A) to any consumer with [that] such consumer's prior express written [or verbal invitation or permission] consent, (B) by a tax-exempt nonprofit organization, or (C) to a consumer in response to a visit made by such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed location;

[(7)] (8) "Telephonic sales call" means a telephone call made by a telephone solicitor, or a text or media message sent by or on behalf of a telephone solicitor, to a consumer for the purpose of (A) engaging in a marketing or sales solicitation, (B) soliciting an extension of credit for consumer goods or services, or (C) obtaining information that will or may be used for marketing or sales solicitation or exchange of or extension of credit for consumer goods or services;

[(8)] (9) "Telephone solicitor" means any individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, doing business in this state that makes or causes to be made a telephonic sales call, including, but not limited to, sending or causing to be sent a text or media message to a consumer's mobile telephone or mobile electronic device;

(10) "Text or media message" means a message that contains
written, audio, video or photographic content and is sent electronically to a mobile telephone or mobile electronic device telephone number, but does not include electronic mail sent to an electronic mail address;

[(9)] (11) "Unsolicited telephonic sales call" means any telephonic sales call other than a telephonic sales call made: (A) [In response to an express written or verbal request] Pursuant to the prior express written consent of the consumer who is called or sent a text or media message; (B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the telephonic sales call; or (C) to an existing customer, unless such customer has stated to the telephone solicitor that such customer no longer wishes to receive the telephonic sales calls of such telephone solicitor; and

[(10)] (12) "Caller identification service or device" means any telephone service or device which permits a consumer to see the telephone number of incoming telephone calls or text or media messages.

(b) The department shall establish and maintain a "no sales solicitation calls" listing of consumers who do not wish to receive unsolicited telephonic sales calls. The department may contract with a private vendor to establish and maintain such listing, provided (1) the private vendor has maintained national "no sales solicitation calls" listings for more than two years, and (2) the contract requires the vendor to provide the "no sales solicitation calls" listing in a printed hard copy format and in any other format offered at a cost that does not exceed the production cost of the format offered. The department shall provide notice to consumers of the establishment of a "no sales solicitation calls" listing. Any consumer who wishes to be included on such listing shall notify the department by calling a toll-free number provided by the department, or in any other such manner and at such times as the commissioner may prescribe. A consumer on such listing
shall be deleted from such listing upon the consumer's written request. The department shall update such listing not less than quarterly and shall make such listing available to telephone solicitors and other persons upon request.

(c) No telephone solicitor may make or cause to be made any unsolicited telephonic sales call to any consumer (1) if the consumer's name and telephone number or numbers appear on the then current quarterly "no sales solicitation calls" listing made available by the department under subsection (b) of this section, unless (A) such call was made by a telephone solicitor that first began doing business in this state on or after January 1, 2000, (B) a period of less than one year has passed since such telephone solicitor first began doing business in this state, and (C) the consumer to whom such call was made had not on a previous occasion stated to such telephone solicitor that such consumer no longer wishes to receive the telephonic sales calls of such telephone solicitor, (2) for telephone calls, to be received between the hours of nine o'clock p.m. and nine o'clock a.m., local time, at the consumer's location or, for text or media messages, to be received on the consumer's mobile telephone or mobile electronic device at any time, (3) in the form of electronically transmitted facsimiles, or (4) by use of a recorded message device.

(d) No telephone solicitor shall intentionally cause to be installed or may intentionally use any blocking device or service to circumvent a consumer's use of a caller identification service or device. No telephone solicitor shall may intentionally transmit inaccurate or misleading caller identification information.

(e) (1) Any person who obtains the name, residential address or telephone number of any consumer from published telephone directories or from any other source and republishes or compiles such information, electronically or otherwise, and sells or offers to sell such publication or compilation to telephone solicitors for marketing or
Substitute Senate Bill No. 209

sales solicitation purposes, shall exclude from any such publication or compilation, and from the database used to prepare such publication or compilation, the name, address and telephone number or numbers of any consumer if the consumer's name and telephone number or numbers appear in the then current quarterly "no sales solicitation calls" listing made available by the department under subsection (b) of this section.

(2) This subsection does not apply to (A) any telephone company, as defined in section 16-1, for the sole purpose of compiling, publishing or distributing telephone directories or causing the compilation, publication or distribution of telephone directories or providing directory assistance, and (B) any person, for the sole purpose of compiling, publishing or distributing telephone directories for such telephone company pursuant to an agreement or other arrangement with such telephone company.

(f) The commissioner may adopt regulations, [pursuant to] in accordance with chapter 54, to carry out the provisions of this section. Such regulations may include, but shall not be limited to, provisions governing the availability and distribution of the listing established under subsection (b) of this section and notice requirements for consumers wishing to be included on the listing established under subsection (b) of this section.

(g) A violation of any of the provisions of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b, except that no telephone solicitor may be liable under this section for a call made in violation of subdivision (1) of subsection (c) of this section if such telephone solicitor demonstrates that: (1) Such telephone solicitor established and implemented written procedures and trained its employees to follow such procedures to comply with subdivision (1) of subsection (c) of this section; (2) such telephone solicitor deleted from its call list any listing of a consumer on the then
current quarterly "no sales solicitation calls" listing maintained pursuant to subsection (b) of this section; and (3) such call was made inadvertently.

(h) No telephone solicitor may make or cause to be made an unsolicited, automatically dialed, recorded telephonic sales call to a consumer without such consumer's prior express written consent.

(i) In addition to the requirements of subsections (b) to (h), inclusive, of this section, if a consumer's mobile telephone or mobile electronic device telephone number does not appear on the then current quarterly "no sales solicitation calls" listing made available by the department under subsection (b) of this section, no telephone solicitor may send or cause to be sent a text or media message to such number for the purpose of marketing or sales solicitation of consumer goods, unless such telephone solicitor has received the prior express written consent of the consumer to receive such text or media message.

(j) Notwithstanding the provisions of subsections (c) and (i) of this section, a telecommunications company, as defined in section 16-1, may send a text or media message to an existing customer, provided:

(1) Such telecommunications company does not charge the customer a fee for such text or media message, and (2) such text or media message is primarily in connection with (A) an existing debt, payment of which has not been completed at the time the text or media message is sent, (B) an existing contract between the telecommunications company and the customer, (C) a wireless emergency alert authorized by federal law, or (D) a prior request for customer service that was initiated by the customer.

[(h)] (k) In addition to any penalty imposed under chapter 735a, any telephone solicitor, who is liable under the provisions of [subsection (g)] subsections (g) to (i), inclusive, of this section, shall be fined not more than [eleven] twenty thousand dollars for each violation.
Substitute Senate Bill No. 209

Sec. 2. (NEW) (Effective October 1, 2014) Each telephone and telecommunications company, as defined in section 16-1 of the general statutes, that issues an account statement to a consumer with respect to service for a telephone, mobile telephone or mobile electronic device shall, not less than two times per year, include on or with such statement a conspicuous notice, informing the consumer with respect to: (1) The prohibitions placed on telephone solicitors pursuant to section 42-288a of the general statutes, as amended by this act, (2) how to place the consumer's telephone number, mobile telephone number or mobile electronic device telephone number on the "no sales solicitation calls" listing established pursuant to subsection (b) of section 42-288a of the general statutes, as amended by this act, and (3) how to obtain a "no sales solicitation complaint" form on the Department of Consumer Protection's Internet web site.

Approved May 28, 2014
SENATE
EIGHTY-EIGHTH SESSION
STATE OF MINNESOTA

(Senate Authors: Sieben, Metzen, Bonoff and Dziedzic)

DATE D-PG OFFICIAL STATUS
02/25/2014 5819 Introduction and first reading
02/25/2014 5819 Referred to Jobs, Agriculture and Rural Development
03/27/2014 6950a Comm report: To pass as amended
03/27/2014 6950 Second reading
03/28/2014 7158 Author added Dziedzic
05/02/2014 8636a Special Order: Amended
05/02/2014 8637 Taken from table
05/09/2014 8639a Third reading Passed as amended
05/09/2014 8994 Returned from House with amendment
05/09/2014 8994 Taken from table
05/09/2014 8998 Senate concurred
05/09/2014 8998 Third reading Passed
05/15/2014 9348 Governor's action Approval 05/14/14
05/15/2014 9348 Presentment date 05/12/14
Passed 05/14/14
Effective date 1, Sec. 1 07/01/15; Sec. 2 08/01/14; Art. 2 07/01/14

ARTICLE 1
SMART PHONE ANTITHEFT PROTECTION

Section 1. [325F.698] SMART PHONE ANTITHEFT PROTECTION.

Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Smart phone" means a cellular phone or other mobile device that: (1) is built on a smart phone mobile operating system; (2) possesses advanced computing capability; (3) enables network connectivity; and (4) is capable of operating on a long-term evolution network and successor wireless data network communication standards. Capabilities a smart phone may possess include, but are not limited to, built-in applications, Internet access, digital voice service, text messaging, e-mail, and Web browsing. Smart phone does not include a phone commonly referred to as a feature or messaging phone, a laptop computer, a tablet device, or a device that has only electronic reading capability.

Subd. 2. Antitheft functionality required. Any new smart phone manufactured on or after July 1, 2015, sold or purchased in Minnesota must be equipped with preloaded antitheft functionality or be capable of downloading that functionality. The functionality must be available to purchasers at no cost.

EFFECTIVE DATE. This section is effective July 1, 2015.
Sec. 2. **REPORT ON SMART PHONE ANTITHEFT FUNCTIONALITY.**

Wireless telecommunications equipment manufacturers, operating systems providers, and wireless telecommunications service providers must either individually or jointly, by January 15, 2015, submit a report to the chairs and ranking minority members of the legislative committees with primary jurisdiction over telecommunication issues. The report must describe the principle functions of a baseline antitheft tool that manufacturers and operating system providers will utilize on new models of smart phones in order to comply with section 1, and must describe the technology or functions included to ensure the baseline antitheft tool is easily operable by individuals with disabilities.

**ARTICLE 2**

**RESALE OF CELLPHONES**

Section 1. **[325E.319] WIRELESS COMMUNICATIONS DEVICES; ACQUISITION FOR RESALE.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "CMRS provider" means a provider of commercial radio service, as defined in United States Code, title 47, section 332, and includes its authorized dealers.

(c) "Internet marketplace" or "online platform" means a digitally accessible platform that facilitates commercial transactions between buyers and community-rated sellers where the operator or the platform does not take possession of, or title to, the goods bought or sold.

(d) "Law enforcement agency" or "agency" means a duly authorized municipal, county, campus, transit, park, state, or federal law enforcement agency.

(e) "Repair and refurbishment program" means a program, offered by a CMRS provider, manufacturer, or retailer who is not primarily engaged in purchasing personal property of any type from a person who is not a wholesaler, through which used or previously owned wireless communications devices are restored to good working order.

(f) "Trade-in program" means a program offered by a CMRS provider, manufacturer, or retailer who is not primarily engaged in purchasing personal property of any type from a person who is not a wholesaler, pursuant to which used wireless communications devices are accepted from customers in exchange for either (1) a noncash credit usable only for the purchase of goods or services from the CMRS provider, manufacturer, or retailer, or (2) a rebate from a manufacturer on the purchase of one of the manufacturer's wireless communications devices.
(g) "Wireless communications device dealer" or "dealer" means an individual, partnership, limited partnership, limited liability company, corporation, or other entity engaged in the business of buying or selling used wireless communications devices.

(h) "Wireless communications device" has the meaning given in section 169.011, subdivision 94.

(i) "Wireless communications device manufacturer" or "manufacturer" means an individual, partnership, limited partnership, limited liability company, corporation, or other entity engaged in the business of manufacturing wireless communications devices.

Subd. 2. **Purchase or acquisition record required.** (a) Every wireless communications device dealer, including an agent, employee, or representative of the dealer, but not an internet marketplace, shall keep a written record at the time of each purchase or acquisition of a used wireless communications device for resale. The record must include the following and may be kept in electronic form:

1. an accurate account or description of the wireless communications device purchased or acquired;
2. the date, time, and place or the online platform the wireless communications device was purchased or acquired;
3. the name and address of the person selling or delivering the wireless communications device;
4. the number of the check or electronic transfer used to purchase the wireless communications device;
5. the number of the seller's driver's license, Minnesota identification card number, or other identification number from an identification document issued by any state, federal, or foreign government if the document includes the person's photograph, full name, birth date, and signature; and
6. a statement signed by the seller, under penalty of perjury as provided in section 609.48, attesting that the wireless communications device is not stolen and is free of any liens or encumbrances and the seller has the right to sell it.

(b) Records required to be maintained under this subdivision shall be retained by the wireless communications device dealer for a period of three years.

(c) The record, as well as the wireless communications device purchased or received, shall at all reasonable times be available for inspection by any law enforcement agency.

(d) No record is required for wireless communications devices purchased from merchants, manufacturers, or wholesale dealers having an established place of business, but a bill of sale or other evidence of open or legitimate purchase of the wireless
communications device shall be obtained and kept by the wireless communications device
dealer, which must be shown upon demand to any law enforcement agency.

(e) Except as otherwise provided in this section, a wireless communications device
dealer or the dealer's agent, employee, or representative may not disclose personal
information received pursuant to paragraph (a) concerning a customer without the
customer's consent unless the disclosure is made in response to a request from a law
enforcement agency. A wireless communications device dealer must implement
reasonable safeguards to protect the security of the personal information and prevent
unauthorized access to or disclosure of the information. For purposes of this paragraph,
"personal information" is any individually identifiable information gathered in connection
with a record under paragraph (a).

Subd. 3. Records; prohibitions. A wireless communications device dealer,
including an agent, employee, or representative of the dealer, shall not:

(1) make any false entry in the records of transactions involving a used wireless
communications device;

(2) falsify, obliterate, destroy, or remove from the place of business the records,
books, or accounts relating to used wireless communications device transactions;

(3) refuse to allow the appropriate law enforcement agency to inspect records or
any used wireless communications device in the dealer's possession during the ordinary
hours of business or other times acceptable to both parties;

(4) fail to maintain a record of each used wireless communications device transaction
for three years; or

(5) purchase a used wireless communications device from a person under the age of
18 years.

Subd. 4. Payment for used wireless communications devices. A wireless
communications device dealer shall pay for purchases of all used wireless communications
devices by check mailed to a specific address or by electronic transfer.

Subd. 5. Investigative holds; confiscation of property. (a) Whenever a law
enforcement official from any agency has probable cause to believe that a wireless
communications device in the possession of a wireless communications device dealer is
stolen or is evidence of a crime and notifies the dealer not to sell the item, the dealer shall
not (1) process or sell the item, or (2) remove or allow its removal from the premises.
This investigative hold must be confirmed in writing by the originating agency within 72
hours and will remain in effect for 30 days from the date of initial notification, until
the investigative hold is canceled or renewed, or until a law enforcement notification to
confiscate or directive to release is issued, whichever comes first.
5.1 (b) If a wireless communications device is identified as stolen or as evidence in a criminal case, a law enforcement official may:

5.2 (1) physically confiscate and remove the wireless communications device from the wireless communications device dealer, pursuant to a written notification;

5.3 (2) place the wireless communications device on hold or extend the hold under paragraph (a), and leave the device at the premises; or

5.4 (3) direct its release to a registered owner or owner's agent.

5.5 (c) When an item is confiscated, the law enforcement agency doing so shall provide identification upon request of the wireless communications device dealer, and shall provide the name and telephone number of the confiscating agency and investigator, and the case number related to the confiscation.

5.6 (d) A wireless communications device dealer may request seized property be returned in accordance with section 626.04.

5.7 (e) When an investigative hold or notification to confiscate is no longer necessary, the law enforcement official or designee shall notify the wireless communications device dealer.

5.8 (f) A wireless communications device dealer may sell or otherwise dispose of the wireless communications device if:

5.9 (1) a notification to confiscate is not issued during the investigative hold; or

5.10 (2) a law enforcement official does not physically remove the wireless communications device from the premises within 15 calendar days from issuance of a notification to confiscate.

5.11 (g) If a wireless communications device dealer is required to hold the wireless communications device at the direction of law enforcement for purposes of investigation or prosecution, or if the device is seized by law enforcement, the wireless communications device dealer and any other victim is entitled to seek restitution, including any out-of-pocket expenses for storage and lost profit, in any criminal case that may arise from the investigation against the individual who sold the wireless communications device to the wireless communications device dealer.

Subd. 6. Video security cameras required. (a) Each wireless communications device dealer shall install and maintain at each physical location video surveillance cameras, still digital cameras, or similar devices positioned to record or photograph a frontal view showing a readily identifiable image of the face of each seller of a wireless communications device who enters the physical location.

(b) The video camera or still digital camera must be kept in operating condition and must be shown upon request to a properly identified law enforcement officer for inspection.
The camera must record and display the accurate date and time. The video camera or still
digital camera must be turned on at all times when the physical location is open for business
and at any other time when wireless communications devices are purchased or sold.

(c) Recordings and images required by paragraph (a) shall be retained by the wireless
communications device dealer for a minimum period of 30 days and shall at all reasonable
times be open to the inspection of any properly identified law enforcement officer.

6.7 Subd. 7. **Criminal penalty.** A wireless communications device dealer, or the
agent, employee, or representative of the wireless communications device dealer, who
intentionally violates a provision of this section is guilty of a misdemeanor.

6.10 Subd. 8. **Application.** (a) This section does not apply with respect to a wireless
communications device returned to the store where it was originally purchased pursuant
to the return policies of the wireless communications device dealer, CMRS provider,
manufacturer, or retailer.

(b) This section does not apply with respect to wireless communications devices
acquired by a: (1) CMRS provider as part of a trade-in or a repair and refurbishment
program; (2) manufacturer as part of a trade-in program; or (3) retailer whose trade-in
program: (i) reports records to the Minnesota Automated Property System in an
interchange file specification format maintained by the system; (ii) reports to other national
or regional transaction reporting database available to law enforcement; or (iii) reports
as required by local ordinance.

(c) This section does not apply to wireless communications device dealers regulated
under chapter 325J.

6.23 **EFFECTIVE DATE.** This section is effective July 1, 2014.
SB-962 Smartphones. (2013-2014)

Senate Bill No. 962

CHAPTER 275

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

[ Approved by Governor August 25, 2014. Filed with Secretary of State August 25, 2014. ]

LEGISLATIVE COUNSEL’S DIGEST

SB 962, Leno. Smartphones.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any smartphone, as defined, that is manufactured on or after July 1, 2015, and sold in California after that date, include a technological solution at the time of sale, which may consist of software, hardware, or both software and hardware, that, once initiated and successfully communicated to the smartphone, can render inoperable the essential features, as defined, of the smartphone to an unauthorized user when the smartphone is not in the possession of an authorized user. The bill would require that the technological solution, when enabled, be able to withstand a hard reset, as defined, and prevent reactivation of the smartphone on a wireless network except by an authorized user. The bill would make these requirements inapplicable when the smartphone is resold in California on the secondhand market or is consigned and held as collateral on a loan. The bill would additionally except from these requirements a smartphone model that was first introduced prior to January 1, 2015, that cannot reasonably be reengineered to support the manufacturer’s or operating system provider’s technological solution, including if the hardware or software cannot support a retroactive update. The bill would authorize an authorized user to affirmatively elect to disable or opt-out of the technological solution at any time. The bill would make the knowing retail sale in violation of the bill’s requirements subject to a civil penalty of not less than $500, nor more than $2,500, for each violation. The bill would limit an enforcement action to collect the civil penalty to being brought by the Attorney General, a district attorney, or city attorney, and would prohibit any private right of action to collect the civil penalty.

The bill would prohibit any city, county, or city and county from imposing requirements on manufacturers, operating system providers, wireless carriers, or retailers relating to technological solutions for smartphones.

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

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

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

(a) According to the Federal Communications Commission, smartphone thefts now account for 30 to 40 percent of robberies in many major cities across the country. Many of these robberies often turn violent with some resulting in the loss of life.

(b) Consumer Reports projects that 1.6 million Americans were victimized for their smartphones in 2012.
According to the New York Times, 113 smartphones are lost or stolen every minute in the United States.

According to the Office of the District Attorney for the City and County of San Francisco, in 2012, more than 50 percent of all robberies in San Francisco involved the theft of a mobile communications device.

Thefts of smartphones in Los Angeles increased 12 percent in 2012, according to the Los Angeles Police Department.

According to press reports, the international trafficking of stolen smartphones by organized criminal organizations has grown exponentially in recent years because of how profitable the trade has become.

In order to be effective, antitheft technological solutions need to be ubiquitous, as thieves cannot distinguish between those smartphones that have the solutions enabled and those that do not. As a result, the technological solution should be able to withstand a hard reset or operating system downgrade, come preequipped, and the default setting of the solution shall be to prompt the consumer to enable the solution during the initial device setup. Consumers should have the option to affirmatively elect to disable this protection, but it must be clear to the consumer that the function the consumer is electing to disable is intended to prevent the unauthorized use of the device.

SEC. 2. Section 22761 is added to the Business and Professions Code, to read:

22761. (a) For purposes of this section, the following terms have the following meanings:

(1) (A) “Smartphone” means a cellular radio telephone or other mobile voice communications handset device that includes all of the following features:

(i) Utilizes a mobile operating system.

(ii) Possesses the capability to utilize mobile software applications, access and browse the Internet, utilize text messaging, utilize digital voice service, and send and receive email.

(iii) Has wireless network connectivity.

(iv) Is capable of operating on a long-term evolution network or successor wireless data network communication standards.

(B) A “smartphone” does not include a radio cellular telephone commonly referred to as a “feature” or “messaging” telephone, a laptop, a tablet device, or a device that only has electronic reading capability.

(2) “Essential features” of a smartphone are the ability to use the smartphone for voice communications, text messaging, and the ability to browse the Internet, including the ability to access and use mobile software applications. “Essential features” do not include any functionality needed for the operation of the technological solution, nor does it include the ability of the smartphone to access emergency services by a voice call or text to the numerals “911,” the ability of a smartphone to receive wireless emergency alerts and warnings, or the ability to call an emergency number predesignated by the owner.

(3) “Hard reset” means the restoration of a smartphone to the state it was in when it left the factory through processes commonly termed a factory reset or master reset.

(4) “Sold in California,” or any variation thereof, means that the smartphone is sold at retail from a location within the state, or the smartphone is sold and shipped to an end-use consumer at an address within the state. “Sold in California” does not include a smartphone that is resold in the state on the secondhand market or that is consigned and held as collateral on a loan.

(b) (1) Except as provided in paragraph (3), any smartphone that is manufactured on or after July 1, 2015, and sold in California after that date, shall include a technological solution at the time of sale, to be provided by the manufacturer or operating system provider, that, once initiated and successfully communicated to the smartphone, can render the essential features of the smartphone inoperable to an unauthorized user when the smartphone is not in the possession of an authorized user. The smartphone shall, during the initial device setup process, prompt an authorized user to enable the technological solution. The technological solution shall be reversible, so that if an authorized user obtains possession of the smartphone after the essential features of the smartphone have been rendered inoperable, the operation of those essential features can be restored by an authorized user. A technological solution may consist of software, hardware, or a combination of both...
software and hardware, and when enabled, shall be able to withstand a hard reset or operating system downgrade and shall prevent reactivation of the smartphone on a wireless network except by an authorized user.

(2) An authorized user of a smartphone may affirmatively elect to disable or opt-out of enabling the technological solution at any time. However, the physical acts necessary to disable or opt-out of enabling the technological solution may only be performed by the authorized user or a person specifically selected by the authorized user to disable or opt-out of enabling the technological solution.

(3) Any smartphone model that was first introduced prior to January 1, 2015, that cannot reasonably be reengineered to support the manufacturer’s or operating system provider’s technological solution, including if the hardware or software cannot support a retroactive update, is not subject to the requirements of this section.

(c) The knowing retail sale of a smartphone in California in violation of subdivision (b) may be subject to a civil penalty of not less than five hundred dollars ($500), nor more than two thousand five hundred dollars ($2,500), per smartphone sold in California in violation of this section. A suit to enforce this subdivision may only be brought by the Attorney General, a district attorney, or a city attorney. A failure of the technological solution due to hacking or other third-party circumvention may be considered a violation for purposes of this subdivision, only if, at the time of sale, the seller had received notification from the manufacturer or operating system provider that the vulnerability cannot be remedied by a software patch or other solution. There is no private right of action to enforce this subdivision.

(d) The retail sale in California of a smartphone shall not result in any civil liability to the seller and its employees and agents from that retail sale alone if the liability results from or is caused by failure of a technological solution required pursuant to this section, including any hacking or other third-party circumvention of the technological solution, unless at the time of sale the seller had received notification from the manufacturer or operating system provider that the vulnerability cannot be remedied by a software patch or other solution. Nothing in this subdivision precludes a suit for civil damages on any other basis outside of the retail sale transaction, including, but not limited to, a claim of false advertising.

(e) Any request by a government agency to interrupt communications service utilizing a technological solution required by this section is subject to Section 7908 of the Public Utilities Code.

(f) Nothing in this section prohibits a network operator, device manufacturer, or operating system provider from offering a technological solution or other service in addition to the technological solution required to be provided by the device manufacturer or operating system provider pursuant subdivision (b).

(g) Nothing in this section requires a technological solution that is incompatible with, or renders it impossible to comply with, obligations under state and federal law and regulation related to any of the following:

(1) The provision of emergency services through the 911 system, including text to 911, bounce-back messages, and location accuracy requirements.

(2) Participation in the wireless emergency alert system.

(3) Participation in state and local emergency alert and public safety warning systems.

(h) The Legislature finds and declares that the enactment of a uniform policy to deter thefts of smartphones and to protect the privacy of smartphone users if their smartphones are involuntarily acquired by others is a matter of statewide concern and no city, county, or city and county shall impose requirements on manufacturers, operating system providers, wireless carriers, or retailers relating to technological solutions for smartphones.
**Fiscal Impact Summary**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State Revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Fund - Reduction</td>
<td>$(4,243,187)</td>
<td>$(2,711,931)</td>
</tr>
<tr>
<td>Cash Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana Cash Fund - Sales Tax Revenue</td>
<td>8,379,859</td>
<td>10,984,489</td>
</tr>
<tr>
<td>Marijuana Cash Fund - Application &amp; Licensing Revenue</td>
<td>2,250,000</td>
<td>2,750,000</td>
</tr>
<tr>
<td>CBI Identification Unit Fund</td>
<td>158,751</td>
<td>147,849</td>
</tr>
<tr>
<td>Marijuana Cash Fund - Base Revenue*</td>
<td>2,000,000</td>
<td>1,700,000</td>
</tr>
<tr>
<td><strong>State Transfers or Diversions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer from the Marijuana Cash Fund to the General Fund</td>
<td>$(2,000,000)</td>
<td>$(2,000,000)</td>
</tr>
<tr>
<td><strong>State Expenditures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana Cash Fund - New Expenditures</td>
<td>1,052,026</td>
<td>781,669</td>
</tr>
<tr>
<td>CBI Identification Unit Fund</td>
<td>155,760</td>
<td>141,193</td>
</tr>
<tr>
<td>Marijuana Cash Fund - Base Expenditures*</td>
<td>5,653,838</td>
<td>5,653,838</td>
</tr>
<tr>
<td><strong>FTE Position Change</strong></td>
<td>3.9 FTE</td>
<td>4.0 FTE</td>
</tr>
<tr>
<td><strong>FTE Existing Appropriation</strong></td>
<td>55.2 FTE</td>
<td>55.2 FTE</td>
</tr>
</tbody>
</table>

**Effective Date:** The bill was signed by the Governor and became law on May 28, 2013. Section 3 was contingent on the passage of SB13-283 which was signed into law on May 28, 2013.

**Summary of Legislation**

Amendment 64 was approved by voters in November 2012 and enacted as Article XVIII, Section 16 of the Colorado Constitution. It allows Colorado residents 21 years or older to lawfully use and possess up to one ounce of marijuana and requires that a regulatory structure be established. It also allows the cultivation, processing, and retail sale of marijuana in Colorado on and after January 1, 2014.
This bill implements major provisions of Amendment 64 by creating the Colorado Retail Marijuana Code. It renames the Medical Marijuana Enforcement Division (MMED) in the Department of Revenue (DOR) as the Marijuana Enforcement Division (MED) and gives the MED the authority to regulate both medical and retail marijuana. It creates a regulatory system for retail marijuana under which existing medical marijuana businesses have the option to convert to retail businesses or to operate both medical and retail businesses. Colorado residents may purchase up to 1 ounce of marijuana in a single transaction as allowed by Amendment 64 but this bill limits nonresidents to purchases of no more than 1/4 of an ounce in a single transaction.

The bill includes a severability clause that allows the bill to be implemented even if certain provisions are found to be unconstitutional as long as those provisions are not essential to fulfilling the legislative intent of the bill. The Colorado Retail Marijuana Code is scheduled to repeal July 1, 2016, after a sunset review.

**State licensing.** As required by Amendment 64, this bill requires that the DOR adopt rules regarding retail marijuana by July 1, 2013, and begin taking license applications no later than October 1, 2013. The MED must act on a license application between 45 and 90 days after receipt of an application. Until September 30, 2014, only medical marijuana businesses in good standing may apply for a retail license. Beginning January 1, 2014, other interested persons may submit a notice of intent to apply for licensure. The MED will create the notice of intent form and may collect a filing fee to be deducted from the licensing fee. The MED will begin accepting applications on July 1, 2014, and give preference to those applicants who submitted a notice of intent.

New license types are created for retail marijuana stores, products manufacturers, cultivation facilities, and testing facilities. All owners, officers, managers, and employees of a retail marijuana business must meet certain requirements, including Colorado residency, and pass a fingerprint-based criminal history check. The bill includes limitations for licensing of individuals with certain felony convictions. Law enforcement personnel are prohibited from being licensed by the MED as are locations currently licensed as retail food or wholesale food businesses. A licensed retail marijuana store is prohibited from selling retail marijuana or retail marijuana products over the Internet or to a person not physically present in the retail marijuana store's licensed premises. Licensed retail marijuana testing facilities are prohibited from having an interest in any other type of medical or retail marijuana business. All licensed retail marijuana businesses must procure a $5,000 surety bond as a guarantee that the business will pay its sales and excise taxes.

Testing of retail marijuana by licensed laboratories is required to verify potency and to ensure that products sold for human consumption do not contain harmful contaminants. The bill gives the DOR rulemaking authority over a variety of issues including licensing, fees, security, labeling, health and safety standards, advertising, enforcement, penalties, inspection procedures, and audits. DOR may limit the number of licenses that it issues as well as limit the amount of production permitted by a retail marijuana cultivation licensee. Any limits on licenses and production may be changed by DOR in the future.

Retail marijuana cannot contain nicotine or alcohol and retail stores must put each item sold in a sealed, opaque container. Retail stores may not sell any products that do not contain marijuana such as soda, candies, baked goods, and cigarettes.
**Vertical integration.** Until September 30, 2014, the bill requires a retail marijuana store to only sell marijuana grown in its own retail marijuana cultivation facility with some exceptions. Beginning October 1, 2014, a licensed retail marijuana store or products manufacturer may either grow its marijuana at its own retail marijuana cultivation facility or purchase it from a facility with which it does not share common ownership.

**Tracking and reporting.** The MED is required to develop and maintain a tracking system to track retail marijuana from the immature plant stage until the marijuana is sold to a customer at a retail store. Beginning April 1, 2014, and annually thereafter, the MED is required to report to the House and Senate Finance Committees on licensing activities as well as an overview of the retail marijuana market that includes actual and anticipated market supply and demand.

Retail marijuana stores must track all retail marijuana and marijuana product sales from when the items are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the consumer. No transfers of retail marijuana from cultivation or production facilities can be made without proof that the excise tax has been paid on the product.

**Testing and certification standards.** The Department of Public Health and Environment (CDPHE) is required to provide the MED with standards for licensing the laboratories that will be responsible for the testing and certification of marijuana.

**Local licensing.** Unlike the state and local licensing requirements for medical marijuana businesses, local jurisdictions are not required to set up a licensing program for retail marijuana businesses. The MED will forward all applications for original or renewal licenses to the applicable local jurisdiction to determine whether the application complies with local restrictions on the time, place, manner, and number of retail marijuana businesses allowed. The local jurisdiction notifies the MED if the application is compliant. Public hearings may be held for all new license applications. Local jurisdictions are also permitted to prohibit such businesses entirely. If a local jurisdiction does choose to license retail marijuana businesses, new businesses will not be permitted to operate until both the state and local licenses are issued. If the local license is not issued within 1 year of the conditional state license being issued, the conditional state license expires; if the local application is denied, the conditional state license is revoked. Local jurisdictions are permitted to charge operational fees for inspection, administration, and enforcement of retail marijuana businesses.

**Funding sources for marijuana regulation.** House Bill 13-1317 requires that all sales taxes from medical and retail marijuana sales, plus application and licensing fees from marijuana businesses, be used to fund the MED in the DOR. This includes the existing 2.9 percent sales taxes that would otherwise be credited to the General Fund. The application fee for existing medical marijuana businesses that want to apply for a retail marijuana licence is set at $500. All other applicants are required to pay a $5,000 application fee. The MED must remit 50 percent of any application fee to the local jurisdiction where the business will be located within 7 days of receipt.

The bill appropriates the balance of the Medical Marijuana License Cash Fund as of July 1, 2013, to the MED and allows the MED to receive moneys from the General Fund if revenues from other sources are insufficient. If the MED receives a General Fund appropriation, the MED
will repay that amount when it becomes self sufficient and generates excess revenue. Beginning September 30, 2014, and annually thereafter, the DOR must report to the Joint Budget Committee and the House and Senate Finance Committees detailing the amount of state revenue generated by medical and retail marijuana, including excise taxes, sales taxes, application and license fees, and any other fees. The report must also discuss the progress in establishing the regulatory environment for marijuana in Colorado.

**Unlawful acts.** The bill identifies a number of unlawful acts including consuming marijuana in a licensed retail marijuana business, buying or selling marijuana outside of the regulated system, selling to a person under 21, distributing marijuana using a mobile distribution center, and failing to pay the lawful excise tax. A person who commits any of these acts commits a Class 2 misdemeanor. In addition, state and local agencies are not required to care for any retail marijuana or retail marijuana product belonging to or seized from a licensed business.

**Background**

The regulatory program for medical marijuana is currently appropriated nearly $6 million annually with 55.2 FTE, but only collects about $1.7 million annually in revenue. The current fund balance is approximately $3.5 million. Due to this inadequate revenue stream, only 14 positions are currently filled and the MMED has been operating at significantly less than its appropriated amount. Because this bill builds the new enforcement system with the existing system as its base, revenue increases have been calculated to address both new expenditures for implementing the bill and the revenue shortfall of the existing program.

<table>
<thead>
<tr>
<th>Table 1. Estimated Marijuana Sales by Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Marijuana Sales</strong></td>
</tr>
<tr>
<td>Medical Marijuana</td>
</tr>
<tr>
<td>Retail Marijuana</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

*Assumes that retail marijuana sales begin January 1, 2014.*

**State Revenue**

This bill is expected to increase state revenue by a total of $6,545,423 in FY 2013-14 and $11,170,407 in FY 2014-15. The revenue sources are described below.

**Sales Tax Revenue.** This bill is expected to increase revenue to the Marijuana Cash Fund by $8,379,859 in FY 2013-14 and $10,984,489 in FY 2014-15. These totals include a net increase in sales taxes on retail marijuana sales, plus a diversion of existing sales taxes from sales of medical marijuana. Based data from the Substance Abuse and Mental Health Association's National Survey on Drug Use and Health, sales of retail marijuana under the bill are expected to increase tax revenue by $4,136,672 in FY 2013-14 and $8,272,558 in FY 2014-15 under the state's existing 2.9 percent sales tax. Table 2 shows the estimated sales tax generated from medical and retail marijuana.
Table 2. Estimated Marijuana Sales Taxes by Fiscal Year

<table>
<thead>
<tr>
<th>Type of Marijuana Sales*</th>
<th>FY 2013-2014</th>
<th>FY 2014-2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Marijuana</td>
<td>$4,243,187</td>
<td>$2,711,931</td>
</tr>
<tr>
<td>Retail Marijuana</td>
<td>4,136,672</td>
<td>8,272,558</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$8,379,859</strong></td>
<td><strong>$10,984,489</strong></td>
</tr>
</tbody>
</table>

*Assumes that retail marijuana sales begin January 1, 2014, and excludes vendor fee for tax processing.

Sales taxes from medical marijuana will be diverted from the General Fund to the Marijuana Cash Fund, so the General Fund will see a decrease in revenue of $4,243,187 in FY 2013-14 and $2,711,931 in FY 2014-15.

**Fee Impact on Individuals, Families, or Business.** Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. This fiscal note illustrates total expected fee revenue in Table 3. The DOR will set specific fees by rule, so actual collections may vary. It is important to note that fees may be raised or lowered to ensure the programs are adequately funded.

Because this bill requires licence applicants to obtain fingerprint-based criminal history record checks, the Department of Public Safety (DPS) is expected to have an increase in revenue to the CBI Identification Unit Fund of $158,751 in FY 2013-14 and $147,849 in FY 2014-15. This is also shown in Table 3.

Table 3. Fee Impact on Marijuana Businesses

<table>
<thead>
<tr>
<th>Type of Fee</th>
<th>FY 2013-2014</th>
<th>FY 2014-2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Fee Revenue - DOR</td>
<td>250,000</td>
<td>250,000</td>
</tr>
<tr>
<td>License Fee Revenue - DOR</td>
<td>2,000,000</td>
<td>2,500,000</td>
</tr>
<tr>
<td>Fingerprint-based Criminal History Record Check - DPS</td>
<td>158,751</td>
<td>147,849</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$2,408,751</strong></td>
<td><strong>$2,897,849</strong></td>
</tr>
</tbody>
</table>

**Fines.** This bill may increase state cash fund revenue credited to the Fines Collection Cash Fund in the Judicial Department. Per Section 18-1.3-501 (1)(a), C.R.S., the fine penalty for a class 2 misdemeanor is $250 to $1,000. Unless otherwise provided by law, the fines are to be deposited into the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, and the timing of payments are established on a per-offender basis, the actual impact cannot be determined.
State Transfers or Diversions

This bill transfers $2,000,000 from the Marijuana Cash Fund to the General Fund on or before June 30 each year. This transfer satisfies a substance abuse funding requirement from the Medical Marijuana Code that, under current law, is paid from the 2.9 percent state sales tax on medical marijuana.

State Expenditures

This bill is expected to increase state expenditures by $1,207,786 and 3.9 FTE in FY 2013-14 and $922,862 and 4.0 FTE in FY 2014-15. Expenditure details are shown in Table 4 and described below.

<table>
<thead>
<tr>
<th>Table 4. Expenditures Under HB 13-1317</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost Components</td>
</tr>
<tr>
<td>Department of Revenue</td>
</tr>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>FTE*</td>
</tr>
<tr>
<td>Operating Expenses and Capital Outlay</td>
</tr>
<tr>
<td>Legal Services</td>
</tr>
<tr>
<td>Computer Programming &amp; Support (OIT)</td>
</tr>
<tr>
<td>Contract Programming &amp; Support</td>
</tr>
<tr>
<td>Contract Marijuana Market Study</td>
</tr>
<tr>
<td><strong>TOTAL - Marijuana Cash Fund</strong></td>
</tr>
<tr>
<td>Department of Public Safety</td>
</tr>
<tr>
<td>Personal Services</td>
</tr>
<tr>
<td>FTE</td>
</tr>
<tr>
<td>Operating Expenses and Capital Outlay</td>
</tr>
<tr>
<td>Fingerprint Equipment and Services</td>
</tr>
<tr>
<td>FBI Background Check (pass through)</td>
</tr>
<tr>
<td><strong>TOTAL - CBI Identification Unit Fund</strong></td>
</tr>
<tr>
<td><strong>TOTAL Costs</strong></td>
</tr>
</tbody>
</table>

*Includes FTE for Department of Law.

Marijuana Enforcement Division, Department of Revenue. The MED is expected to have increased expenditures of $1,052,026 and 2.7 FTE over its currently appropriated $5.98 million and 55.2 FTE in FY 2013-14, and $781,669 and 2.7 FTE over the appropriated amount in FY 2014-15. These costs will be paid from the Marijuana Cash Fund, are shown in Table 4, and described below.
The increased staffing for the MED will support the maintenance of separate financial records for medical and retail marijuana and ensure compliance with procurement codes and fiscal rules. Programming services purchased from vendors and the Office of Information Technology total $586,532 in FY 2013-14 and $311,106 in FY 2014-15 and thereafter. This will cover changes to the GenTax system and the MED inventory tracking and licensing systems to include retail marijuana. It will also allow the MED to establish connectivity to 3 new satellite offices. Leased space expenditures for expanding the Denver office are shown below in the Expenditures Not Included section and will be centrally appropriated.

Adding the authority to regulate retail marijuana to the DOR is expected to require additional legal services support for developing rules, enforcing disciplinary actions, resolving appeals of negative license actions, and participating in the sunset review. Provided by the Department of Law, legal services costs are estimated to be $70,684 in FY 2013-14 for 915 hours at a rate of $77.25 per hour and 1,145 hours in FY 2014-15 at a cost of $88,451. The Department of Law requires an additional 0.5 FTE in FY 2013-14 and 0.6 FTE in FY 2014-15 and thereafter.

**Colorado Bureau of Investigation, Department of Public Safety.** The CBI will have additional expenditures of $155,760 and 0.7 FTE in FY 2013-14 and $141,193 and 0.7 FTE in FY 2014-15 and thereafter from the CBI Identification Unit Fund. These costs are shown in Table 4. The CBI will increase staff to address an increase in the number of fingerprint-based criminal history record checks that will be required as retail marijuana license applications are made. This increase in checks is estimated to be approximately 4,000 per year. The increased costs include training and specialized equipment used by fingerprint examiners, as well as funds transferred to the FBI for the federal background check.

**Colorado Department of Public Health and Environment.** CDPHE will develop and provide to the DOR the standards for licensing the laboratories that will test marijuana. The fiscal note assumes that the CDPHE can accomplish this task within existing appropriations. In an earlier version of the bill, CDPHE was required to both develop the standards and regulate the laboratories and was appropriated $87,615 and 1.0 FTE. The appropriation remained in the bill but is no longer required.

**Judicial Branch.** Because this bill creates a new Class 2 misdemeanor for illegal acts related to retail marijuana, the Office of the State Public Defender will have an increase in clients and the Probation Division will have an increase in caseload. Trial courts may be required to conduct judicial reviews of MED decisions. Workload increases in the Judicial Branch are expected to be addressed within existing appropriations. If that is not the case, the fiscal note assumes that the Judicial Branch will request additional appropriations during the annual budget process.

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 5.
Table 5. Expenditures Not Included Under HB13-1317*

<table>
<thead>
<tr>
<th>Cost Components</th>
<th>FY 2013-14</th>
<th>FY 2014-15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Insurance (Health, Life, Dental, and Short-term Disability)</td>
<td>$22,802</td>
<td>$22,802</td>
</tr>
<tr>
<td>Supplemental Employee Retirement Payments</td>
<td>10,063</td>
<td>11,384</td>
</tr>
<tr>
<td>Indirect Costs</td>
<td>3,439</td>
<td>3,439</td>
</tr>
<tr>
<td>Leased Space</td>
<td>175,000</td>
<td>175,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$211,304</strong></td>
<td><strong>$212,625</strong></td>
</tr>
</tbody>
</table>

*More information is available at: [http://colorado.gov/fiscalnotes](http://colorado.gov/fiscalnotes)

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. House Bill 13-1317 adds 22 new crimes based primarily on the new regulatory structure for retail marijuana. The fiscal note assumes that the majority of retail licensees and their employees will comply with the bill in order to maintain their licenses and avoid penalties or will be subjected to administrative rather than criminal penalties. As such, the increase in cases resulting from these new crimes is expected to be minimal.

Local Government Impact

This bill is expected to increase both revenue and expenditures to local governments as described below.

*Licensing.* Local governments that allow the licensing of retail marijuana facilities, regardless of whether they require local licensing, will share in the application fees submitted by applicants and will have increased revenue from local sales tax on retail marijuana sales. For local governments that require local licensing, they will be able to collect operational fees from licensed marijuana businesses to fund their licensing systems. Revenue increases are dependent on how local governments choose to address the implementation of Amendment 64 and this bill.

*Misdemeanor offenses.* By adding 22 new crimes, this bill may increase the number of individuals incarcerated in county jails. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of $250 to $1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from $45 to $50 per day in smaller rural jails to $62 to $65 per day for larger Denver-metro area jails.
State Appropriations

For FY 2013-14, the following appropriations are included in the bill:

- $1,052,026 and 2.7 FTE to the Department of Revenue from the Marijuana Cash Fund, of which $70,684 is reappropriated to the Department of Law with an allocation of 0.5 FTE, and $73,700 is reappropriated to the Office of Information Technology;
- $155,760 and 0.7 FTE to the Department of Public Safety from the CBI Identification Unit Fund; and
- $87,615 and 1.0 FTE to the Department of Public Health and Environment from the Laboratory Cash Fund. Due to an amendment, the appropriation to the Department of Public Health and Environment is no longer required.

Departments Contacted

Agriculture District Attorneys
Counties Municipalities
Corrections Education
Higher Education Governor
Human Services Judicial Branch
Law Revenue
Public Safety Secretary of State
State Auditor Transportation
Sheriffs Regulatory Agencies
Personnel and Administration Public Health and Environment
HOUSE BILL 13-1318

BY REPRESENTATIVE(S) Singer, Fields, Fischer, Ginal, Hullinghorst, Kagan, Labuda, Pabon, Rosenthal, Tyler, Court, Melton, Ryden, Schafer; also SENATOR(S) Jahn, Crowder, Giron, Guzman, Heath, Hodge, Johnston, Jones, Kerr, Nicholson, Schwartz, Steadman, Todd, Ulibarri, Morse.

CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS FOR THE PURPOSE OF IMPLEMENTING CERTAIN STATE TAXES ON RETAIL MARIJUANA LEGALIZED BY SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, add article 28.8 to title 39 as follows:

ARTICLE 28.8
Taxes on Marijuana and Marijuana Products

PART 1
DEFINITIONS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
39-28.8-101. Definitions. Unless the context otherwise requires, any terms not defined in this article shall have the meanings set forth in article 26 of this title. As used in this article, unless the context otherwise requires:

(1) "Average market rate" means the average price, as determined by the department on a biannual basis in six-month intervals, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities. An "average market rate" may be based on the purchaser or transfereree of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred.

(2) "Consumer" means a person twenty-one years of age or older who purchases retail marijuana or retail marijuana products for personal use by persons twenty-one years of age or older but not for resale to others.

(3) "Department" means the Department of Revenue.

(4) "Industrial hemp" means the plant of the genus Cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

(5) "Local government" means a county, municipality, or city and county.

(6) "Medical marijuana center" means an entity licensed by the department to sell marijuana and marijuana products pursuant to section 14 of article XVIII of the state constitution and the "Colorado Medical Marijuana Code", article 43.3 of title 12, C.R.S.

(7) "Retail marijuana" means all parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the
PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIJUANA CONCENTRATE. "RETAIL MARIJUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT THAT IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

(8) "RETAIL MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE RETAIL MARIJUANA AND SELL RETAIL MARIJUANA TO RETAIL MARIJUANA STORES, TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER RETAIL MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(9) "RETAIL MARIJUANA PRODUCTS" MEANS CONCENTRATED RETAIL MARIJUANA PRODUCTS AND RETAIL MARIJUANA PRODUCTS THAT ARE COMPRISED OF RETAIL MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

(10) "RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE RETAIL MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE RETAIL MARIJUANA PRODUCTS; AND SELL RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS TO OTHER RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

(11) "RETAIL MARIJUANA SALES TAX" MEANS THE SALES TAX IMPOSED ON RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS PURSUANT TO PART 2 OF THIS ARTICLE.

(12) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED BY THE DEPARTMENT TO PURCHASE RETAIL MARIJUANA FROM RETAIL MARIJUANA CULTIVATION FACILITIES AND RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS FROM RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS TO CONSUMERS.

(13) "SALE" MEANS ANY EXCHANGE OR BARTER, IN ANY MANNER OR BY ANY MEANS WHATSOEVER, FOR CONSIDERATION.

PAGE 3-HOUSE BILL 13-1318
(14) "TRANSFER" MEANS TO GRANT, CONVEY, HAND OVER, ASSIGN, SELL, EXCHANGE, OR BARTER, IN ANY MANNER OR BY ANY MEANS, WITH OR WITHOUT CONSIDERATION.

(15) "UNPROCESSED RETAIL MARIJUANA" MEANS MARIJUANA AT THE TIME OF THE FIRST TRANSFER OR SALE FROM A RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY OR A RETAIL MARIJUANA STORE.

PART 2
RETAIL MARIJUANA SALES TAX

39-28.8-201. Retail marijuana sales tax - administration - enforcement. The tax imposed pursuant to this Part 2 shall be administered and enforced in accordance with the provisions of Article 21 of this title and Part 1 of Article 26 of this title, including, without limitation, any penalties for failure to make any return or to collect or pay any tax; except that, in the event of a conflict between the provisions of this Part 2 and the provisions of Article 21 of this title or Part 1 of Article 26 of this title, the provisions of this Part 2 shall control.

39-28.8-202. Retail marijuana sales tax. (1) (a) In addition to the tax imposed pursuant to Part 1 of Article 26 of this title and the sales tax imposed by a local government pursuant to Title 29, 30, 31, or 32, beginning January 1, 2014, there is imposed upon all sales of retail marijuana and retail marijuana products by a retailer a tax at the rate of ten percent of the amount of the sale, to be computed in accordance with schedules or forms prescribed by the executive director of the department; except that a retail marijuana store is not allowed to retain any portion of the retail marijuana sales tax collected pursuant to this Part 2 to cover the expenses of collecting and remitting the tax and except that the department of revenue may require a retailer to make returns and remit the tax described in this Part 2 by electronic means.

(b) The maximum tax rate that may be imposed pursuant to this section is fifteen percent. At any time on or after January 1, 2014, the general assembly may, by a bill enacted by the general assembly and that becomes law:
(I) Establish a tax rate to be imposed pursuant to this subsection (1) that is lower than fifteen percent of the sale of retail marijuana or retail marijuana products; or

(II) After establishing a tax rate that is lower than fifteen percent pursuant to subparagraph (I) of this paragraph (b), increase the tax rate to be imposed pursuant to this subsection (1); except that, in no event shall the General Assembly increase the tax rate above fifteen percent of the sale of retail marijuana or retail marijuana products. Notwithstanding any other provision of law, an increase in the tax rate pursuant to this subparagraph (II) shall not require voter approval subsequent to the voter approval required pursuant part 4 of this article.

(2) Nothing in this section shall be construed to impose a tax on the sale of marijuana or marijuana products to any person by a medical marijuana center.

(3) The department may require retail marijuana stores to file tax returns and remit payments due pursuant to this part 2 electronically. The department shall promulgate rules governing electronic payment and filing.

39-28.8-203. Disposition of collections. (1) The proceeds of all moneys collected from the retail marijuana sales tax shall be credited to the old age pension fund created in section 1 of article XXIV of the state constitution in accordance with paragraphs (a) and (f) of section 2 of article XXIV of the state constitution. For each fiscal year in which a tax is collected pursuant to this part 2, an amount shall be distributed from the general fund as follows:

(a) (I) An amount equal to fifteen percent of the gross retail marijuana sales tax revenues collected by the department shall be apportioned to local governments. The city or town share shall be apportioned according to the percentage that retail marijuana sales tax revenues collected by the department within the boundaries of the city or town bears to the total retail marijuana sales tax revenues collected by the department. The county share shall be apportioned according to the percentage
THAT RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE
DEPARTMENT IN THE UNINCORPORATED AREA OF THE COUNTY BEARS TO
TOTAL RETAIL MARIJUANA SALES TAX REVENUES COLLECTED BY THE
DEPARTMENT.

(II) THE DEPARTMENT OF REVENUE SHALL CERTIFY TO THE STATE
TREASURER, AT LEAST ANNUALLY, THE PERCENTAGE FOR APPORTIONMENT
TO EACH LOCAL GOVERNMENT, AND THE PERCENTAGE FOR APPORTIONMENT
SO CERTIFIED SHALL BE APPLIED BY SAID DEPARTMENT IN ALL DISTRIBUTIONS
TO LOCAL GOVERNMENTS UNTIL CHANGED BY CERTIFICATION TO THE STATE
TREASURER.

(III) DISTRIBUTION TO EACH LOCAL GOVERNMENT PURSUANT TO THIS
PARAGRAPH (a) SHALL BE MADE MONTHLY, NO LATER THAN THE FIFTEENTH
DAY OF THE SECOND SUCCESSIVE MONTH AFTER THE MONTH FOR WHICH
RETAIL MARIJUANA SALES TAX COLLECTIONS ARE MADE.

(IV) EACH LOCAL GOVERNMENT, UPON REQUEST AND DURING
ESTABLISHED BUSINESS HOURS, SHALL BE ENTITLED TO VERIFY WITH THE
EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S
DESIGNEE THE PROCEEDS TO WHICH THE LOCAL GOVERNMENT IS ENTITLED
PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (a).

(V) MONEYS APPORTIONED PURSUANT TO THIS PARAGRAPH (a)
SHALL BE INCLUDED FOR INFORMATIONAL PURPOSES IN THE GENERAL
APPROPRIATION BILL OR IN SUPPLEMENTAL APPROPRIATION BILLS FOR THE
PURPOSE OF COMPLYING WITH THE LIMITATION ON STATE FISCAL YEAR
SPENDING IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION AND SECTION 24-77-103, C.R.S.

(VI) NOTHING IN THIS PARAGRAPH (a) SHALL BE CONSTRUED TO
PREVENT A LOCAL GOVERNMENT FROM IMPOSING, LEVYING, AND
COLLECTING ANY FEE OR ANY TAX UPON THE SALE OF RETAIL MARIJUANA OR
RETAIL MARIJUANA PRODUCTS OR UPON THE OCCUPATION OR PRIVILEGE OF
SELLING RETAIL MARIJUANA PRODUCTS, NOR SHALL THE PROVISIONS OF THIS
PARAGRAPH (a) BE INTERPRETED TO AFFECT ANY EXISTING AUTHORITY OF A
LOCAL GOVERNMENT TO IMPOSE A TAX ON RETAIL MARIJUANA OR RETAIL
MARIJUANA PRODUCTS TO BE USED FOR LOCAL AND MUNICIPAL PURPOSES;
HOWEVER, ANY LOCAL TAX IMPOSED AT OTHER THAN THE LOCAL
JURISDICTION'S GENERAL SALES TAX RATE SHALL NOT BE COLLECTED,
ADMINISTERED, AND ENFORCED BY THE DEPARTMENT OF REVENUE PURSUANT TO SECTION 29-2-106, C.R.S., BUT SHALL INSTEAD BE COLLECTED, ADMINISTERED, AND ENFORCED BY THE LOCAL GOVERNMENT ITSELF.

(b) FOLLOWING APPORTIONMENT OF LOCAL GOVERNMENT SHARES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), AN AMOUNT EQUAL TO ALL REMAINING REVENUES COLLECTED SHALL BE TRANSFERRED FROM THE GENERAL FUND TO THE MARIJUANA CASH FUND CREATED IN SECTION 12-43.3-501, C.R.S., TO BE USED FOR THE ENFORCEMENT OF REGULATIONS ON THE RETAIL MARIJUANA INDUSTRY AND FOR THE OTHER PURPOSES OF THE FUND AS DETERMINED BY THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY SHALL MAKE APPROPRIATIONS FROM THE MARIJUANA CASH FUND FOR THE EXPENSES OF THE ADMINISTRATION OF THIS SECTION.

(2) ON OR BEFORE APRIL 1, 2014, AND ON OR BEFORE APRIL 1 EACH YEAR THEREAFTER THROUGH APRIL 1, 2016, THE FINANCE COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, SHALL REVIEW THE PROVISIONS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION TO DETERMINE WHETHER THE PERCENTAGE OF THE TAX IMPOSED PURSUANT TO THIS PART 2 THAT IS APPORTIONED TO LOCAL GOVERNMENTS IS APPROPRIATE. THE FINANCE COMMITTEES MAY REQUEST ASSISTANCE AND INPUT FROM THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF LOCAL AFFAIRS IN MAKING THIS DETERMINATION.

39-28.8-204. Revenue and spending limitations. NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES GENERATED BY THE RETAIL MARIJUANA SALES TAX IMPOSED PURSUANT TO THIS PART 2 AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2013, MAY BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES AND SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS ARTICLE.

PART 3
RETAIL MARIJUANA EXCISE TAX

39-28.8-301. Retail marijuana excise tax - administration - enforcement. The tax imposed pursuant to this Part 3 shall be administered and enforced in accordance with the provisions of Article 21 of this Title and Part 1 of Article 26 of this Title, including, without limitation, any penalties for failure to make any return or to collect or pay any tax; except that, in the event of a conflict between the provisions of this Part 3 and the provisions of Article 21 of this Title or Part 1 of Article 26 of this Title, the provisions of this Part 3 shall control.

39-28.8-302. Retail marijuana - excise tax levied at first transfer from retail marijuana cultivation facility - tax rate. (1) (a) Beginning January 1, 2014, except as otherwise provided in paragraph (b) of this subsection (1), there is levied and shall be collected, in addition to the sales tax imposed pursuant to Part 1 of Article 26 of this Title and Part 2 of this Article, a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of fifteen percent of the average market rate of the unprocessed retail marijuana. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana by a retail marijuana cultivation facility, a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

(b) The fifteen percent tax rate specified in paragraph (a) of this subsection (1) is the maximum tax rate that may be imposed pursuant to this section. At any time on or after January 1, 2014, the General Assembly may, by a bill enacted by the General Assembly and that becomes law:

(I) Establish a tax rate to be imposed pursuant to this subsection (1) that is lower than fifteen percent of the average market rate of unprocessed retail marijuana at the time that it is sold or transferred; or

(II) After establishing a tax rate that is lower than fifteen
PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS SUBSECTION (1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE TIME THAT IT IS SOLD OR TRANSFERRED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS ARTICLE.

(2) THE TAX IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOT BE LEVIED ON THE SALE OR TRANSFER OF UNPROCESSED MARIJUANA BY A MARIJUANA CULTIVATION FACILITY TO A MEDICAL MARIJUANA CENTER.

39-28.8-303. Books and records to be preserved. (1) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL KEEP AT EACH LICENSED PLACE OF BUSINESS COMPLETE AND ACCURATE ELECTRONIC RECORDS FOR THAT PLACE OF BUSINESS, INCLUDING ITEMIZED INVOICES OF ALL RETAIL MARIJUANA GROWN, HELD, SHIPPED, OR OTHERWISE TRANSPORTED OR SOLD TO RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA STORES, OR OTHER RETAIL MARIJUANA CULTIVATION FACILITIES IN THIS STATE.

(2) THE RECORDS REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL INCLUDE THE NAMES AND ADDRESSES OF RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITIES, RETAIL MARIJUANA STORES, OR OTHER RETAIL MARIJUANA CULTIVATION FACILITIES TO WHICH UNPROCESSED RETAIL MARIJUANA IS SOLD OR TRANSFERRED, THE INVENTORY OF ALL UNPROCESSED RETAIL MARIJUANA ON HAND, AND OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO THE SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA.

(3) A RETAIL MARIJUANA CULTIVATION FACILITY SHALL KEEP ITEMIZED INVOICES OF ALL UNPROCESSED MARIJUANA TRANSFERRED TO RETAIL MARIJUANA STORES OWNED OR CONTROLLED BY THE OWNERS OF THE RETAIL MARIJUANA CULTIVATION FACILITY.

(4) EVERY RETAIL MARIJUANA STORE SHALL KEEP AT ITS PLACE OF BUSINESS COMPLETE AND ACCURATE RECORDS TO SHOW THAT ALL RETAIL
MARIJUANA RECEIVED BY THE RETAIL MARIJUANA STORE WAS PURCHASED FROM A RETAIL MARIJUANA CULTIVATION FACILITY. THE RETAIL MARIJUANA STORE SHALL PROVIDE A COPY OF SUCH RECORDS TO THE DEPARTMENT IF SO REQUESTED. THE DEPARTMENT MAY ESTABLISH THE ACCEPTABLE FORM OF SUCH RECORDS.


(2) EVERY RETAIL MARIJUANA CULTIVATION FACILITY SHALL FILE A RETURN WITH THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE MONTH REPORTED AND WITH THE REPORT SHALL REMIT THE AMOUNT OF TAX DUE.

(3) THE DEPARTMENT MAY REQUIRE RETAIL MARIJUANA CULTIVATION FACILITIES TO FILE TAX RETURNS AND REMIT PAYMENTS DUE PURSUANT TO THIS PART 3 ELECTRONICALLY. THE DEPARTMENT SHALL PROMULGATE RULES GOVERNING ELECTRONIC PAYMENT AND FILING.


39-28.8-305. Distribution of tax collected. (1) ALL MONEYS RECEIVED AND COLLECTED IN PAYMENT OF THE TAX IMPOSED BY THE PROVISIONS OF THIS PART 3 SHALL BE TRANSMITTED TO THE STATE
TREASURER, WHO SHALL DISTRIBUTE THE MONEY ASfollows:

(a) THE FIRST FORTY MILLION DOLLARS RECEIVED AND COLLECTED ANNUALLY SHALL BE TRANSFERRED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR TO ANY SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE; AND

(b) ANY AMOUNT REMAINING AFTER THE TRANSFER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE TRANSFERRED TO THE MARIJUANA CASH FUND CREATED IN SECTION 12-43.3-501, C.R.S.

39-28.8-306. Prohibited acts - penalties. IT IS UNLAWFUL FOR ANY RETAIL MARIJUANA CULTIVATION FACILITY TO SELL OR TRANSFER RETAIL MARIJUANA WITHOUT A LICENSE AS REQUIRED BY LAW, OR TO WILFULLY MAKE ANY FALSE OR FRAUDULENT RETURN OR FALSE STATEMENT ON ANY RETURN, OR TO WILFULLY EVADE THE PAYMENT OF THE TAX, OR ANY PART THEREOF, AS IMPOSED BY THIS PART 3. ANY RETAIL MARIJUANA CULTIVATION FACILITY OR AGENT THEREOF WHO WILFULLY VIOLATES ANY PROVISION OF THIS PART 3 SHALL BE PUNISHED AS PROVIDED BY SECTION 39-21-118.

39-28.8-307. Revenue and spending limitations. NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES GENERATED BY THE RETAIL MARIJUANA EXCISE TAX IMPOSED PURSUANT TO THIS PART 3 AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2013 MAY BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES AND SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO PART 4 OF THIS ARTICLE.


PART 4
SUBMISSION OF BALLOT QUESTIONS REGARDING RETAIL MARIJUANA SALES AND EXCISE TAX

PAGE 11-HOUSE BILL 13-1318
39-28.8-401. Submission of ballot questions regarding imposition of retail marijuana sales and excise tax. (1) The secretary of state shall submit a ballot question to a vote of the registered electors of the state of Colorado at the statewide election to be held in November 2013, for their approval or rejection. For purposes of title 1, C.R.S., the ballot question is a proposition. Each elector voting at said November election shall cast a vote as provided by law either "Yes/For" or "No/Against" on the proposition: "Shall state taxes be increased by $70,000,000 annually in the first full fiscal year and by such amounts as are raised annually thereafter by imposing an excise tax of 15% when unprocessed retail marijuana is first sold or transferred by a retail marijuana cultivation facility with the first $40,000,000 of tax revenues being used for public school capital construction as required by the state constitution, and by imposing an additional sales tax of 10% on the sale of retail marijuana and retail marijuana products with the tax revenues being used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters, with the rate of either or both taxes being allowed to be decreased or increased without further voter approval so long as the rate of either tax does not exceed 15%, and with the resulting tax revenue being allowed to be collected and spent notwithstanding any limitations provided by law?"

(2) The votes cast for the adoption or rejection of the question submitted pursuant to subsection (1) of this section shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

39-28.8-402. Repeal of article. (1) This article is repealed, effective February 1, 2014, if the voters at the November 2013 statewide election do not approve the question described in section 39-28.8-401 and the governor issues an official declaration of the vote thereon.

(2) This section is repealed, effective February 1, 2014, if the voters at the November 2013 statewide election approve the question described in section 39-28.8-401 and the governor issues
AN OFFICIAL DECLARATION OF THE VOTE THEREON.

SECTION 2. In Colorado Revised Statutes, 12-43.3-501, amend (1) as follows:

12-43.3-501. Marijuana cash fund. (1) All moneys collected by the state licensing authority pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the medical marijuana license cash fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue for the direct and indirect costs associated with implementing this article and ARTICLE 28.8 OF TITLE 39, C.R.S. Any moneys in the fund not expended for the purpose of this article or ARTICLE 28.8 OF TITLE 39, C.R.S., may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

SECTION 3. In Colorado Revised Statutes, add 17-18-109 as follows:

17-18-109. Appropriation to comply with section 2-2-703 - HB 13-1318 - repeal. (1) Pursuant to section 2-2-703, C.R.S., the following statutory appropriation, or so much thereof as may be necessary, is made in order to implement House Bill 13-1318, enacted in 2013:

(a) For the fiscal year beginning July 1, 2014, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of twenty thousand eight hundred sixteen dollars ($20,816).

(b) For the fiscal year beginning July 1, 2015, in addition to any other appropriation, there is hereby appropriated to the department, out of any moneys in the general fund not otherwise appropriated, the sum of fourteen thousand nine hundred eighty-seven dollars ($14,987).
SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the marijuana cash fund created in section 12-43.3-501 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for the fiscal year beginning July 1, 2013, the sum of $4,246,090 and 11.5 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

- Executive Director's Office, Personal Services and Operating Expenses: $92,376 and 1.5 FTE
- Executive Director's Office, Vehicle Lease Payments: $9,956
- Taxation Business Group, CITA Annual Maintenance and Support: $3,400,000
- Taxation Business Group, Taxation and Compliance Division: $576,696 and 8.3 FTE
- Taxation Business Group, Taxpayer Services Division: $167,062 and 1.7 FTE

SECTION 5. Effective date. (1) Except as specified in subsection (2) of this section, this act takes effect upon passage.

(2) (a) Sections 3 and 4 of this act take effect only if, at the November 2013 statewide election, a majority of voters approve the ballot question submitted pursuant to section 39-28.8-401, Colorado Revised Statutes, enacted in section 1 of this act.

(b) If the voters at the November 2013 statewide election approve the ballot question described in paragraph (a) of this subsection (2), then sections 3 and 4 of this act take effect on the date of the official declaration of the vote thereon by the governor.

SECTION 6. Safety clause. The general assembly hereby finds,
HOUSE BILL 14-1398

BY REPRESENTATIVE(S) Singer, Becker, Duran, Ginal, Hamner, Hullinghorst, Labuda, Lebsock, McCann, Melton, Moreno, Rosenthal, Williams, Ferrandino, Fields, Fischer, Kagan; also SENATOR(S) Steadman and Balmer, Guzman, Schwartz.

CONCERNING THE PROVISION OF FINANCIAL SERVICES TO LICENSED MARIJUANA BUSINESSES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, add article 33 to title 11 as follows:

ARTICLE 33
Marijuana Financial Services Cooperatives

11-33-101. Short title. This article shall be known and may be cited as the "Marijuana Financial Services Cooperatives Act".

11-33-102. Legislative declaration. (1) The general assembly hereby:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
(a) FINDS THAT:

(I) BECAUSE MARIJUANA IS CURRENTLY ILLEGAL TO GROW, POSSESS, OR SELL UNDER FEDERAL LAW, FINANCIAL INSTITUTIONS ARE RELUCTANT TO PROVIDE FINANCIAL SERVICES TO MARIJUANA BUSINESSES EVEN WHEN THOSE BUSINESSES ARE PROPERLY LICENSED AND FULLY LEGAL UNDER COLORADO LAW; AND

(II) CONSEQUENTLY, MOST COLORADO-LICENSED MARIJUANA BUSINESSES MUST OPERATE ALMOST ENTIRELY ON A CASH-ONLY BASIS;

(b) DECLARES THAT THIS LACK OF ACCESS TO FINANCIAL SERVICES HARMs THE PUBLIC INTEREST BY:

(I) STIMULATING THE MARIJUANA BLACK MARKET'S COMPETITIVE ADVANTAGE BY INCREASING LICENSED MARIJUANA BUSINESSES' COSTS OF DOING BUSINESS;

(II) INCREASING THE CRIME RATE ASSOCIATED WITH LICENSED MARIJUANA BUSINESSES DUE TO THE LARGE AMOUNTS OF CASH THAT MUST BE KEPT ON PREMISES; AND

(III) IMPEDING COLORADO'S ABILITY TO TRACK AND INDEPENDENTLY VERIFY THE ACCOUNTING OF LICENSED MARIJUANA BUSINESSES' REVENUES; AND

(c) DECLARES THAT THE ENACTMENT OF THIS ARTICLE, BY AUTHORIZING THE FORMATION OF MARIJUANA FINANCIAL SERVICES COOPERATIVES, IS NECESSARY FOR THE PROMOTION AND PRESERVATION OF THE PUBLIC WELFARE.

11-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "CANNABIS CREDIT CO-OP" OR "CO-OP" MEANS A MARIJUANA FINANCIAL SERVICES COOPERATIVE.

(2) "COMMISSIONER" MEANS THE STATE COMMISSIONER OF FINANCIAL SERVICES APPOINTED PURSUANT TO SECTION 11-44-102.
(3) "DIVISION" MEANS THE DIVISION OF FINANCIAL SERVICES CREATED IN SECTION 11-44-101.

(4) "LICENSED MARIJUANA BUSINESS" MEANS AN ENTITY LICENSED PURSUANT TO SECTION 12-43.3-402, 12-43.3-403, 12-43.3-404, 12-43.4-402, 12-43.4-403, 12-43.4-404, OR 12-43.4-405, C.R.S.

(5) "MEMBER" MEANS A LICENSED MARIJUANA BUSINESS, INDUSTRIAL HEMP BUSINESS, OR AN ENTITY THAT PROVIDES GOODS OR SERVICES TO A LICENSED MARIJUANA BUSINESS AND THAT PROVIDES DOCUMENTATION TO THE CO-OP OF AN INABILITY TO GET COMPARABLE SERVICES FROM A BANK OR CREDIT UNION, ACTING THROUGH ONE OR MORE OF ITS CURRENT PARTNERS, EXECUTIVE OFFICERS, OR DIRECTORS.

11-33-104. Organization - charter - investigation. (1) A MARIJUANA FINANCIAL SERVICES COOPERATIVE, REFERRED TO IN THIS ARTICLE AS A CANNABIS CREDIT CO-OP, IS A COOPERATIVE ASSOCIATION INCORPORATED PURSUANT TO THIS ARTICLE FOR THE TWOFOLD PURPOSE OF PROVIDING SPECIFIED FINANCIAL SERVICES TO ITS MEMBERS AND CREATING A SOURCE OF CREDIT FOR THEM.

(2) A CO-OP MAY BE ORGANIZED IN THE FOLLOWING MANNER:

(a) (I) Any eight or more Colorado residents may execute, in a number of copies to be specified by the commissioner, articles of incorporation that set forth the terms by which they agree to be bound. The articles must state the name and address of the proposed co-op; the names and addresses of the incorporators; the number of shares subscribed by each incorporator; and the term of existence of the corporation, which may be perpetual.

(II) A CO-OP MAY BE INCORPORATED AND ORGANIZED FOR THE PURPOSE OF PROVIDING FINANCIAL SERVICES TO LICENSED MARIJUANA BUSINESSES IN GOOD STANDING WITH THE EXECUTIVE DIRECTOR OF THE STATE LICENSING AUTHORITY CREATED IN SECTION 12-43.3-201, C.R.S., INDUSTRIAL HEMP BUSINESSES, AND ENTITIES THAT PROVIDE GOODS OR SERVICES TO LICENSED MARIJUANA BUSINESSES AND THAT PROVIDE DOCUMENTATION TO THE CO-OP OF AN INABILITY TO GET COMPARABLE SERVICES FROM A BANK OR CREDIT UNION.
(b) The incorporators must prepare, in a number of copies to be specified by the commissioner, proposed bylaws for the governing of the co-op, consistent with this article, on standard forms approved by the commissioner and must define in the bylaws the proposed eligibility requirements for membership.

(c) The proposed bylaws must set forth:

(I) The classes of shares that the co-op is authorized to issue;

(II) If the shares are to consist of one class only, the par value of each of the shares or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, a statement of the par value of the shares of each such class or that the shares are to be without par value; and

(III) If the shares are to be divided into classes, the bylaws must designate each class and a statement of its preferences, limitations, and relative rights with respect to the shares of each other class.

(3) (a) The incorporators must file an application in such form as may be prescribed by the commissioner together with the articles of incorporation and the bylaws with the commissioner, in a number of copies to be specified by the commissioner, upon the payment of a filing fee, as determined from time to time by the commissioner, to cover the reasonable and necessary expense to the division attributable to the application. Within sixty days after the filing and payment of the fee, the commissioner shall determine whether the application complies with this article and whether the co-op would benefit its members and proposed members, consistent with the purposes of this article, the general character and fitness of the incorporators, and the economic advisability of establishing the proposed co-op. Upon such determination and written evidence of approval by the Federal Reserve System Board of Governors, the commissioner may approve or deny an application without notice and hearing. If federal deposit insurance provided by the Federal Deposit Insurance Corporation or National Credit Union Administration

PAGE 4-HOUSE BILL 14-1398
BECOMES AVAILABLE FOR BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS ORGANIZED TO PROVIDE FINANCIAL SERVICES TO THE LICENSED MARIJUANA INDUSTRY, THE COMMISSIONER MAY DETERMINE THAT THE CONTINUED ISSUANCE OF CHARTERS UNDER THIS ARTICLE IS NO LONGER NECESSARY OR DESIRABLE.

(b) THE COMMISSIONER SHALL MAKE OR CAUSE TO BE MADE AN INVESTIGATION TO DETERMINE WHETHER THE INCORPORATORS AND ORGANIZERS ARE QUALIFIED AND WHETHER THEIR QUALIFICATIONS, EXPERIENCE CONCERNING FEDERAL COMPLIANCE ISSUES, AND FINANCIAL EXPERIENCE ARE CONSISTENT WITH THEIR RESPONSIBILITIES AND DUTIES. THE COMMISSIONER SHALL INVESTIGATE WHETHER AN INCORPORATOR OR ORGANIZER HAS BEEN CONVICTED OF ANY CRIMINAL ACTIVITY. THE COMMISSIONER MAY ESTABLISH BY RULE THE CONTENT OF THE INVESTIGATIONS AND WHAT, IF ANY, INVESTIGATIONS BY OTHER AGENCIES OR AUTHORITIES MAY BE TREATED AS SUBSTANTIALLY EQUIVALENT TO AND ACCEPTED IN LIEU OF AN INVESTIGATION BY THE COMMISSIONER.


(b) UPON RECEIPT OF WRITTEN EVIDENCE OF APPROVAL BY THE FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

(I) THE COMMISSIONER AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL CONVENE A STAKEHOLDER GROUP, INCLUDING ALL TRADE ASSOCIATIONS REPRESENTING BANKS AND CREDITUNIONS, TO IDENTIFY CONFLICTS THAT MAY EXIST BETWEEN THIS ARTICLE AND OTHER PROVISIONS OF STATE LAW INCLUDING TITLE 4, C.R.S. THE COMMISSIONER SHALL FILE A REPORT WITH THE GENERAL ASSEMBLY REGARDING THE CONFLICTS AND SUGGESTED RESOLUTION OF THE CONFLICTS, AND SHALL NOT APPROVE AN APPLICATION OR ISSUE A CERTIFICATE PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) UNTIL THE GENERAL ASSEMBLY RESOLVES ALL OF THE IDENTIFIED STATE LAW CONFLICTS.

PAGE 5-HOUSE BILL 14-1398
II) Upon approval of an application, receipt of all necessary documents, and resolution of any state law conflicts as specified in subparagraph (I) of this paragraph (b), the commissioner shall issue a certificate of approval, in a number of copies equal to the number of copies of the articles of incorporation required to be filed pursuant to paragraph (a) of subsection (2) of this section as specified by the commissioner, and attach a copy of the certificate to each copy of the articles of incorporation. The incorporators must then file approved articles with the secretary of state and a copy of the articles, certified by the secretary of state, with the commissioner. The incorporators must pay to the secretary of state a fee for filing the articles of incorporation and a fee for certifying the copy of articles of incorporation furnished by the incorporators for filing with the commissioner, both fees to be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) (a) After the incorporators have filed a certified copy of articles of incorporation with the commissioner, the commissioner shall issue a charter for the co-op, at which time the co-op becomes a body corporate having the powers enumerated in section 7-103-102, C.R.S., except as otherwise provided or limited in this article.

(b) The commissioner shall not permit more than ten co-op charters to be outstanding at any one time.

(6) The initial board of directors of the co-op shall then adopt the bylaws approved by the commissioner.

11-33-105. Bylaws. The commissioner shall cause to be prepared a standard form of bylaws, consistent with this article, to be issued to all cannabis credit co-ops. All co-ops shall operate under the standard bylaws; except that each co-op, subject to the approval of the commissioner, must propose its own name, the number of members of its board of directors, its credit committee, its supervisory committee, provisions relative to times and places of meetings of the membership and of the board of directors, provisions relative to the conduct of elections and balloting of the co-op, and modifications of the standard bylaws.
DEEMED APPROPRIATE BY THE BOARD OF DIRECTORS FOR THE OPERATION OF THE INDIVIDUAL CO-OP. THE COMMISSIONER MUST APPROVE ANY AND ALL AMENDMENTS TO THE BYLAWS BEFORE THEY BECOME OPERATIVE.

11-33-106. Membership - disclosures. (1) Cannabis credit co-op membership consists of licensed marijuana businesses, industrial hemp businesses, and entities that provide goods or services to licensed marijuana businesses and that provide documentation to the co-op of an inability to get comparable services from a bank or credit union, that are qualified and elected to membership and that pay any entrance fee; except that the co-op shall perform due diligence on each applicant for membership, including background checks and investigations, as specified in section 11-33-126 before the co-op grants the applicant membership in the co-op.

(2) (a) Co-op membership is limited to only entities that own, operate, or are licensed marijuana businesses in good standing with the executive director of the state licensing authority created in section 12-43.3-201, C.R.S., industrial hemp businesses, and entities that provide goods or services to licensed marijuana businesses and that provide documentation to the co-op of an inability to get comparable services from a bank or credit union.

(b) An individual is not qualified to be a member of a co-op, regardless of whether the individual is licensed, including pursuant to section 12-43.3-401 (1) (d) or 12-43.4-401 (1) (e), to own, operate, manage, or be employed by a licensed marijuana business, either as a sole proprietor or any other form of ownership that gives the individual sole control over the licensed marijuana business.

(3) Once a member no longer owns or operates a licensed marijuana business or industrial hemp business, or no longer provides goods or services to a licensed marijuana business, the member is no longer qualified to be a member and shall promptly terminate its deposits with and repay its loans from the co-op.

(4) (a) Each co-op shall disclose to its members or prospective members that:

PAGE 7-HOUSE BILL 14-1398
(I) Federal law does not authorize financial institutions, including marijuana financial services cooperatives, to accept proceeds from activity that is illegal under federal law, such as that from licensed marijuana businesses;

(II) Deposits with and the capital of the co-op are:

(A) Subject to seizure by the federal government;

(B) Not federally insured;

(C) Not backed by the full faith and credit of the state of Colorado; and

(III) It is not the obligation of the state of Colorado to defend the co-op or its deposits and capital in the event of a seizure.

(b) A co-op shall make the disclosures:

(I) On its web site;

(II) In each advertisement or offer of services;

(III) Before accepting an applicant as a member; and

(IV) Before a member accepts a loan from the co-op.

11-33-107. Powers. (1) A cannabis credit co-op has the power to:

(a) Receive the savings of its members either as payment on shares or as deposits;

(b) Make loans to its members;

(c) Make loans to other co-ops as provided in this article;

(d) Make deposits in state and national financial institutions insured by an agency of the federal government that
VOLUNTARILY ACCEPTS THOSE DEPOSITS;

(e) INVEST IN ANY OF THE FOLLOWING:

(I) OBLIGATIONS OF THE UNITED STATES OR SECURITIES GUARANTEED OR INSURED BY ANY AGENCY OF THE UNITED STATES;

(II) OBLIGATIONS OF ANY STATE OR TERRITORY OF THE UNITED STATES, OR OF ANY POLITICAL SUBDIVISION OR INSTRUMENTALITY THEREOF, EXCEPT REVENUE OBLIGATIONS ISSUED TO PROVIDE, ENLARGE, OR IMPROVE ELECTRIC POWER, GAS, WATER, OR SEWER FACILITIES, OR ANY COMBINATION THEREOF, ISSUED BY ANY CITY OR TOWN, OR OTHER SIMILAR MUNICIPAL CORPORATION HAVING A POPULATION OF FEWER THAN FIVE THOUSAND PERSONS, AS DETERMINED BY THE LATEST FEDERAL DECENNIAL CENSUS; AND

(III) TO AN EXTENT THAT MUST NOT EXCEED TEN PERCENT OF ITS SHARES, DEPOSITS, AND UNDIVIDED EARNINGS, IN SHARES OF MUTUAL FUNDS OR INVESTMENT COMPANIES, STOCKS, BONDS, OR OTHER SECURITIES OF ANY CORPORATION OR RELIGIOUS OR EDUCATIONAL ORGANIZATIONS;

(f) ACQUIRE, THROUGH PURCHASE OR OTHER LAWFUL TRANSACTIONS, AND HOLD TITLE TO REAL AND PERSONAL PROPERTY NECESSARY AND INCIDENTAL TO THE OPERATION OF THE CO-OP, AND SELL, MORTGAGE, OR OTHERWISE DISPOSE OF THE PROPERTY;

(g) EXERCISE SUCH INCIDENTAL POWERS AS ARE NECESSARY TO ENABLE IT TO CARRY ON EFFECTIVELY THE BUSINESS FOR WHICH IT IS INCORPORATED AS AUTHORIZED IN THIS ARTICLE;

(h) SELL ALL OR ANY PORTION OF ITS ASSETS AND PURCHASE ALL OR ANY PORTION OF THE ASSETS OF ANOTHER CO-OP AND ASSUME THE LIABILITIES OF THE SELLING CO-OP, SUBJECT TO THE APPROVAL OF THE COMMISSIONER; AND

(i) PARTICIPATE WITH OTHER CO-OPS OR FINANCIAL ORGANIZATIONS IN MAKING LOANS TO CO-OP MEMBERS WHEN THE BORROWER IS A MEMBER OF EITHER THE CO-OP ORIGINATING THE LOAN OR THE CO-OP PURCHASING A PARTICIPATION INTEREST IN THE LOAN.
11-33-108. Title protection. (1) A cannabis credit co-op:

(a) Shall not use the word "bank" or the phrase "credit union" in its articles of incorporation, trade name, or an advertisement or offer of services;

(b) Shall use:

(I) The phrase "marijuana financial services cooperative" in its articles of incorporation; and

(II) The words "marijuana" or "cannabis" in its trade name and any advertisement or offer of services; and

(c) May use the phrases "financial services cooperative", "financial services co-op", "financial cooperative", "financial co-op", "credit cooperative", or "credit co-op" in its trade name or an advertisement or offer of services.

(2) (a) A co-op organized in accordance with this article has the exclusive right to use the phrases "cannabis credit cooperative", "marijuana credit cooperative", "cannabis credit co-op", "marijuana credit co-op", "cannabis financial services cooperative", "marijuana financial services cooperative", "cannabis financial services co-op", and "marijuana financial services co-op" in its name, title, and advertisements or offers of services; but an association composed of co-ops transacting business in this state may use those phrases in its name, title, and advertisements or offers of services.

(b) Any person other than a co-op or an association of co-ops using the phrases specified in paragraph (a) of this subsection (2) in its name, title, or advertisements or offers of services is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, imprisonment in the county jail for not more than sixty days, or both.

11-33-109. Examinations - reports - powers of commissioner - rules - fund created. (1) (a) Cannabis credit co-ops are under the
SUPERVISION OF THE COMMISSIONER. THE COMMISSIONER SHALL EXAMINE EVERY CO-OP AT LEAST ONCE DURING ANY SIX-MONTH PERIOD. THE COMMISSIONER SHALL ASSESS EACH CO-OP AN AMOUNT TO COVER THE EXPENSES OF THE DIVISION ATTRIBUTABLE TO THE SUPERVISION OF CO-OPS. THE COMMISSIONER SHALL DETERMINE THE AMOUNT ASSESSED ACCORDING TO A SCHEDULE OR SCHEDULES OR ANY OTHER METHOD ESTABLISHED BY THE COMMISSIONER TO BE APPROPRIATE, BUT THE ASSESSMENT MUST BE AT THE SAME RATE FOR ALL CO-OPS. THE COMMISSIONER MAY WAIVE THE PAYMENT OF ALL OR A PORTION OF THE ASSESSMENT WITH RESPECT TO A YEAR IN WHICH A CHARTER IS ISSUED OR CANCELLED OR IN WHICH A FINAL DISTRIBUTION IS MADE IN LIQUIDATION.

(b) THE COMMISSIONER SHALL ESTABLISH THE DIVISION'S ANNUAL ASSESSMENT, TO BE COLLECTED AT LEAST SEMIANNUALLY IN AMOUNTS SUFFICIENT TO GENERATE THE MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DIVISION FOR EACH FISCAL YEAR.

(c) (I) THERE IS HEREBY CREATED IN THE STATE TREASURY THE CANNABIS CREDIT CO-OP FUND, CONSISTING OF:

(A) REVENUES APPROPRIATED TO THE FUND; AND

(B) ASSESSMENTS MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1).

(II) REVENUES CREDITED TO THE FUND AND UNEXPENDED AT THE END OF EACH FISCAL YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE GENERAL FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF REVENUES IN THE FUND REMAINS IN THE FUND AND DOES NOT REVERT TO THE GENERAL FUND. THE DIVISION SHALL USE REVENUES IN THE FUND ONLY FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE.

(2) QUARTERLY, EVERY CO-OP SHALL FILE A FINANCIAL REPORT WITH THE COMMISSIONER ON A DATE ESTABLISHED BY THE COMMISSIONER, IN A FORM PRESCRIBED BY THE COMMISSIONER. THE COMMISSIONER MAY REQUIRE THAT ADDITIONAL REPORTS BE FILED. FOR FAILURE TO FILE A REPORT WHEN DUE, UNLESS EXCUSED FOR CAUSE, A CO-OP SHALL PAY TO THE COMMISSIONER A PENALTY, AS PRESCRIBED BY RULE, FOR EACH DAY OF DELINQUENCY IN FILING.
(3) The commissioner may adopt rules necessary for the administration and enforcement of this article and shall reference the rules to the sections of this article to which they apply. The commissioner shall promulgate the rules pursuant to article 4 of title 24, C.R.S., and shall mail a copy of the rules and of each order to each co-op at least thirty days before their effective date, except as to temporary or emergency rules.

(4) Except in cases where there is a statutory right to appeal to the commissioner, any person aggrieved and directly affected by a final order of the commissioner may obtain judicial review of the order by filing an action for review with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S., within thirty days after the date of issuance of the order.

(5) The commissioner may charge off the whole or any part of any asset of any co-op that could not be lawfully acquired by it and to reduce the value of any asset of a co-op to its market value or to a reasonable value, if no market value can be established. If the losses of a co-op exceed its undivided earnings and reserve funds so that the reasonable value of its assets is less than the total amount due the shareholders, the commissioner may order a reduction in the liability to each shareholder, dividing the loss proportionately among all shareholders. Any reduction from each share account must be a specified percentage sufficient to correct the impaired condition and preserve the solvency of the co-op. If thereafter the co-op realizes from the assets a greater amount than that fixed by the order of reduction, the commissioner shall divide the excess proportionately among the shareholders to whom liability was previously reduced, but only to the extent of the reduction.

(6) The commissioner may issue subpoenas and require attendance of any officers, directors, agents, and employees of a co-op and such other witnesses as the commissioner deems necessary in relation to its affairs, transactions, and conditions, and may require the witnesses to appear and answer such questions as the commissioner puts to them, and may require the witnesses to produce such books, papers, or documents in their possession as the commissioner may require. Upon application of
THE COMMISSIONER, A PERSON SERVED WITH A SUBPOENA ISSUED BY THE COMMISSIONER MAY BE REQUIRED, BY ORDER OF THE DISTRICT COURT OF THE COUNTY WHERE THE CO-OP HAS ITS PRINCIPAL OFFICE, TO APPEAR AND ANSWER SUCH QUESTIONS AS THE COMMISSIONER MAY PUT TO THE WITNESS AND BE REQUIRED TO PRODUCE SUCH BOOKS, PAPERS, OR DOCUMENTS IN THE WITNESS' POSSESSION AS THE COMMISSIONER MAY REQUIRE.

(7) THE COMMISSIONER MAY ISSUE CEASE-AND-DESIST ORDERS IF THE COMMISSIONER DETERMINES FROM COMPETENT AND SUBSTANTIAL EVIDENCE THAT A CO-OP IS ENGAGED OR HAS ENGAGED, OR WHEN THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THE CO-OP IS ABOUT TO ENGAGE, IN AN UNSAFE OR UNSOUND PRACTICE OR IS VIOLATING OR HAS VIOLATED, OR WHEN THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THE CO-OP IS ABOUT TO VIOLATE, A MATERIAL PROVISION OF ANY LAW OR RULE OR ANY CONDITION IMPOSED IN WRITING BY THE COMMISSIONER OR ANY WRITTEN AGREEMENT MADE WITH THE COMMISSIONER.

(8) (a) (I) THE COMMISSIONER MAY SUSPEND OR REMOVE A DIRECTOR, OFFICER, OR EMPLOYEE OF A CO-OP WHEN THE COMMISSIONER DETERMINES THAT THE PERSON HAS:

(A) VIOLATED A PROVISION OF THIS ARTICLE OR A LAWFUL RULE OR ORDER ISSUED PURSUANT TO THIS ARTICLE;

(B) ENGAGED OR PARTICIPATED IN AN UNSAFE OR UNSOUND PRACTICE IN THE CONDUCT OF A CO-OP;

(C) COMMITTED OR ENGAGED IN AN ACT, OMISSION, OR PRACTICE THAT CONSTITUTES A BREACH OF FIDUCIARY DUTY TO THE CO-OP, AND THE CO-OP HAS SUFFERED OR WILL PROBABLY SUFFER FINANCIAL LOSS OR OTHER DAMAGE, OR THE INTERESTS OF MEMBERS OR ACCOUNT HOLDERS MAY BE SERIOUSLY PREJUDICED THEREBY; OR

(D) RECEIVED FINANCIAL GAIN BY REASON OF A VIOLATION, PRACTICE, OR BREACH OF FIDUCIARY DUTY THAT INVOLVED PERSONAL DISHONESTY OR DEMONSTRATED A WILLFUL OR CONTINUING DISREGARD FOR THE SAFETY OR SOUNDNESS OF THE CO-OP.

(II) THE COMMISSIONER MAY SUSPEND OR REMOVE A DIRECTOR,
OFFICER, OR EMPLOYEE OF A CO-OP WHO, UNDER THE LAWS OF THIS STATE, THE UNITED STATES, OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES:

(A) HAS ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO OR BEEN CONVICTED OF A CRIME INVOLVING THEFT OR FRAUD THAT IS CLASSIFIED AS A FELONY; OR

(B) IS SUBJECT TO AN ORDER REMOVING OR SUSPENDING THE INDIVIDUAL FROM OFFICE OR PROHIBITING THE INDIVIDUAL'S PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF A CO-OP, SAVINGS AND LOAN ASSOCIATION, BANK, OR OTHER FINANCIAL INSTITUTION.

(b) (I) A SUSPENSION OR REMOVAL ORDER MUST SPECIFY THE GROUNDS FOR THE SUSPENSION OR REMOVAL. THE COMMISSIONER SHALL SEND A COPY OF THE ORDER TO THE CO-OP CONCERNED AND TO EACH MEMBER OF ITS BOARD OF DIRECTORS. THE COMMISSIONER SHALL SEND WRITTEN NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO EACH PERSON AFFECTED BY PARAGRAPH (a) OF THIS SUBSECTION (8) AT LEAST TEN DAYS BEFORE A HEARING HELD PURSUANT TO SECTION 24-4-105, C.R.S., AT WHICH THE COMMISSIONER SHALL PRESIDE.

(II) IF THE COMMISSIONER DETERMINES THAT EXTRAORDINARY CIRCUMSTANCES REQUIRE IMMEDIATE ACTION, THE COMMISSIONER MAY SUSPEND OR REMOVE A PERSON UNDER PARAGRAPH (a) OF THIS SUBSECTION (8) WITHOUT NOTICE OR A HEARING, BUT THE COMMISSIONER SHALL CONDUCT A HEARING UNDER SECTION 24-4-105, C.R.S., WITHIN THIRTY DAYS AFTER THE SUSPENSION OR REMOVAL.

(III) IN EXTRAORDINARY CIRCUMSTANCES, UPON ORDER OF THE COMMISSIONER, A HEARING CONDUCTED PURSUANT TO THIS SECTION IS EXEMPT FROM ANY PROVISION OF LAW REQUIRING THAT PROCEEDINGS OF THE COMMISSIONER BE CONDUCTED PUBLICLY. EXTRAORDINARY CIRCUMSTANCES OCCUR WHEN SPECIFIC CONCERN ARISES ABOUT PROMPT WITHDRAWAL OF MONEYS FROM THE CO-OP.

(IV) A PERSON WHO PERFORMS A DUTY OR EXERCISES A POWER OF A CO-OP AFTER RECEIPT OF A SUSPENSION OR REMOVAL ORDER UNDER PARAGRAPH (a) OF THIS SUBSECTION (8) COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.
11-33-110. **Assessment of civil fines.** (1) (a) **After notice and a hearing as provided in Article 4 of Title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against the person for the same act or practice, the commissioner may assess and collect a civil fine from a person who has violated a final cease-and-desist order issued by the commissioner pursuant to section 11-33-109(7) or a suspension order issued pursuant to section 11-33-122.**

(b) **For the purposes of this section, a violation includes an action by any person, alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.**

(c) **In extraordinary circumstances, upon order of the commissioner, a hearing conducted pursuant to this section is exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from a co-op.**

(2) (a) **The commissioner must assess civil fines by written notice of assessment of a civil fine served upon the person to be assessed. The notice of assessment of a civil fine must state the amount of the fine, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The person may file a request for a rehearing regarding the notice of assessment of a civil fine with the commissioner pursuant to paragraph (b) of this subsection (2).**

(b) **A person must file the notice of rehearing with the commissioner within thirty days after the assessment. The notice must contain a brief statement of the pertinent facts upon which the request is based. Within sixty days after the request is filed, the commissioner shall fix a date, time, and place for the rehearing and shall notify the person at least thirty days before the date of the rehearing. The commissioner may stay the civil fine pending the rehearing. On rehearing, the commissioner may consider, among other matters, whether the civil fine assessed is appropriate considering the financial resources of the person.**
ASSESSED. THE DECISION OF THE COMMISSIONER IS FINAL AGENCY ACTION.

(c) IN EXTRAORDINARY CIRCUMSTANCES, UPON ORDER OF THE COMMISSIONER, A REHEARING CONDUCTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) IS EXEMPT FROM ANY PROVISION OF LAW REQUIRING THAT PROCEEDINGS OF THE COMMISSIONER BE CONDUCTED PUBLICLY. EXTRAORDINARY CIRCUMSTANCES OCCUR WHEN SPECIFIC CONCERN ARISES ABOUT PROMPT WITHDRAWAL OF MONEYS FROM A CO-OP.

(3) IN DETERMINING THE AMOUNT OF THE CIVIL FINE TO BE ASSESSED, THE COMMISSIONER SHALL CONSIDER THE GOOD FAITH OF THE PERSON ASSESSED, THE GRAVITY OF THE VIOLATION, ANY PREVIOUS VIOLATIONS BY THE PERSON ASSESSED, AND SUCH OTHER MATTERS AS THE COMMISSIONER DEEMS APPROPRIATE; EXCEPT THAT THE CIVIL FINE MUST BE NOT MORE THAN ONE THOUSAND DOLLARS PER DAY FOR EACH DAY THE PERSON ASSESSED IS DETERMINED BY THE COMMISSIONER TO BE IN VIOLATION OF A CEASE-AND-DESIST ORDER OR AN ORDER OF SUSPENSION OR REMOVAL. ALTERNATIVELY, THE COMMISSIONER MAY ASSESS A CIVIL FINE FOR THE VIOLATION IN A LUMP SUM AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS.

(4) CIVIL FINES ASSESSED PURSUANT TO THIS SECTION ARE DUE AND PAYABLE AND MUST BE COLLECTED WITHIN THIRTY DAYS AFTER THE COMMISSIONER ISSUES THE NOTICE OF ASSESSMENT OF A CIVIL FINE; EXCEPT THAT THE COMMISSIONER MAY COMPROMISE, MODIFY, OR SET ASIDE ANY CIVIL FINE. IF A PERSON FAILS TO PAY AN ASSESSMENT AFTER IT HAS BECOME DUE AND PAYABLE, THE COMMISSIONER MAY REFER THE MATTER TO THE ATTORNEY GENERAL, WHO SHALL RECOVER THE AMOUNT ASSESSED BY ACTION IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. A CIVIL FINE COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT IT TO THE GENERAL FUND.

11-33-111. Fiscal year - meetings. The fiscal year of all cannabis credit co-ops ends on December 31 of each year. The co-op shall hold its annual meeting within five months after the close of the fiscal year. Special meetings may be held in the manner indicated in the bylaws. At all meetings a member has but a single vote, whatever the member's share holdings. Voting by proxy is prohibited.

PAGE 16-HOUSE BILL 14-1398
11-33-112. Elections. (1) (a) At the annual meeting, or by other proper balloting within thirty days before and twenty days after the annual meeting, the cannabis credit co-op members must elect from the membership, or the board of directors must appoint as provided in the bylaws of the co-op:

(I) A board of directors of not less than five members;

(II) A supervisory committee of not less than three members; and

(III) A credit committee of not less than three members or a credit officer.

(b) In addition, the co-op members may elect, or the board may appoint, one or more alternate members of the credit committee to serve in the absence of members of the credit committee.

(2) All persons appointed or elected pursuant to subsection (1) of this section hold office for the terms specified in the bylaws and until successors are elected or appointed and are qualified. A person shall not hold more than one elected office simultaneously.

(3) The co-op shall file with the commissioner a record of the names and addresses of the members of the board and the committees, alternates, and officers within twenty days after their election or appointment.

11-33-113. Directors and officers. (1) At its first meeting after the annual election, the board of directors shall elect from its own number: An executive officer, who may be designated as chair of the board or president; a vice-chair of the board or one or more vice-presidents; a treasurer; and a secretary. A single person shall not serve as both secretary and treasurer. The persons so elected are the executive officers of the corporation. The board of directors is responsible for the general management of the affairs of the cannabis credit co-op, and more specifically for:

PAGE 17-HOUSE BILL 14-1398
(a) Acting on applications for membership, or appointing from among the membership of the co-op one or more membership officers who may act on applications for membership;

(b) Setting policies, terms, and conditions under which loans will be available to members, and determining interest rates on loans and on deposits;

(c) Fixing the amount of the blanket surety bond that covers all elected and appointed officials and all employees of the co-op. The blanket surety bond must be in an amount equal to the assets of the co-op as of December 31 of the previous year or one million dollars, whichever is less, or in such other amount as the commissioner may prescribe.

(d) Declaring dividends and, subject to approval by the commissioner, adopting amendments to the bylaws of the co-op;

(e) Determining when any vacancy exists in the board of directors or in the credit committee, filling vacancies in the board and in the credit committee until successors are elected or appointed and qualify, and appointing one or more assistant secretaries or treasurers or both, as needed; and the board shall employ:

(I) An officer in charge of operations whose title is either president or chief executive officer to act as general manager and who shall be in active charge of the affairs of the co-op; and

(II) A chief financial officer;

(f) Determining the maximum individual share holdings in the co-op and the maximum amount of individual loans that can be made either with or without security;

(g) Having charge of and supervising investments of co-op funds;

(h) Maintaining records pursuant to rules promulgated by the commissioner concerning how long records must be retained.
AND IN WHAT MANNER;

(i) PROVIDING FOR COMPENSATION FOR NECESSARY CLERICAL AND AUDITING ASSISTANCE REQUESTED BY THE SUPERVISORY COMMITTEE AND OF LOAN OFFICERS APPOINTED BY THE CREDIT COMMITTEE, AND ESTABLISHING ANY SALARY TO BE PAID TO THE CHIEF EXECUTIVE OFFICER, PRESIDENT, OR CHIEF FINANCIAL OFFICER.

(2) THE BYLAWS MUST DETERMINE THE DUTIES OF THE OFFICERS; EXCEPT THAT THE TREASURER IS THE GENERAL MANAGER IF A GENERAL MANAGER HAS NOT BEEN EMPLOYED PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

11-33-114. Credit committee - credit officer. The credit committee or credit officer is responsible for the general supervision of all loans to members. Applications for loans must be on a form approved by the credit committee or the credit officer. At least a majority of the members of the credit committee or the credit officer must approve or disapprove all loans; except that the credit committee or the credit officer may appoint one or more loan officers and delegate to the loan officer the power to approve or disapprove loans that are within limits prescribed by the credit committee or the credit officer. Each loan officer shall furnish to the credit committee or the credit officer a record of each loan application received by the loan officer within seven days after the date of filing of the application. The credit committee or the credit office may consider all loans not approved by a loan officer. A member of the credit committee shall not receive any compensation as a loan officer or be employed by the cannabis credit co-op in any other capacity. A credit officer may receive compensation in connection with the performance of his or her duties. The credit committee shall meet as often as necessary after due notice to each member. Vacancies in the credit committee shall be filled pursuant to section 11-33-113 (1) (e).

11-33-115. Supervisory committee. (1) The supervisory committee shall:

(a) Make, or cause to be made, a comprehensive annual
AUDIT OF THE BOOKS AND AFFAIRS OF THE CANNABIS CREDIT CO-OP AND SHALL SUBMIT A REPORT OF THE ANNUAL AUDIT TO THE BOARD OF DIRECTORS AND A SUMMARY OF THAT REPORT TO THE MEMBERS AT THE NEXT ANNUAL MEETING. THE COMMITTEE SHALL MAKE OR CAUSE TO BE MADE SUCH SUPPLEMENTARY AUDITS OR EXAMINATIONS AS IT DEEMS NECESSARY OR AS REQUIRED BY THE COMMISSIONER.

(b) Make an annual report and submit the report at the annual meeting of the members;

(c) By unanimous vote of the committee if it deems the action to be necessary for the proper conduct of the co-op, temporarily suspend an officer or director of the co-op or a member of the credit committee, and call a special meeting of the members of the co-op not less than seven nor more than fourteen days after the suspension to take final action on the suspension. The members at the meeting may sustain the suspension and remove the officer, director, or member of the credit committee permanently and elect a successor thereto for the unexpired term of office or may reinstate the person.

(d) Annually verify, or cause to be verified, by a random sampling or by verification of all members' accounts, the members' share, deposit, and loan accounts. The verification may be obtained by either sending or causing to be sent a statement of account to each member or by such means as may be specified by the commissioner.

(e) Not less frequently than twice annually, or as otherwise required by the commissioner, examine the continued eligibility of each member and expel each member that is no longer qualified to be a member.

(2) By majority vote, the supervisory committee may call a special meeting of the members of the co-op to consider a violation of a provision of this article, rules of the commissioner, the bylaws, or a rule or requirement of the co-op, by an officer, director, member of a committee, or a member, that the committee deems to be detrimental to the co-op. The supervisory committee shall fill vacancies in its own membership until the next annual
ELECTION OF THE CO-OP.

11-33-116. Capital - no full faith and credit. (1) The capital of a cannabis credit co-op consists of the payments that have been made to it in shares by its members. The co-op has a lien on the shares and deposits of a member for any sum due to the co-op from a member or for any loan endorsed by a member. A co-op may charge an entrance fee and an annual membership fee, but the fees must be uniform to all members.

(2) The deposits with and capital of a co-op are not backed by the full faith and credit of the state of Colorado.

11-33-117. Loans. A cannabis credit co-op may make loans to members subject to this article and the bylaws of the co-op. A borrower may repay a loan in whole or in part any day the office of the co-op is open for business.

11-33-118. Reserves. The commissioner may require reserves to protect the interest of members by general rules. In addition, the commissioner may require special reserves by an order directed to an individual cannabis credit co-op in a special case.

11-33-119. Confidentiality. (1) Neither the commissioner, the commissioner's deputy, nor any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (1) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division or in criminal actions;

(b) The commissioner may furnish information as to the condition of a cannabis credit co-op to a liquidating agent appointed by the commissioner, a federal reserve bank, the division of banking, the executive director of the department of regulatory agencies, or a department or division of any other state having supervisory authority over marijuana financial
SERVICES COOPERATIVES OR ANALOGOUS ORGANIZATIONS AND MAY ACCEPT ANY REPORT OF EXAMINATION MADE ON BEHALF OF THE LIQUIDATING AGENT, BANK, DEPARTMENT, OR DIVISION;

(c) THE COMMISSIONER MAY GIVE RECORDS OR INFORMATION IN THE COMMISSIONER’S POSSESSION TO A LICENSING AGENCY WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR THE DEPARTMENT OF REVENUE RELATING TO POSSIBLE MISCONDUCT BY A PERSON OR ENTITY LICENSED BY THE AGENCY;

(d) (I) THE COMMISSIONER AND THE COMMISSIONER’S DESIGNEES MAY EXCHANGE INFORMATION OBTAINED BY THE DIVISION AS TO POSSIBLE CRIMINAL VIOLATIONS OF ANY LAW RELATING TO THE ACTIVITIES OF A CO-OP WITH THE APPROPRIATE LAW ENFORCEMENT AGENCIES; AND

(II) THE COMMISSIONER OR THE COMMISSIONER’S DESIGNEES SHALL EXCHANGE INFORMATION OBTAINED BY THE DIVISION WITH THE APPROPRIATE STATE LAW ENFORCEMENT AGENCIES AS TO CRIMINAL VIOLATIONS OF ANY LAW RELATING TO THE ACTIVITIES OF A CO-OP THAT THE COMMISSIONER REASONABLY BELIEVES HAVE OCCURRED; AND

(e) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, THE COMMISSIONER MAY DISCLOSE INFORMATION IN THE RECORDS OF THE DIVISION OR ACQUIRED BY THE COMMISSIONER IN THE DISCHARGE OF THE COMMISSIONER’S DUTIES THE DISCLOSURE OF WHICH HAS BEEN SPECIFICALLY AUTHORIZED BY THE BOARD OF DIRECTORS OF THE CO-OP TO WHICH THE INFORMATION RELATES. NOTHING IN THIS SECTION AUTHORIZES THE BOARD OF DIRECTORS OF A CO-OP TO WAIVE ANY PRIVILEGES THAT BELONG SOLELY TO THE COMMISSIONER, THE DIVISION, OR ITS EMPLOYEES.

11-33-120. Dividends. At intervals and for periods of time that the board of directors may authorize and after provision for the required reserves, the board of directors of a cannabis credit co-op may declare a dividend. Dividends may be paid at various rates on different classes of shares, and dividend credit may be accrued on different classes of shares, as determined by the board of directors. The board shall not pay dividends in excess of available earnings.
11-33-121. Expulsion or withdrawal of members. (1) A member may withdraw from a cannabis credit co-op at any time, but the bylaws may require advance notice of the withdrawal. The board of directors may expel a member from membership in a co-op if the member fails to comply with the written rules and policies of the co-op as adopted and made available to the membership.

(2) The board shall not expel a member until the board informs the member in writing of the reasons for the expulsion and the member has had reasonable opportunity to be heard.

(3) The co-op shall pay to an expelled or withdrawing member all amounts paid on shares or as deposits of the member, together with any dividends or interest accredited to the member, to the date of the withdrawal or expulsion, as funds become available and after deducting all amounts due from the member to the co-op. The co-op may require sixty days' written notice of intention to withdraw shares and thirty days' written notice of intention to withdraw deposits. Withdrawing or expelled members have no further rights in the co-op but are not, by such expulsion or withdrawal, released from any remaining liability to the co-op.

11-33-122. Suspension - liquidation - procedures. (1) (a) (I) If it appears that a cannabis credit co-op is insolvent, has willfully violated a provision of this article, or is operating in an unsafe or unsound manner, the commissioner:

(A) May issue an order for the co-op to show cause why its operations should not be suspended until the insolvency, violation, or manner of operation is rectified; and

(B) Shall afford the co-op an opportunity for a hearing not less than ten days nor more than twenty days after issuance of the order.

(II) The order must be in writing and be delivered by registered or certified mail.

(III) If the co-op fails to answer the order or if an officer or
DIRECTOR OF OR ATTORNEY FOR THE CO-OP FAILS TO APPEAR AT THE TIME SET FOR THE HEARING, THE COMMISSIONER MAY:

(A) REVOKE THE ARTICLES OF INCORPORATION OF THE CO-OP, ORDER THE IMMEDIATE SUSPENSION OF OPERATIONS OF THE CO-OP EXCEPT THE COLLECTION OF PAYMENTS ON OUTSTANDING LOANS OR OTHER OBLIGATIONS DUE THE CO-OP, OR BOTH; AND

(B) ENFORCE THE ORDER BY AN ACTION FILED IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT IN WHICH THE PRINCIPAL OFFICE OF THE CO-OP IS LOCATED, SEEKING TO ENJOIN FURTHER OPERATIONS OR TO APPOINT A CONSERVATOR FOR THE CO-OP.

(b) (I) A CO-OP TO WHICH AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) MAY:

(A) INCLUDE WITH ITS ANSWER OR PRESENT AT A HEARING RESULTING FROM THE ORDER ITS PROPOSED PLAN TO CONTINUE OPERATIONS AND RECTIFY THE INSOLVENCY, VIOLATION, OR MANNER OF OPERATION SPECIFIED IN THE ORDER; OR

(B) REQUEST THAT IT BE DISSOLVED AND LIQUIDATED AND THAT THE COMMISSIONER APPOINT A LIQUIDATING AGENT.


(c) IF THE COMMISSIONER REVOKES THE CHARTER OF A CO-OP, THE COMMISSIONER SHALL APPOINT A LIQUIDATING AGENT TO LIQUIDATE THE ASSETS OF THE CO-OP PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(d) IF IN THE OPINION OF THE COMMISSIONER AN EMERGENCY EXISTS THAT MAY RESULT IN SERIOUS LOSSES TO THE MEMBERS, THE COMMISSIONER MAY REVOKE THE CHARTER OF A CO-OP AND IMMEDIATELY APPOINT A LIQUIDATING AGENT WITHOUT NOTICE OR A HEARING. THE COMMISSIONER SHALL POST NOTICE OF THE COMMISSIONER’S EMERGENCY DETERMINATION ON THE PREMISES OF THE CO-OP THAT IS THE SUBJECT OF

(2) (a) The commissioner may appoint himself or herself or a third party as conservator of a co-op and immediately take possession and control of the business and assets of the co-op if the commissioner determines that:

(I) SUCH ACTION IS NECESSARY TO CONSERVE THE ASSETS OF THE CO-OP OR TO PROTECT THE INTERESTS OF ITS MEMBERS FROM ACTS OR OMISSIONS OF THE EXISTING MANAGEMENT;

(II) THE CO-OP, BY A RESOLUTION OF ITS BOARD OF DIRECTORS, CONSENTS TO SUCH ACTION;

(III) THERE IS A WILLFUL VIOLATION OF A CEASE-AND-DESIST ORDER THAT RESULTS IN THE CO-OP BEING OPERATED IN AN UNSAFE OR UNSOUND MANNER; OR

(IV) THE CO-OP IS SIGNIFICANTLY UNDERCAPITALIZED AND HAS NO REASONABLE PROSPECT OF BECOMING ADEQUATELY CAPITALIZED.

(b) The commissioner may appoint a conservator and take immediate possession of the co-op without prior notice or a hearing; except that, within ten days after the conservator is appointed, the co-op may file an appeal with the court of appeals requesting the commissioner to rescind the commissioner's appointment of a conservator. The filing of an appeal does not stay the commissioner's action. If the court finds the commissioner's action was unauthorized, the commissioner shall restore control of the co-op to its board of directors. If no appeal is filed within ten days after the commissioner's
APPOINTMENT OF A CONSERVATOR, THE ACTION TAKEN BY THE COMMISSIONER BECOMES FINAL.

(c) IN EXTRAORDINARY CIRCUMSTANCES, UPON ORDER OF THE COMMISSIONER, A HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (2) IS EXEMPT FROM ANY PROVISION OF LAW REQUIRING THAT PROCEEDINGS OF THE COMMISSIONER BE CONDUCTED PUBLICLY. EXTRAORDINARY CIRCUMSTANCES OCCUR WHEN SPECIFIC CONCERN ARISES ABOUT PROMPT WITHDRAWAL OF MONEYS FROM THE CO-OP.


(3) A CO-OP MAY BE VOLUNTARILY DISSOLVED AND LIQUIDATED UPON MAJORITY VOTE OF THE ENTIRE MEMBERSHIP OF THE CO-OP AT A MEETING SPECIALLY CALLED FOR THE PURPOSE OR AT THE ANNUAL MEETING

(4) UNDER ANY PROCEDURE TO DISSOLVE AND LIQUIDATE A CO-OP PURSUANT TO THIS SECTION, THE CO-OP CONTINUES IN EXISTENCE FOR THE PURPOSE OF DISCHARGING ITS DEBTS, COLLECTING AND DISTRIBUTING ITS ASSETS, AND DOING ALL ACTS REQUIRED IN ORDER TO WIND UP ITS BUSINESS, AND IT MAY SUE AND BE SUED FOR THE ENFORCEMENT OF ITS DEBTS AND OPERATIONS UNTIL ITS AFFAIRS ARE FULLY ADJUSTED IN LIQUIDATION. THE ASSETS OF THE CO-OP SHALL BE USED TO PAY: FIRST, THE EXPENSES INCIDENTAL TO LIQUIDATION; AND SECOND, DEPOSIT ACCOUNTS. ANY REMAINING ASSETS SHALL BE DISTRIBUTED TO THE MEMBERS PROPORTIONATELY TO THE SHARES HELD BY EACH MEMBER AS OF THE DATE OF DISSOLUTION.


11-33-123. Change in place of business. A CANNABIS CREDIT CO-OP MAY CHANGE ITS PLACE OF BUSINESS TO A LOCATION OUTSIDE OF THE COUNTY OR CITY AND COUNTY IN WHICH IT WAS PREVIOUSLY LOCATED UPON RECEIVING WRITTEN PERMISSION FROM THE COMMISSIONER. A CO-OP MAY CHANGE ITS PLACE OF BUSINESS WITHIN THE COUNTY OR CITY AND COUNTY IN WHICH IT WAS PREVIOUSLY LOCATED BY PROVIDING WRITTEN
NOTICE OF THE NEW ADDRESS AND THE EFFECTIVE DATE OF THE CHANGE TO THE COMMISSIONER.

11-33-124. Merger. (1) The method of merger of two or more cannabis credit co-ops is as follows:

(a) (I) The board of directors of each merging co-op shall:

(A) Approve a plan for the proposed merger; and

(B) Authorize representatives of each co-op to act on each co-op's behalf to bring about the merger.

(II) The plan must include information that the commissioner deems appropriate.

(b) Upon approval of the merger plan by each board of directors for each co-op involved in the transaction, the co-ops shall submit the merger plan, together with the resolutions of each board of directors, to the commissioner. If the commissioner determines that the merger plan complies with this article and any applicable rules, the commissioner may approve the merger plan, subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger.

(c) The boards of directors of each co-op involved shall call a meeting of the members of each co-op involved for the purpose of considering a merger. The boards of directors shall give notice of the meeting, including purpose, date, time, place, and ballot of the merger plan, to the entire membership. At the meeting, at least two-thirds of the members present and voting must approve the proposed merger. If any member approves or disapproves the merger by returning a ballot, signed by the member, to the secretary of the co-op at or before the meeting, the ballot for all purposes of this section is equivalent to the vote of the member at the meeting, notwithstanding that the member is not then present.

(2) Upon approval of the merger by the members of the
CO-OP, THE MERGER SHALL BE CONSUMMATED IN THE FOLLOWING MANNER:

(a) The duly authorized representatives of each CO-OP shall execute, in duplicate, a certificate of merger stating:

(I) That the board of directors of each CO-OP has approved the merger;

(II) That at least two-thirds of the voting members of each merging CO-OP have approved the terms and conditions of the proposed merger at a meeting of the members called for that purpose; and

(III) The name and location of the continuing CO-OP.

(b) The continuing CO-OP shall prepare and adopt any bylaw amendments required by the board, consistent with this article, and execute the amendments in duplicate.

(c) The continuing board of directors shall file the certificate provided for in paragraph (a) of this subsection (2) and any required bylaw amendments, both executed in duplicate, to the commissioner.

(3) If the commissioner approves the certificate and bylaw amendments, the commissioner shall so notify the representatives and shall issue a certificate of approval, attach it to the duplicate certificate of merger, and return them to the representatives of the participating CO-OPS together with the duplicate of the bylaw amendments.

(4) The continuing CO-OP shall file the duplicate of the certificate of merger with the commissioner's certificate of approval attached with the secretary of state, who shall make a record of the certificate and return it, with the secretary's certificate of record attached, to the commissioner for permanent record. The fee for the filing shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) Upon compliance with all requirements of subsections

PAGE 29-HOUSE BILL 14-1398
TO (4) OF THIS SECTION, THE PARTICIPATING CO-OPS ARE MERGED, AND
THE CONTINUING CO-OP SHALL TAKE OVER THE ASSETS AND ASSUME ALL
THE LIABILITIES OF THE PARTICIPATING CO-OPS.

11-33-125. Taxation. A CANNABIS CREDIT CO-OP IS NOT
TAX-EXEMPT AND IS SUBJECT TO TAXATION AS PROVIDED BY FEDERAL,
STATE, AND LOCAL LAWS.

11-33-126. Compliance with federal requirements - due
diligence. (1) EACH CANNABIS CREDIT CO-OP SHALL COMPLY WITH ALL
APPLICABLE REQUIREMENTS OF FEDERAL LAW, INCLUDING:

(a) The federal "Bank Secrecy Act", 12 U.S.C. sec. 1951 et seq.;

(b) The requirement to maintain a due diligence program
pursuant to 31 CFR 1020.610;

(c) The requirement to establish a customer identification
policy pursuant to 31 CFR 1020.220; and

(d) The requirement to file suspicious activity reports
pursuant to 31 CFR sec. 1020.320.

(2) Each co-op shall:

(a) Conduct due diligence with regard to the activities of
its members so as to prevent:

(I) The distribution of marijuana to minors;

(II) Revenue from the sale of marijuana from going to
criminal enterprises, gangs, and cartels;

(III) The diversion of marijuana from states where it is
legal under state law in some form to other states;

(IV) State-authorized marijuana activity from being used
as a cover or pretext for the trafficking of other illegal drugs
or other illegal activity;
(V) VIOLENCE AND THE USE OF FIREARMS IN THE CULTIVATION AND DISTRIBUTION OF MARIJUANA;

(VI) DRUGGED DRIVING AND THE EXACERBATION OF OTHER ADVERSE PUBLIC HEALTH CONSEQUENCES ASSOCIATED WITH MARIJUANA USE;

(VII) THE GROWING OF MARIJUANA ON PUBLIC LANDS AND THE ATTENDANT PUBLIC SAFETY AND ENVIRONMENTAL DANGERS POSED BY MARIJUANA PRODUCTION ON PUBLIC LANDS; AND

(VIII) MARIJUANA POSSESSION OR USE ON FEDERAL PROPERTY; AND

(b) FILE AN ANNUAL REPORT WITH THE COMMISSIONER REGARDING ITS COMPLIANCE WITH THE LAWS AND REQUIREMENTS SPECIFIED IN THIS SECTION.

3) THE COMMISSIONER SHALL REVOKE THE CHARTER OF A CO-OP THAT VIOLATES ANY OF THE LAWS OR DUE DILIGENCE REQUIREMENTS SPECIFIED IN THIS SECTION.

11-33-127. Reports - suspicious transactions. (1) General. (a) (I) EVERY CO-OP SHALL FILE WITH THE COMMISSIONER, TO THE EXTENT AND IN THE MANNER REQUIRED BY THIS SECTION, A REPORT OF ANY SUSPICIOUS TRANSACTION RELEVANT TO A POSSIBLE VIOLATION OF LAW, RULE, OR FEDERAL REGULATION.

(II) FOR PURPOSES OF THIS SECTION, A TRANSACTION OR CONDUCT THAT IS ILLEGAL OR A VIOLATION OF LAW SOLELY BECAUSE MARIJUANA IS A CONTROLLED SUBSTANCE UNDER FEDERAL LAW IS NOT SUBJECT TO BEING REPORTED.

(b) A CO-OP SHALL REPORT A TRANSACTION IF IT IS CONDUCTED OR ATTEMPTED BY, AT, OR THROUGH THE CO-OP, IT INVOLVES OR AGGREGATES AT LEAST FIVE THOUSAND DOLLARS IN FUNDS OR OTHER ASSETS, AND THE CO-OP KNOWS, SUSPECTS, OR HAS REASON TO SUSPECT THAT:

(I) THE TRANSACTION INVOLVES FUNDS DERIVED FROM ILLEGAL ACTIVITIES OR IS INTENDED OR CONDUCTED IN ORDER TO HIDE OR DISGUISE FUNDS OR ASSETS DERIVED FROM ILLEGAL ACTIVITIES AS PART OF A PLAN TO
VIOLATE OR EVADE ANY FEDERAL OR STATE LAW OR REGULATION OR TO AVOID ANY TRANSACTION REPORTING REQUIREMENT UNDER FEDERAL OR STATE LAW OR REGULATION;

(II) THE TRANSACTION IS DESIGNED TO EVADE ANY REQUIREMENTS OF THIS ARTICLE, A RULE PROMULGATED PURSUANT TO THIS ARTICLE, THE FEDERAL "BANK SECRECY ACT", 12 U.S.C. SEC. 1951 ET SEQ., OR A REGULATION PROMULGATED UNDER THE FEDERAL "BANK SECRECY ACT"; OR

(III) THE TRANSACTION HAS NO BUSINESS OR APPARENT LAWFUL PURPOSE OR IS NOT THE SORT IN WHICH THE PARTICULAR MEMBER WOULD NORMALLY BE EXPECTED TO ENGAGE, AND THE CO-OP KNOWS OF NO REASONABLE EXPLANATION FOR THE TRANSACTION AFTER EXAMINING THE AVAILABLE FACTS, INCLUDING THE BACKGROUND AND POSSIBLE PURPOSE OF THE TRANSACTION.

(2) **Filing procedures.** (a) **What to file.** A CO-OP SHALL REPORT A SUSPICIOUS TRANSACTION BY COMPLETING A SUSPICIOUS TRANSACTION REPORT, REFERRED TO IN THIS SECTION AS AN STR, AND COLLECTING AND MAINTAINING SUPPORTING DOCUMENTATION AS REQUIRED BY SUBSECTION (4) OF THIS SECTION.

(b) **When to file.** A CO-OP SHALL FILE AN STR NO LATER THAN THIRTY CALENDAR DAYS AFTER THE DATE OF INITIAL DETECTION BY THE CO-OP OF FACTS THAT MAY CONSTITUTE A BASIS FOR FILING AN STR. IF NO SUSPECT WAS IDENTIFIED ON THE DATE OF THE DETECTION OF THE INCIDENT REQUIRING THE FILING, A CO-OP MAY DELAY FILING AN STR FOR AN ADDITIONAL THIRTY CALENDAR DAYS TO IDENTIFY A SUSPECT. IN NO CASE MAY A CO-OP DELAY REPORTING FOR MORE THAN SIXTY CALENDAR DAYS AFTER THE DATE OF INITIAL DETECTION OF A REPORTABLE TRANSACTION. IN SITUATIONS INVOLVING VIOLATIONS THAT REQUIRE IMMEDIATE ATTENTION, SUCH AS, FOR EXAMPLE, ONGOING MONEY-LAUNDERING SCHEMES, THE CO-OP SHALL IMMEDIATELY NOTIFY, BY TELEPHONE, AN APPROPRIATE LAW ENFORCEMENT AUTHORITY IN ADDITION TO FILING TIMELY AN STR.

(3) **Exceptions.** A CO-OP IS NOT REQUIRED TO FILE AN STR FOR A ROBBERY OR BURGLARY COMMITTED OR ATTEMPTED THAT IS REPORTED TO APPROPRIATE LAW ENFORCEMENT AUTHORITIES OR FOR LOST, MISSING, COUNTERFEIT, OR STOLEN SECURITIES WITH RESPECT TO WHICH THE CO-OP
(4) **Retention of records.** A co-op shall maintain a copy of each STR filed and the original or business record equivalent of any supporting documentation for a period of five years after the date of filing the STR. The co-op shall identify supporting documentation and maintain the documentation as such, which documentation shall be deemed to have been filed with the STR. Upon request, a co-op shall make all supporting documentation available to:

(a) **The commissioner;**

(b) **Any federal, state, or local law enforcement agency;**

(c) **Any federal regulatory authority that examines the co-op for compliance with the federal "Bank Secrecy Act"; or**

(d) **Any state regulatory authority administering a state law that requires the co-op to comply with the federal "Bank Secrecy Act" or otherwise authorizes the state authority to ensure that the co-op complies with the federal "Bank Secrecy Act".**

(5) **Confidentiality of STRs.** (a) An STR and any information that would reveal the existence of an STR are confidential and shall not be disclosed except as authorized in this subsection (5). For purposes of this subsection (5) only, an STR includes any suspicious activity report filed with the federal financial enforcement network of the department of the treasury pursuant to any regulation in chapter X of subtitle B of title 31 of the code of federal regulations.

(b) **Prohibition on disclosures by co-ops.** (I) **General rule.** A co-op and a director, officer, employee, or agent of any co-op shall not disclose an STR or any information that would reveal the existence of an STR. Any co-op, and any director, officer, employee, or agent of any co-op that is subpoenaed or otherwise requested to disclose an STR or any information that would
REVEAL THE EXISTENCE OF AN STR, SHALL DECLINE TO PRODUCE THE STR OR SUCH INFORMATION, CITING THIS SECTION, 31 U.S.C. SEC. 5318 (g) (2) (A) (i), AND 31 CFR 1020.320, AND SHALL NOTIFY THE COMMISSIONER OF ANY SUCH REQUEST AND THE RESPONSE THERETO.

(II) **Rules of construction.** So long as none of the persons involved in a reported suspicious transaction is notified that the transaction has been reported, this paragraph (b) does not prohibit:

(A) To the full extent authorized in 31 U.S.C. sec. 5318 (g) (2) (B), the disclosure by a co-op or by a director, officer, employee, or agent of a co-op, of an STR or any information that would reveal the existence of an STR, to: The commissioner or any federal, state, or local law enforcement agency; a federal regulatory authority that examines the co-op for compliance with the federal "Bank Secrecy Act"; or a state regulatory authority administering a state law that requires the co-op to comply with the federal "Bank Secrecy Act" or otherwise authorizes the state authority to ensure that the co-op complies with the "Bank Secrecy Act". In addition, the co-op and its officers, directors, employees, and agents may disclose the underlying facts, transactions, and documents upon which an STR is based to another financial institution, or a director, officer, employee, or agent of a financial institution, for the preparation of a joint STR or in connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. sec. 5318 (g) (2) (B).

(B) The sharing by a co-op, or any director, officer, employee, or agent of the co-op, of an STR, or any information that would reveal the existence of an STR, within the co-op's corporate organizational structure for purposes consistent with Title II of the federal "Bank Secrecy Act" as determined by federal regulation or in guidance.

(c) **Prohibition on disclosures by government authorities.** A federal, state, local, territorial, or tribal government authority and any director, officer, employee, or agent of a federal, state, local, territorial, or tribal government shall not
DISCLOSE AN STR, OR ANY INFORMATION THAT WOULD REVEAL THE EXISTENCE OF AN STR, EXCEPT AS NECESSARY TO FULFILL OFFICIAL DUTIES CONSISTENT WITH TITLE II OF THE FEDERAL "BANK SECRECY ACT". FOR PURPOSES OF THIS SECTION, "OFFICIAL DUTIES" DO NOT INCLUDE THE DISCLOSURE OF AN STR, OR ANY INFORMATION THAT WOULD REVEAL THE EXISTENCE OF AN STR, IN RESPONSE TO A REQUEST FOR DISCLOSURE OF NONPUBLIC INFORMATION OR A REQUEST FOR USE IN A PRIVATE LEGAL PROCEEDING, INCLUDING A REQUEST PURSUANT TO 31 CFR 1.11.

(6) **Limitation on liability.** A CO-OP AND ANY DIRECTOR, OFFICER, EMPLOYEE, OR AGENT OF ANY CO-OP, THAT MAKES A VOLUNTARY DISCLOSURE OF ANY POSSIBLE VIOLATION OF LAW, RULE, OR FEDERAL REGULATION TO A GOVERNMENT AGENCY OR MAKES A DISCLOSURE PURSUANT TO THIS SECTION OR ANY OTHER AUTHORITY, INCLUDING A DISCLOSURE MADE JOINTLY WITH ANOTHER INSTITUTION, IS PROTECTED FROM LIABILITY TO ANY PERSON FOR ANY SUCH DISCLOSURE OR FOR FAILURE TO PROVIDE NOTICE OF SUCH DISCLOSURE TO ANY PERSON IDENTIFIED IN THE DISCLOSURE, OR BOTH, TO THE FULL EXTENT PROVIDED BY 31 U.S.C. SEC. 5318 (g) (3).

(7) **Compliance.** THE COMMISSIONER SHALL EXAMINE CO-OPS FOR COMPLIANCE WITH THIS SECTION.

11-33-128. **Repeal of article - review.** (1) THIS ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2020. UPON REPEAL OF THIS ARTICLE, EACH CANNABIS CREDIT CO-OP SHALL IMMEDIATELY CEASE ITS OPERATION AND TAKE PRUDENT AND NECESSARY STEPS TO DISSOLVE. EACH CO-OP SHALL COMPLETE ITS DISSOLUTION BY SEPTEMBER 1, 2021.

(2) PRIOR TO THE REPEAL OF THIS ARTICLE, THE DEPARTMENT OF REGULATORY AGENCIES SHALL CONDUCT A SUNSET REVIEW OF THE COMMISSIONER'S REGULATION OF CANNABIS CREDIT CO-OPS AS DESCRIBED IN SECTION 24-34-104 (8), C.R.S.

**SECTION 2.** In Colorado Revised Statutes, 12-43.3-401, amend (3) as follows:

**12-43.3-401. Classes of licenses.** (3) A state chartered bank or a credit union may loan money to any person licensed pursuant to this article for the operation of a licensed business. A MARIJUANA FINANCIAL SERVICES
SECTION 3. In Colorado Revised Statutes, 13-4-102, amend (2) (kk); and add (2) (ll) as follows:

13-4-102. Jurisdiction. (2) The court of appeals has initial jurisdiction to:

(kk) Review all final actions and orders appropriate for judicial review of the director of the division of professions and occupations in the department of regulatory agencies, as provided in section 12-40.5-110, C.R.S.; and

(ll) Review all final actions and orders appropriate for judicial review of the state commissioner of financial services as provided in sections 11-33-109 (4) and 11-33-122 (1) (d) and (2) (b), C.R.S.

SECTION 4. In Colorado Revised Statutes, 24-34-104, add (51.5) (i) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (51.5) The following agencies, functions, or both, terminate on September 1, 2020:

(i) The regulation of marijuana financial services cooperatives pursuant to Article 33 of Title 11, C.R.S.

SECTION 5. In Colorado Revised Statutes, 39-28.8-501, amend as added by Senate Bill 14-215 (2) (b) (XI) and (2) (b) (XII); and add (2) (b) (XIII) as follows:

39-28.8-501. Marijuana tax cash fund - creation - distribution. (2) (b) Subject to the limitations in subsection (5) of this section, any moneys in the fund that are not appropriated to the department of revenue pursuant to paragraph (a) of this subsection (2) are subject to annual appropriation by the general assembly for any fiscal year following the
fiscal year in which they were received by the state. The general assembly shall initially appropriate moneys in the fund based on the most recent estimate of revenue prepared by the staff of the legislative council or the department of revenue for the applicable fiscal year. The general assembly may appropriate moneys in the fund for the following purposes:

(XI) To expand the provision of jail-based behavioral health services in underserved counties and to enhance the provision of jail-based behavioral health services to offenders transitioning from jail to the community to ensure continuity of care; and

(XII) For the provision of substance use disorder treatment services for adolescents and pregnant women; AND

(XIII) FOR THE START-UP EXPENSES OF THE DIVISION OF FINANCIAL SERVICES RELATED TO THE REGULATION OF MARIJUANA FINANCIAL SERVICES COOPERATIVES PURSUANT TO ARTICLE 33 OF TITLE 11, C.R.S., AND UNTIL THE STATE COMMISSIONER OF FINANCIAL SERVICES FIRST COLLECTS ASSESSMENTS ON SUCH COOPERATIVES.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the marijuana tax cash fund created in section 39-28.8-501, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of $50,000, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) $35,427 to the division of financial services for stakeholder workgroup expenses; and

(b) $14,573 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of $14,573, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the
appropriation made in paragraph (b) of subsection (1) of this section.

SECTION 7. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of $50,000, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) $35,427 to the division of financial services for stakeholder workgroup expenses; and

(b) $14,573 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of $14,573, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (b) of subsection (1) of this section.

SECTION 8. Effective date - applicability. (1) This act takes effect upon passage, except that:

(a) Sections 5 and 6 of this act take effect only if Senate Bill 14-215 becomes law and sections 5 and 6 take effect on the effective date of this act or Senate Bill 14-215, whichever is later;

(b) Section 7 of this act takes effect only if Senate Bill 14-215 does not become law and section 7 takes effect on the effective date of this act; and

(2) This act applies to conduct occurring on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds,
HOUSE BILL 14-1122

BY REPRESENTATIVE(S) Kagan, Becker, Conti, Court, Duran, Fields, Fischer, Ginal, Hamner, Hullinghorst, Labuda, Lee, May, Melton, Mitsch Bush, Pabon, Pettersen, Priola, Rankin, Rosenthal, Ryden, Schafer, Scott, Singer, Tyler, Williams, Young, Coram, Exum, Ferrandino; also SENATOR(S) Newell, Crowder, Guzman, Heath, Herpin, Jones, Kefalas, Kerr, King, Nicholson, Rivera, Schwartz, Todd.

CONCERNING PROVISIONS TO KEEP LEGAL MARIJUANA FROM UNDERAGE PERSONS.

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

SECTION 1. In Colorado Revised Statutes, 12-43.3-202, amend (2) (a) (XIV.5) as follows:

12-43.3-202. Powers and duties of state licensing authority. (2) (a) Rules promulgated pursuant to paragraph (b) of subsection (1) of this section may include, but need not be limited to, the following subjects:

(XIV.5) Prohibiting the sale of MEDICAL MARIJUANA AND medical marijuana-infused products unless the product is: packaged:

(A) In special packaging that is designed or constructed to be

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
significantly difficult for children under five years of age to open and not
difficult for normal adults to use properly and that does not allow the
product to be seen without opening the packaging material PACKAGED IN
PACKAGING MEETING REQUIREMENTS ESTABLISHED BY THE STATE LICENSING
AUTHORITY SIMILAR TO THE FEDERAL "POISON PREVENTION PACKAGING
ACT OF 1970", 15 U.S.C. sec. 1471 et seq.; or

(B) In packaging that is labeled "Medicinal product - keep out of
reach of children"; PLACED IN AN OPAQUE AND RESEALABLE EXIT PACKAGE
OR CONTAINER AT THE POINT OF SALE PRIOR TO EXITING THE STORE, AND THE
CONTAINER OR PACKAGE MEETS THE REQUIREMENTS ESTABLISHED BY THE
STATE LICENSING AUTHORITY.

SECTION 2. In Colorado Revised Statutes, 12-43.4-402, amend
(3) (b) as follows:

12-43.4-402. Retail marijuana store license - repeal.
(3) (b) (I) Prior to initiating a sale, the employee of the retail marijuana
store making the sale shall verify that the purchaser has a valid
identification card showing the purchaser is twenty-one years of age or
older. If a person under twenty-one years of age presents a fraudulent proof
of age, any action relying on the fraudulent proof of age shall not be
grounds for the revocation or suspension of any license issued under this
article.

(II) (A) IF A RETAIL MARIJUANA STORE LICENSEE OR EMPLOYEE HAS
REASONABLE CAUSE TO BELIEVE THAT A PERSON IS UNDER TWENTY-ONE
YEARS OF AGE AND IS EXHIBITING FRAUDULENT PROOF OF AGE IN AN
ATTEMPT TO OBTAIN ANY RETAIL MARIJUANA OR MARIJUANA-INFUSED
PRODUCT, THE LICENSEE OR EMPLOYEE IS AUTHORIZED TO CONFISCATE SUCH
FRAUDULENT PROOF OF AGE, IF POSSIBLE, AND SHALL, WITHIN SEVENTY-TWO
HOURS AFTER THE CONFISCATION, REMIT TO A STATE OR LOCAL LAW
ENFORCEMENT AGENCY. THE FAILURE TO CONFISCATE SUCH FRAUDULENT
PROOF OF AGE OR TO REMIT TO A STATE OR LOCAL LAW ENFORCEMENT
AGENCY WITHIN SEVENTY-TWO HOURS AFTER THE CONFISCATION DOES NOT
CONSTITUTE A CRIMINAL OFFENSE.

(B) IF A RETAIL MARIJUANA STORE LICENSEE OR EMPLOYEE BELIEVES
THAT A PERSON IS UNDER TWENTY-ONE YEARS OF AGE AND IS EXHIBITING
FRAUDULENT PROOF OF AGE IN AN ATTEMPT TO OBTAIN ANY RETAIL
MARIJUANA OR RETAIL MARIJUANA-INFUSED PRODUCT, THE LICENSEE OR EMPLOYEE OR ANY PEACE OR POLICE OFFICER, ACTING IN GOOD FAITH AND UPON PROBABLE CAUSE BASED UPON REASONABLE GROUNDS THEREFOR, MAY DETAIN AND QUESTION SUCH PERSON IN A REASONABLE MANNER FOR THE PURPOSE OF ASCERTAINING WHETHER THE PERSON IS GUILTY OF ANY UNLAWFUL ACT REGARDING THE PURCHASE OF RETAIL MARIJUANA. THE QUESTIONING OF A PERSON BY AN EMPLOYEE OR A PEACE OR POLICE OFFICER DOES NOT RENDER THE LICENSEE, THE EMPLOYEE, OR THE PEACE OR POLICE OFFICER CIVILLY OR CRIMINALLY LIABLE FOR SLANDER, FALSE ARREST, FALSE IMPRISONMENT, MALICIOUS PROSECUTION, OR UNLAWFUL DETENTION.

SECTION 3. In Colorado Revised Statutes, 12-43.4-901, amend (4) (e) and (6) as follows:

12-43.4-901. Unlawful acts - exceptions - repeal. (4) It is unlawful for any person licensed to sell retail marijuana or retail marijuana products pursuant to this article:

(e) To sell OR PERMIT THE SALE OF retail marijuana or retail marijuana products to a person under twenty-one years of age; without checking the person's identification;

(6) A person who commits any acts that are unlawful pursuant to this article or the rules authorized and adopted pursuant to this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except for violations that would also constitute a violation of paragraph (e) of subsection (4) of this section is a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If a violation of this article or the rules authorized and adopted pursuant to this article also constitutes a violation of title 18, C.R.S., which the violation shall be charged and prosecuted pursuant to title 18, C.R.S.

SECTION 4. In Colorado Revised Statutes, 18-18-102, add (14.5) and (16.5) as follows:

18-18-102. Definitions. As used in this article:

(14.5) "ENCLOSED" MEANS A PERMANENT OR SEMI-PERMANENT AREA COVERED AND SURROUNDED ON ALL SIDES. TEMPORARY OPENING OF
WINDOWS OR DOORS OR THE TEMPORARY REMOVAL OF WALL OR CEILING PANELS DOES NOT CONVERT THE AREA INTO AN UNENCLOSED SPACE.

(16.5) "LOCKED SPACE" MEANS SECURED AT ALL POINTS OF INGRESS OR EGRESS WITH A LOCKING MECHANISM DESIGNED TO LIMIT ACCESS SUCH AS WITH A KEY OR COMBINATION LOCK.

SECTION 5. In Colorado Revised Statutes, 18-18-406, amend (3) as follows:

18-18-406. Offenses relating to marijuana and marijuana concentrate. (3) (a) It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls. A person who violates the provisions of this subsection (3) commits:

(a) (I) A level 3 drug felony if the offense involves more than thirty plants;

(b) (II) A level 4 drug felony if the offense involves more than six but not more than thirty plants; or

(c) (III) A level 1 drug misdemeanor if the offense involves not more than six plants.

(b) IT IS NOT A VIOLATION OF THIS SUBSECTION (3) IF:

(I) THE PERSON IS LAWFULLY CULTIVATING MEDICAL MARIJUANA PURSUANT TO THE AUTHORITY GRANTED IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION; OR

(II) THE PERSON IS LAWFULLY CULTIVATING MARIJUANA IN AN ENCLOSED AND LOCKED SPACE PURSUANT TO THE AUTHORITY GRANTED IN SECTION 16 OF ARTICLE XVIII OF THE STATE CONSTITUTION; EXCEPT THAT, IF THE CULTIVATION AREA IS LOCATED IN A RESIDENCE AND:

(A) A PERSON UNDER TWENTY-ONE YEARS OF AGE LIVES AT THE RESIDENCE, THE CULTIVATION AREA ITSELF MUST BE ENCLOSED AND LOCKED; AND

PAGE 4-HOUSE BILL 14-1122
(B) IF NO PERSON UNDER TWENTY-ONE YEARS OF AGE LIVES AT THE RESIDENCE, THE EXTERNAL LOCKS OF THE RESIDENCE CONSTITUTES AN ENCLOSED AND LOCKED SPACE. IF A PERSON UNDER TWENTY-ONE YEARS OF AGE ENTERS THE RESIDENCE, THE PERSON MUST ENSURE THAT ACCESS TO THE CULTIVATION SITE IS REASONABLY RESTRICTED FOR THE DURATION OF THAT PERSON’S PRESENCE IN THE RESIDENCE.

SECTION 6. In Colorado Revised Statutes, 12-43.3-104, add (10.5) and (14.5) as follows:

12-43.3-104. Definitions. As used in this article, unless the context otherwise requires:

(10.5) "OPAQUE" MEANS THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL.

(14.5) "RESEALABLE" MEANS THAT THE PACKAGE CONTINUES TO FUNCTION WITH EFFECTIVENESS SPECIFICATIONS, WHICH SHALL BE ESTABLISHED BY THE STATE LICENSING AUTHORITY SIMILAR TO THE FEDERAL "POISON PREVENTION PACKAGING ACT OF 1970", 15 U.S.C. SEC. 1471 ET SEQ., FOR THE NUMBER OF OPENINGS AND CLOSINGS CUSTOMARY FOR ITS SIZE AND CONTENTS, WHICH SHALL BE DETERMINED BY THE STATE LICENSING AUTHORITY.

SECTION 7. In Colorado Revised Statutes, 12-43.4-103, add (10.5) and (14.5) as follows:

12-43.4-103. Definitions. As used in this article, unless the context otherwise requires:

(10.5) "OPAQUE" MEANS THAT THE PACKAGING DOES NOT ALLOW THE PRODUCT TO BE SEEN WITHOUT OPENING THE PACKAGING MATERIAL.

(14.5) "RESEALABLE" MEANS THAT THE PACKAGE CONTINUES TO FUNCTION WITH EFFECTIVENESS SPECIFICATIONS, WHICH SHALL BE ESTABLISHED BY THE STATE LICENSING AUTHORITY SIMILAR TO THE FEDERAL "POISON PREVENTION PACKAGING ACT OF 1970", 15 U.S.C. SEC. 1471 ET SEQ., FOR THE NUMBER OF OPENINGS AND CLOSINGS CUSTOMARY FOR ITS SIZE AND CONTENTS, WHICH SHALL BE DETERMINED BY THE STATE LICENSING AUTHORITY.
SECTION 8. In Colorado Revised Statutes, 12-43-4-202, amend (3) (c) (I) introductory portion and (3) (c) (III) (B) as follows:

12-43-4-202. Powers and duties of state licensing authority - rules. (3) (c) Rules promulgated pursuant to paragraph (b) of subsection (2) of this section must also include the following subjects, and the state licensing authority may seek the assistance of the department of public health and environment when necessary before promulgating the rules:

(I) Signage, marketing, and advertising, including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching persons under twenty-one years of age and other such rules that may include:

(III) Prohibiting the sale of retail marijuana and retail marijuana products unless:

(B) The product is placed in an opaque and resealable exit package or container meeting requirements established by the state licensing authority at the point of sale prior to exiting the store;

SECTION 9. Safety clause. The general assembly hereby finds,
Synopsis as Enacted

Brief Description: Establishing the cannabis patient protection act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rivers, Hatfield and Conway).

Senate Committee on Health Care
Senate Committee on Ways & Means
House Committee on Health Care & Wellness

Background: Medical Use of Marijuana. In 1998 voters approved Initiative 692 which permitted the use of marijuana for medical purposes by qualifying patients. The Legislature subsequently amended the chapter on medical use of marijuana in 2007, 2010, and 2011, changing who may authorize the medical use of marijuana, the definition of terminal or debilitating medical condition, what constitutes a 60-day supply of medical marijuana, and authorized qualifying patients and designated providers to participate in collective gardens.

In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition such as cancer, the human immunodeficiency virus, multiple sclerosis, intractable pain, glaucoma, Crohn’s disease, hepatitis C, nausea or seizure diseases, or a disease approved by the Medical Quality Assurance Commission, and the diagnosis of this condition must be made by a health care professional. The health care professional who determines that a person would benefit from the medical use of marijuana must provide that patient with valid documentation written on tamper-resistant paper.

Qualifying patients who hold valid documentation may assert an affirmative defense at trial that they are authorized medical cannabis patients. These patients are not currently provided arrest protection.

Patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide for one patient at a time, must be 18 years of age, and must be designated in writing by the qualifying patient to serve in this capacity. There is no age limit for patients. Qualified patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product.
Up to ten qualifying patients may share responsibility for acquiring and supplying the resources required to produce, process, transport, and deliver marijuana for the medical use of its members. Collective gardens may contain up to 45 plants and 72 ounces of useable marijuana and no marijuana from the collective garden may be delivered to anyone other than one of the qualifying patients participating in the collective garden. No provision for the sale of marijuana from a collective garden or for the licensing of collective gardens is made in statute.

No state agency is provided with regulatory oversight of medical marijuana. The Department of Health (DOH) does provide guidance to its licensees who recommend the medical use of marijuana, and is the disciplinary authority for its providers who authorize the medical use of marijuana in violation of the statutory requirements. DOH does not perform investigations until a complaint is made that someone is unlawfully authorizing the medical use of marijuana. There are no statutory licensing or production standards for medical marijuana and there are no provisions for taxation of medical marijuana.

Recreational Use of Marijuana. In 2012 voters approved Initiative 502 which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for non-medical purposes. Under this system, the Liquor Control Board (LCB) issues licenses to marijuana producers, processors, and retailers, and adopts standards for the regulation of these operations. The number of these licenses that may be issued is established by LCB. Persons over 21 years of age may purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, or seven grams of marijuana concentrates at a licensed retailer.

Federal Response to State Marijuana Regulations. Washington is one of 33 states, and the District of Columbia, that have passed legislation allowing the use of marijuana for medicinal purposes – although some of these states permit the use of high cannabidiol products only. Washington is also one of four states, and the District of Columbia, that allow recreational use of marijuana. The use of marijuana remains illegal under federal law. However, Congress in its 2015 fiscal year funding bill provided that the United States Department of Justice (DOJ) may not use federal funds to prevent states from carrying out their medical marijuana laws. Additionally the DOJ has issued several policy statements regarding state regulation of marijuana and describing when prosecutors may intervene. Federal prosecutors have been instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent the distribution of marijuana to minors; marijuana sales revenue from being directed to criminal enterprises; marijuana from being diverted from states where it is legal to states in which it is illegal; state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity; violence and the use of firearms in the production and distribution of marijuana; drugged driving and other marijuana-related public health consequences; the growth of marijuana on public lands; and marijuana possession or use on federal property.

Summary: LCB is renamed to the Liquor and Cannabis Board (LCB).

Medical use of marijuana is regulated through the structure provided in Initiative 502. Specific provisions for the medical use of marijuana are included: the terminal or debilitating medical conditions that qualify a patient for the medical use of marijuana must be
severe enough to significantly interfere with activities of daily living and must be able to be objectively assessed and evaluated; and qualifying patients continue to be able to grow marijuana for their medical use. A medical marijuana authorization database (database) is created. Qualifying patients and designated providers who do not sign up to the database may grow marijuana for their medical use but are limited to four plants and 6 ounces of useable marijuana and are provided an affirmative defense to charges of violating the law on medical use of marijuana. Qualifying patients and designated providers who do sign up to the database may grow up to 15 plants for their medical use, are provided arrest protection, and may possess three times the amount of marijuana than what is permitted for the recreational user.

A medical marijuana endorsement to a marijuana retail license is established to be issued by LCB. The endorsement may be issued concurrently with the retail license and medical marijuana–endorsed stores must carry products identified by DOH as beneficial to medical marijuana patients. DOH must also adopt safe handling requirements for all marijuana products to be sold by endorsed stores and must adopt training requirements for retail employees. LCB must reopen the license period for retail stores and allow for additional licenses to be issued to address the needs of the medical market. LCB must establish a merit based system for issuing retail licenses. First priority must be given to applicants that have applied for a marijuana retailer license before July 1, 2014, and who have operated or been employed by a collective garden before November 6, 2012, and second priority to applicants who were operating or employed by a collective garden before November 6, 2012 but who have not previously applied for a marijuana license.

Beginning July 1, 2016, health care professionals who authorize the medical use of marijuana must use an authorization form developed by DOH. The authorization form must include the qualifying patient's or designated provider's name, address, and date of birth; the health care professional's name, address, and license number; the amount of marijuana recommended for the qualifying patient; a telephone number where the authorization can be verified; the dates of issuance and expiration; and a statement that the authorization does not provide protection from arrest unless the patient or provider is also entered into the database. Authorizations are valid for one year for adults and six months for minors.

Minors may be authorized for the medical use of marijuana if the minor's parent or guardian agrees to the authorization. The parent or guardian must have sole control over the minor's marijuana. Minors may not grow marijuana, nor may they purchase from a retailer. However, they may enter the premises of a medical marijuana retailer if they are accompanied by their parent or guardian who is serving as the designated provider. Patients who are between ages 18 and 21 may enter medical marijuana retail outlets.

The database is to be administered by a third party under contract with DOH. The database must allow authorizing marijuana retailers with medical marijuana endorsements to enter the qualifying patient or designated provider into the database and, consequently, provide the patient or provider with a recognition card that may be used to confirm the authenticity of the patient or provider. Patients and providers who are entered into the database are provided protection from arrest so long as they are in compliance with the law on the medical use of marijuana. Patients and providers who are entered into the database are permitted the following possession amounts: 3 ounces of useable marijuana, 48 ounces
of marijuana-infused product in solid form, 216 ounces of marijuana-infused product in liquid form, 21 grams of marijuana concentrates, and 6 plants. The authorizing health care professional may authorize more than the six plants and 3 ounces of useable marijuana if the patient's medical needs require additional amounts, but no more than 8 ounces of useable marijuana and 15 plants.

No more than 15 plants may be grown in a housing unit, unless the housing unit is the location of a cooperative. No plants may be grown or processed if any portion of the activity may be viewed or smelled by the public or the private property of another housing unit.

The database is not subject to public disclosure. The database is accessible to only the following groups of people:

- The medical marijuana retailer with a medical marijuana endorsement, to add the patient or provider to the database.
- Persons authorized to prescribe or dispense controlled substances to access health care information on their patients to provide medical care to their patients.
- A qualifying patient or designated provider to request or receive his or her own health care information.
- Law enforcement officers who are engaged in a bona fide investigation relating to the use of marijuana.
- A marijuana retailer holding a medical marijuana endorsement to confirm the validity of a recognition card.
- The Department of Revenue to verify tax exemptions.
- The Department of Health to monitor compliance of health care professionals.

It is a class C felony for a person to access the database for an unauthorized purpose or to disclose any information obtained by accessing the database. Funding for the creation and maintenance of the database comes from the Health Professions Account which will be reimbursed from the Dedicated Marijuana Fund.

Qualifying patients and designated providers placed in the database be issued recognition cards. Recognition cards must include a randomly generated number that will identify the patient or provider, a photograph of the patient or provider, the amount of marijuana for which the patient has been authorized, the effective and expiration dates of the card, the name of the health care professional who authorized the patient or provider, and other security features necessary to ensure its validity. Patients and providers will be charged $1 for each initial and renewal recognition card issued with proceeds to be deposited into the Health Professions Account.

The provision authorizing collective gardens is repealed, effective July 1, 2016. Four member cooperatives are permitted. Up to four patients or designated providers may participate in cooperatives to share responsibility for the production and processing of marijuana for the medical use of its members. The location of the cooperative must be registered with LCB and is only permitted if it is at least 1 mile away from a marijuana retailer. The registration must include each member's name and copies of each member's authorization cards. Only registered members may participate in the cooperative or obtain marijuana from the cooperative. If a member leaves the cooperative, no new member may join for 60 days after LCB has been notified of the change in membership. All members of the cooperative must
provide labor; monetary assistance is not permitted. Marijuana grown at a cooperative is only for the medical use of its members and may not be sold or donated to another. Minors may not participate in cooperatives. LCB must develop a seed to sale traceability system to track all marijuana grown by the cooperative.

Licensed marijuana producers may be permitted to increase the amount of their production space if the additional amount is to be used to grow plants identified as appropriate for medical use.

Extractions by any person without a license is prohibited. LCB must adopt rules on non-combustible methods of extractions that may be used.

A medical marijuana consultant certificate is established to be issued by DOH. Certificate holders must meet education requirements relating to the medical use of marijuana and the laws and rules implementing the recreational and medical systems. DOH must also make recommendations on whether medical marijuana specialty clinics may be permitted.

LCB may conduct controlled purchase programs in retail outlets, cooperatives, and, until they expire December 31, 2015, in collective gardens to ensure minors are not accessing marijuana. Retailers may conduct in-house controlled purchase programs.

**Votes on Final Passage:**

<table>
<thead>
<tr>
<th></th>
<th>Senate</th>
<th>36</th>
<th>11</th>
</tr>
</thead>
<tbody>
<tr>
<td>House</td>
<td>60</td>
<td>36</td>
<td>(House amended)</td>
</tr>
<tr>
<td>Senate</td>
<td>41</td>
<td>8</td>
<td>(Senate concurred)</td>
</tr>
</tbody>
</table>

**Effective:** Various effective dates.

**Partial Veto Summary:** The Governor vetoed the section that prohibited employers of health care providers from limiting medical marijuana recommendations to patients. The sections that removed medical marijuana from Schedule I of the Controlled Substances Act and the resulting criminal penalties relating to the newly unscheduled medical products were also vetoed. Finally, the section that would make the bill contingent on House Bill 2136 passing was vetoed.
AN ACT to amend the agriculture and markets law, in relation to prohibiting piercing and tattooing of companion animals

Became a law December 15, 2014, with the approval of the Governor.

Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The agriculture and markets law is amended by adding a new section 353-f to read as follows:

Section 353-f. Companion animal piercing and tattooing prohibited. 1. No person shall pierce or cause to have pierced a companion animal unless such piercing provides a medical benefit to the companion animal. Such piercing shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian. Nothing in this section shall be construed to apply to ear tags on rabbits and cavies.

2. No person shall tattoo or cause to have tattooed a companion animal unless such tattoo:

(a) is done in conjunction with a medical procedure for the benefit of the companion animal and to indicate that such medical procedure has been done, provided that such tattoo is not for design purposes; or

(b) is done for the purpose of identification of the companion animal and not for design purposes, and such tattoo includes only such numbers and/or letters allotted by a corporation that, in the regular course of its business, maintains an animal tattoo identification registry.

3. For the purposes of this section, "tattoo" shall mean a mark on the body made with indelible ink or pigments injected beneath the outer layer of the skin.

4. Tattooing done in conjunction with a medical procedure for the benefit of a companion animal that indicates that such medical procedure has been done shall be performed by a licensed veterinarian or under the supervision of a licensed veterinarian.

5. Any person who knowingly violates the provisions of this section shall be guilty of a violation punishable pursuant to the penal law.

Section 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.

Copyright 2015 State Net. All Rights Reserved.
AN ACT relating to fraudulent transfers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. KRS CHAPTER 378A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

As used in this chapter:

(1) "Affiliate" means:

(a) A person that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

(b) A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets:
(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one (1) tenant.

(3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, undisputed, legal, equitable, secure, or unsecured;

(4) "Creditor" means a person that has a claim;

(5) "Debt" means liability on a claim;

(6) "Debtor" means a person that is liable on a claim;

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(8) "Insider" includes:

(a) If the debtor is an individual:

   1. A relative of the debtor or of a general partner of the debtor;

   2. A partnership in which the debtor is a general partner;

   3. A general partner in a partnership described in subparagraph 2. of this paragraph; or

   4. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

   1. A director of the debtor;

   2. An officer of the debtor;

   3. A person in control of the debtor;

   4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership described in subparagraph 4. of this paragraph; or

6. A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general partner;

4. A general partner in a partnership described in subparagraph 3. of this paragraph; or

5. A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor;

(9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien;

(10) "Organization" means a person other than an individual;

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity;

(12) "Property" means anything that may be the subject of ownership;

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(14) "Relative" means an individual related by consanguinity within the third degree
as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree;

(15) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process;

(16) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance; and

(17) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

SECTION 2. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(2) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(4) Debts under this section do not include an obligation to the extent it is secured by
a valid lien on property of the debtor not included as an asset.

⇒ SECTION 3. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of subsection (1)(b) of Section 4 of this Act and Section 5 of this Act, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

⇒ SECTION 4. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for
which the remaining assets of the debtor were unreasonably small in
relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that
the debtor would incur, debts beyond the debtor's ability to pay as they
became due.

(2) In determining actual intent under subsection (1)(a) of this section, consideration
may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor retained possession or control of the property transferred after
the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor had
been sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor absconded;

(g) The debtor removed or concealed assets;

(h) The value of the consideration received by the debtor was reasonably
    equivalent to the value of the asset transferred or the amount of the
    obligation incurred;

(i) The debtor was insolvent or became insolvent shortly after the transfer was
    made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was
    incurred; and

(k) The debtor transferred the essential assets of the business to a lienor that
    transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) of this section has the
burden of proving the elements of the claim for relief by a preponderance of the
evidence.

SECTION 5. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made, if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subjection to subsection (2) of Section 2 of this Act, a creditor making a claim for relief under subsection (1) or (2) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 6. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

For the purposes of this chapter:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable laws permit the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) With respect to an asset that is not real property or that is a fixture, when
the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section, and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record, when the record, signed by the obligor, is delivered to or for the benefit of the obligee.

SECTION 7. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 8 of this Act, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(c) Subject to applicable principles of equity and in accordance with applicable Rules of Civil Procedure:

1. An injunction against further disposition by the debtor or a transferee.
or both, of the asset transferred or of other property;

2. Appointment of a receiver to take charge of the asset transferred or of the other property of the transferee; or

3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

SECTION 8. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) A transfer or obligation is not voidable under subsection (1)(a) of Section 4 of this Act against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under subsection (1)(a) of Section 7 of this Act, the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1. The first transferee of the asset or the person for whose benefit the transfer was made; or

2. An immediate or mediate transferee of the first transferee, other than:

   a. A good-faith transferee that took for value; or

   b. An immediate or mediate good-faith transferee of a person described in subdivision a. of this subparagraph; and

(b) Recovery pursuant to subsection (1)(a) or (b) of Section 7 of this Act of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subsection (2)(a)1. or 2. of this section.

(3) If the judgment under subsection (2) of this section is based upon the value of the
asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an interest in the asset transferred;
(b) Enforcement of an obligation incurred; or
(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under subsection (1)(b) of Section 4 of this Act or Section 5 of this Act if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
(b) Enforcement of a security interest in compliance with Subtitle 9 of KRS Chapter 355, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under subsection (2) of Section 5 of this Act:

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
(c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this section has
the burden of proving the applicability of the subsection invoked;

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, the creditor has the burden of proving each applicable element of subsections (2) or (3) of this section;

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)2.a. or b. of this section; and

(d) A party that seeks adjustment under subsection (3) of this section has the burden of proving the adjustment.

(8) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

SECTION 9. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

(1) Under subsection (1)(a) of Section 4 of this Act, not later than four (4) years after the transfer was made or the obligation was incurred or, if later, not later than one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under subsection (1)(b) of Section 4 of this Act or subsection (1) of Section 5 of this Act, not later than four (4) years after the transfer was made or the obligation was incurred; or

(3) Under subsection (2) of Section 5 of this Act, no later than one (1) year after the transfer was made.

SECTION 10. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal
residence:

(b) A debtor that is an organization and has only one (1) place of business is located at its place of business; and

c) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local laws of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

SECTION 11. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

(1) In this section:

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (b) of this subsection; and

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

1. The organic record of the organization provides for creation by the organization of one (1) or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series;

2. Debt incurred or existing with respect to the activities of, or property of, or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization; and
3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

SEC. 12. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

SEC. 13. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

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.

SEC. 14. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(B) of that act, 15 U.S.C. sec. 7003(b).

SEC. 15. A NEW SECTION OF KRS CHAPTER 378A IS CREATED TO READ AS FOLLOWS:
This chapter may be cited as the Kentucky Uniform Voidable Transactions Act.

Section 16. The following KRS sections are repealed:

378.010 Fraudulent conveyances and encumbrances -- Void as to whom -- Exception.
378.020 Conveyance or encumbrance without consideration -- Effect.
378.030 Action on fraudulent conveyance or encumbrance of real property -- Proceedings.
378.050 Loan of personal property with possession for five years or reservation -- Effect in absence of recorded evidence or will.
378.060 Preferential conveyance, encumbrance or other act in contemplation of insolvency -- Effect -- Exception.
378.070 Action on transfer by preferential act -- Limitation and extension of limitation -- Parties -- Proceedings.
378.080 Property to be surrendered to receiver -- Disclosure -- Writ of ne exeat may be granted.
378.090 Distribution of assets by the court -- Appeal -- Preferred claims.
378.100 Provisions concerning actions for settlements applicable to proceedings for sale of property held in trust or preferentially assigned.

Section 17. This Act takes effect January 1, 2016.

Section 18. The repeals in Section 16 of this Act shall not apply to:

(1) A transfer made or obligation incurred before the effective date of this Act; or
(2) A right of action that has accrued before January 1, 2016, as determined pursuant to Section 6 of this Act.
An Act to amend and reenact §§ 46.2-694, as it is currently effective and as it may become effective, 46.2-711, 46.2-749.5, 46.2-753, 46.2-755, 46.2-1400, 46.2-2000, 46.2-2001.3, 46.2-2011.5, 46.2-2011.6, 46.2-2011.20, 46.2-2011.22, 46.2-2011.24, 46.2-2011.29, and 46.2-2051 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 20 of Title 46.2 an article numbered 15, consisting of sections numbered 46.2-2099.45 through 46.2-2099.53, relating to transportation network companies.

Approved February 16, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-694, as it is currently effective and as it may become effective, 46.2-711, 46.2-749.5, 46.2-753, 46.2-755, 46.2-1400, 46.2-2000, 46.2-2001.3, 46.2-2011.5, 46.2-2011.6, 46.2-2011.20, 46.2-2011.22, 46.2-2011.24, 46.2-2011.29, and 46.2-2051 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 20 of Title 46.2 an article numbered 15, consisting of sections numbered 46.2-2099.45 through 46.2-2099.53, as follows:

§ 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; however, the fee provided under this subdivision shall apply to a private passenger car or motor home that weighs 4,000 pounds or less and is used as a TNC partner vehicle as defined in § 46.2-2000.

2. Thirty-eight dollars for each private passenger car or motor home which that 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; however, the fee provided under this subdivision shall apply to a private passenger car or motor home that weighs more than 4,000 pounds and is used as a TNC partner vehicle as defined in § 46.2-2000.

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 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 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 subdivision does not apply to vehicles used as common carriers or as TNC partner vehicles as defined in § 46.2-2000.

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 subdivision does not apply to vehicles used as common carriers or as TNC partner vehicles as defined in § 46.2-2000.

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. 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 service 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; however, the fee provided under this subdivision shall apply to a private passenger car or motor home that weighs 4,000 pounds or less and is used as a TNC partner vehicle as defined in § 46.2-2000.

2. Twenty-eight dollars for each private passenger car or motor home which that 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; however, the fee provided under this subdivision shall apply to a private passenger car or motor home that weighs more than 4,000 pounds and is used as a TNC partner vehicle as defined in § 46.2-2000.

3. Thirty cents per 100 pounds or major fraction thereof for 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.

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 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,
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 subdivision does not apply to vehicles used as common carriers or as TNC partner vehicles as defined in § 46.2-2000.

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 subdivision does not apply to vehicles used as common carriers or as TNC partner vehicles as defined in § 46.2-2000.

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. 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, other than TNC partner vehicles as defined in § 46.2-2000;
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, other than TNC partners as defined in § 46.2-2000, 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 the 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.).

§ 46.2-749.5. Special license plates celebrating Virginia's tobacco heritage.
A. On receipt of an application, the Commissioner shall issue special license plates celebrating Virginia's tobacco heritage. For each set of license plates issued under this section, the Commissioner shall charge, in addition to the prescribed cost of state license plates, an annual fee of ten dollars $10.
B. License plates may be issued under this section for display on vehicles registered as trucks, as that term is defined in § 46.2-100, provided that no license plates are issued pursuant to this section for (i) vehicles operated for hire, except TNC partner vehicles as defined in § 46.2-2000; (ii) vehicles registered under the International Registration Plan; or (iii) vehicles registered as tow trucks or tractor trucks as defined in § 46.2-100. No permanent license plates without decals as authorized in subsection B of § 46.2-712 may be issued under this section. For each set of truck license plates issued under this subsection, the Commissioner shall charge, in addition to the prescribed cost of state license plates, an annual fee of $25.

§ 46.2-753. Additional license fees in certain localities.
Notwithstanding any other provision of law, the governing bodies of Alexandria, Arlington, Fairfax County, Fairfax City, and Falls Church are authorized to charge annual license fees, in addition to those specified in § 46.2-752, on passenger cars, including passenger cars that are used as TNC partner vehicles as defined in § 46.2-2000, but not on passenger cars that are otherwise used for the transportation of passengers for compensation. The additional fee shall be no more than five dollars $5. The total local license fee shall be no more than twenty-five dollars $25 on any vehicle, and this license fee shall not be imposed on any motor vehicle exempted under § 46.2-739.

The governing bodies are also authorized to charge additional annual license fees on the motor vehicles, trailers, and semitrailers as specified in § 46.2-697 in an amount of no more than five dollars $5 for each such vehicle. This authorization shall not increase the maximum chargeable by more than five dollars $5 or affect any existing exemption.

Any funds acquired in excess of those allowed by § 46.2-752, shall be allocated to the Northern Virginia Transportation Commission to be a credit to that jurisdiction locality making the payment for its share of any operating deficit assigned to it by the Washington Metropolitan Area Transit Authority.

§ 46.2-755. Limitations on imposition of motor vehicle license taxes and fees.
A. No county, city, or town locality shall impose any motor vehicle license tax or fee on any motor vehicle, trailer, or semitrailer when:

1. A similar tax or fee is imposed by the county, city, or town locality wherein the vehicle is normally garaged, stored, or parked;

2. The vehicle is owned by a nonresident of such locality and is used exclusively for pleasure or personal transportation or as a TNC partner vehicle as defined in § 46.2-2000 and not otherwise for hire or for the conduct of any business or occupation other than that set forth in subdivision 3 of this subsection;

3. The vehicle is (i) owned by a nonresident and (ii) used for transporting into and within the locality, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale;

4. The motor vehicle, trailer, or semitrailer is owned by an officer or employee of the Commonwealth who is a nonresident of such county, city, or town locality and who uses the vehicle in the performance of his duties for the Commonwealth under an agreement for such use;

5. The motor vehicle, trailer, or semitrailer is kept by a dealer or manufacturer for sale or for sales demonstration;

6. The motor vehicle, trailer, or semitrailer is operated by a common carrier of persons or property operating between cities and towns in the Commonwealth and not in intracity transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intracity transportation;

7. The motor vehicle, trailer, or semitrailer is inoperable and unlicensed pursuant to § 46.2-734.

B. No county, city, or town locality shall impose a license fee for any one motor vehicle owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran's exemption from the Department and has been issued a disabled veteran's motor vehicle license plate as prescribed in § 46.2-739.

C. No county, city, or town locality shall impose any license tax or license fee or the requirement of a license tag, sticker or decal upon any daily rental vehicle, as defined in § 58.1-1735, the rental of which is subject to the tax imposed by subdivision A 2 of § 58.1-1736.

D. In the rental agreement between a motor vehicle renting company and a renter, the motor vehicle renting company may separately itemize and charge daily fees or transaction fees to the renter, provided that the amounts of such fees are disclosed at the time of reservation and rental as part of any estimated pricing provided to the renter. Such fees include a vehicle license fee to recover the company's incurred costs in licensing, titling, and registering its rental fleet, concession recovery fees actually charged the company by an airport, or other governmentally owned or operated facility, and consolidated facility charges actually charged by an airport, or other governmentally owned or operated facility for improvements to or construction of facilities at such facility where the motor vehicle rental company operates. The vehicle license fee shall represent the company's good faith estimate of the average per day per vehicle portion of the company's total annual vehicle licensing, titling, and registration costs.

No motor vehicle renting company charging a vehicle license fee, concession recovery fee, or consolidated facility charge may make an advertisement in the Commonwealth that includes a statement of the rental rate for a vehicle available for rent in the Commonwealth unless such advertisement includes a statement that the customer will be required to pay a vehicle license fee, concession recovery fee, or consolidated facility charge. The vehicle license fee, concession recovery fee, or consolidated facility charge shall be shown as a separately itemized charge on the rental agreement. The vehicle license fee shall be described in either the terms and conditions of the rental agreement as the "estimated average per day per vehicle portion of the company's total annual vehicle licensing, titling, and registration costs" or, for renters participating in an extended rental program pursuant to a master rental agreement, by posting such statement on the rental company website.

Any amounts collected by the motor vehicle renting company in excess of the actual amount of its costs incurred relating to its vehicle license fees shall be retained by the motor vehicle renting company and applied toward the recovery of its next calendar year's costs relating to such fees. In such event, the good faith estimate of any vehicle license fee to be charged by the company for the next calendar year shall be reduced to take into account the excess amount collected from the prior year.

E. As used in this section, common carrier of persons or property includes any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or household goods for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, that has obtained the required certificate from the Department of Motor Vehicles pursuant to § 46.2-2075 or 46.2-2150.

§ 46.2-1400. "Ridesharing arrangement" defined.

"Ridesharing arrangement" means the transportation of persons in a motor vehicle when such transportation is incidental to the principal purpose of the driver, which is to reach a destination and not to transport persons for profit. The term includes ridesharing arrangements known as carpools, vanpools, and bus pools. "Ridesharing arrangement" does not include a prearranged ride as defined in § 46.2-2000.
Whenever used in this chapter unless expressly stated otherwise:

"Authorized insurer" means, in the case of an interstate motor carrier whose operations may or may not include intrastate activity, an insurer authorized to transact business in any one state, or, in the case of a solely intrastate motor carrier, an insurer authorized to transact business in the Commonwealth.

"Broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

"Carrier by motor launch" means a common carrier or contract carrier, which carrier uses one or more motor launches operating on the waters within the Commonwealth to transport passengers.

"Certificate" means a certificate of public convenience and necessity or a certificate of fitness.

"Certificate of fitness" means a certificate issued by the Department to a contract passenger carrier, a sight-seeing carrier, a transportation network company, or a nonemergency medical transportation carrier.

"Certificate of public convenience and necessity" means a certificate issued by the Department of Motor Vehicles to certain common carriers, but nothing contained in this chapter shall be construed to mean that the Department can issue any such certificate authorizing intracity transportation.

"Common carrier" means any person who undertakes, whether directly or by a lease or any other arrangement, to transport passengers for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water under this chapter. "Common carrier" does not include nonemergency medical transportation carriers, transportation network companies, or TNC partners as defined in this section.

"Contract carrier" means any person who, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers for compensation.

"Contract passenger carrier" means a motor carrier that transports groups of passengers under a single contract made with one person for an agreed charge for such transportation, regardless of the number of passengers transported, and for which transportation no individual or separate fares are solicited, charged, collected, or received by the carrier. "Contract passenger carrier" does not include a transportation network company or TNC partner as defined in this section.

"Department" means the Department of Motor Vehicles.

"Digital platform" means any online-enabled application, software, website, or system offered or utilized by a transportation network company that enables the prearrangement of rides with TNC partners.

"Employee hauler" means a motor carrier operating for compensation and exclusively transporting only bona fide employees directly to and from the factories, plants, office or other places of like nature where the employees are employed and accustomed to work.

"Excursion train" means any steam-powered train that carries passengers for which the primary purpose of the operation of such train is the passengers' experience and enjoyment of this means of transportation, and does not, in the course of operation, carry (i) freight other than the personal luggage of the passengers or crew or supplies and equipment necessary to serve the needs of the passengers and crew, (ii) passengers who are commuting to work, or (iii) passengers who are traveling to their final destination solely for business or commercial purposes.

"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 this chapter.

"Highway" means every public highway or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Identification marker" means a decal or other visible identification issued or required by the Department to show one or more of the following: (i) that the operator of the vehicle has registered with the Department for the payment of the road tax imposed under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1; (ii) proof of the possession of a certificate or permit issued pursuant to Chapter 20 (§ 46.2-2000 et seq.) of this title; and/or, (iii) proof that the vehicle has been registered with the Department as a TNC partner vehicle under subsection B of § 46.2-2099.50; (iv) proof that the vehicle has been authorized by a transportation network company to be operated as a TNC partner vehicle, in accordance with subsection C of § 46.2-2099.50; or (v) proof of compliance with the insurance requirements of this chapter.

"Interstate" means transportation of passengers between states.

"Intrastate" means transportation of passengers solely within a state.

"License" means a license issued by the Department to a broker.

"Minibus" means any motor vehicle having a seating capacity of not less than seven nor more than 31 passengers, including the driver, and used in the transportation of passengers.

"Motor carrier" means any person who undertakes, whether directly or by lease, to transport
passengers for compensation over the highways of the Commonwealth.

“Motor launch” means a motor vessel that meets the requirements of the U.S. Coast Guard for the carriage of passengers for compensation, with a capacity of six or more passengers, but not in excess of fifty passengers. “Motor launch, as defined herein, shall” does not include sight-seeing vessels, special or charter party vessels within the provisions of this chapter. A carrier by motor launch shall not be regarded as a steamship company.

“Nonemergency medical transportation carrier” means a motor carrier that exclusively provides nonemergency medical transportation and provides such transportation only (i) through the Department of Medical Assistance Services; (ii) through a broker operating under a contract with the Department of Medical Assistance Services; or (iii) as a Medicaid Managed Care Organization contracted with the Department of Medical Assistance Services to provide such transportation.

“Nonprofit/tax-exempt passenger carrier” means a bona fide nonprofit corporation organized or existing under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, or a tax-exempt organization as defined in §§ 501(c)(3) and 501(c)(4) of the United States Internal Revenue Code, as from time to time amended, who undertakes, whether directly or by lease, to control and operate minibuses exclusively in the transportation, for compensation, of members of such organization if it is a membership corporation, or of elderly, disabled, or economically disadvantaged members of the community if it is not a membership corporation.

"Operation" or "operations" includes the operation of all motor vehicles, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

"Operation of a TNC partner vehicle" means (i) any time a TNC partner is logged into a digital platform and is available to pick up passengers; (ii) any time a passenger is in the TNC partner vehicle; and (iii) any time the TNC partner has accepted a prearranged ride request through the digital platform and is en route to a passenger.

"Operator" means the employer or person actually driving a motor vehicle or combination of vehicles.

"Permit" means a permit issued by the Department to carriers operating as employee haulers or nonprofit/tax-exempt passenger carriers or to operators of taxicabs or other vehicles performing taxicab service under this chapter.

"Person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Personal vehicle" means a motor vehicle that is not used to transport passengers for compensation except as a TNC partner vehicle.

"Prearranged ride" means passenger transportation for compensation in a TNC partner vehicle arranged through a digital platform. "Prearranged ride" includes the period of time that begins when a TNC partner accepts a ride requested through a digital platform, continues while the TNC partner transports a passenger in a TNC partner vehicle, and ends when the passenger exits the TNC partner vehicle.

"Restricted common carrier" means any person who undertakes, whether directly or by a lease or other arrangement, to transport passengers for compensation, whereby such transportation service has been restricted. "Restricted common carrier" does not include a transportation network company or TNC partner as defined in this section.

"Route," when used in connection with or with respect to a certificate of public convenience and necessity, means the road or highway, or segment thereof, operated over by the holder of a certificate of public convenience and necessity or proposed to be operated over by an applicant therefor, whether such road or highway is designated by one or more highway numbers.

"Services" and "transportation" include the service of, and all transportation by, all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, expressed or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or the performance of any service in connection therewith.

"Sight-seeing carrier" means a restricted common carrier authorized to transport passengers under the provisions of this chapter, whereby the primary purpose of the operation is the passengers' experience and enjoyment and/or the promotion of tourism.

"Sight-seeing carrier by boat" means a restricted common carrier, which restricted common carrier uses a boat or boats operating on waters within the Commonwealth to transport passengers, and whereby the primary purpose of the operation is the passengers' experience and enjoyment and/or the promotion of tourism. Sight-seeing carriers by boat shall not be regarded as steamship companies.

"Single state insurance receipt" means any receipt issued pursuant to 49 C.F.R. Part 367 evidencing that the carrier has the required insurance and paid the requisite fees to the Commonwealth and other qualified jurisdictions.

"Special or charter party carrier by boat" for purposes of this chapter shall mean means a restricted common carrier which transports groups of persons under a single contract made with one person for an agreed charge for such movement regardless of the number of persons transported. Special or charter
party carriers by boat shall not be regarded as steamship companies.

"Taxicab or other motor vehicle performing a taxicab service" means any motor vehicle having a seating capacity of not more than six passengers, excluding the driver, not operating on a regular route or between fixed terminals used in the transportation of passengers for hire or for compensation, and not a common carrier, restricted common carrier, transportation network company, TNC partner, or nonemergency medical transportation carrier as defined in this chapter.

"TNC insurance" means a motor vehicle liability insurance policy that specifically covers liabilities arising from a TNC partner's operation of a TNC partner vehicle.

"TNC partner" means a person authorized by a transportation network company to use a TNC partner vehicle to provide prearranged rides on an intrastate basis in the Commonwealth.

"TNC partner vehicle" means a personal vehicle authorized by a transportation network company and used by a TNC partner to provide prearranged rides on an intrastate basis in the Commonwealth.

"Trade dress" means a logo, insignia, or emblem attached to or visible from the exterior of a TNC partner vehicle that identifies a transportation network company or digital platform with which the TNC partner vehicle is affiliated.

"Transportation network company" means a person who provides prearranged rides using a digital platform that connects passengers with TNC partners.

§ 46.2-2001.3. Application; notice requirements.
A. Applications for a license, permit, certificate, or identification marker, or TNC partner vehicle registration or renewal of a license, permit, certificate, or identification marker, or TNC partner vehicle registration under this chapter shall be made to the Department and contain such information and exhibits as the Department shall require. Such information shall include except in the case of a TNC partner vehicle, in the application or otherwise, the matters set forth in § 46.2-2011.24 as grounds for denying licenses, permits, and certificates, and other pertinent matters requisite for the safeguarding of the public interest.

Notwithstanding any other provision of this chapter, the Commissioner may require all or certain applications for a license, permit, certificate, identification marker, or TNC partner vehicle registration to be filed electronically.

For the purposes of this subsection, "identification marker" does not include trade dress.

B. An applicant for any original certificate of public convenience and necessity issued under this chapter, or any request for a transfer of such certificate, unless otherwise provided, shall cause a notice of such application, on the form and in the manner prescribed by the Department, on every motor carrier holding the same type of certificate issued by the Department and operating or providing service within the area proposed to be served by the applicant.

C. For any application for original certificate or license issued under this chapter, or any request for a transfer of such certificate or license, the Department shall publish a notice of such application on the Department’s public website in the form and in the manner prescribed by the Department.

D. An applicant for any original certificate of public convenience and necessity issued under this chapter, or any request for a transfer of such certificate of public convenience and necessity, shall cause a publication of a summary of the application to be made in a newspaper having a general circulation in the proposed area to be served or area where the primary business office is located within such time as the Department may prescribe.

§ 46.2-2011.5. Filing and application fees.

Unless otherwise provided, every applicant, other than a transportation network company, for an original license, permit, or certificate issued under this chapter and transfer of a license or certificate under the provisions of this chapter shall, upon the filing of an application, deposit with the Department, as a filing fee, a sum in the amount of fifty dollars $50. The fee to accompany an application for an original of the certificate required under § 46.2-2099.45 shall be $100,000, and the annual fee to accompany an application for a renewal thereof shall be $60,000. If the Department does not approve an application for an original of the certificate required under § 46.2-2099.45, the Department shall refund $90,000 of the application fee to the applicant. The Department shall collect a fee of three dollars $3 for the issuance of a duplicate license, permit, or certificate.

§ 46.2-2011.6. Vehicle fees.

Every person, other than a TNC partner, who operates a passenger vehicle for compensation over the highways of the Commonwealth, unless such operation is exempted from this chapter, shall be required to pay an annual fee of $3 for each such vehicle so operated, unless a vehicle identification marker fee has been paid to the Department as to such vehicle for the current year under the provisions of Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1. Such fee shall be paid through the single state registration system established pursuant to 49 U.S.C. § 14504 and 49 C.F.R. Part 367 or through the unified carrier registration system established pursuant to 49 U.S.C. § 14504a and the federal regulations promulgated thereunder for carriers registered pursuant to those provisions. No more than one vehicle fee shall be charged or paid as to any vehicle in any one year under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1 and this chapter, including payments made pursuant to the single state registration system or the unified carrier registration system.
§ 46.2-2011.20. Unlawful use of registration and identification markers.

It shall be unlawful for any person to operate or cause to be operated on any highway in the Commonwealth any motor vehicle that (i) does not carry the proper registration and identification that this chapter requires, (ii) does not display an identification marker in such manner as is prescribed by the Department, or (iii) bears registration or identification markers of persons whose TNC partner vehicle registration under subsection B of § 46.2-2099.50 or whose license, permit, or certificate issued by the Department has been canceled, revoked, suspended, or renewal thereof denied in accordance with this chapter.

§ 46.2-2011.22. Violation; criminal penalties.

A. Any person knowingly and willfully violating any provision of this chapter, or any rule or regulation thereunder, or any term or condition of any certificate, permit, license, or certificate, for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $2,500 for the first offense and not more than $5,000 for any subsequent offense. Each day of such violation shall constitute a separate offense.

B. Any person, whether carrier, broker, or any officer, employee, agent, or representative thereof, or a TNC partner, who willfully falsifies, destroys, mutilates, or alters any such report, account, record, or memorandum, or knowingly and willfully files any false report, account, record, or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $500 for the first offense and not more than $2,000 for any subsequent offense.

C. Any motor carrier, broker, or excursion train operator or any officer, agent, employee, or representative thereof, or a TNC partner, who willfully fails or refuses to make a report to the Department as required by this chapter or to keep accounts, records, and memoranda in the form and manner approved or prescribed by the Department, or knowingly and willfully falsifies, destroys, mutilates, or alters any such report, account, record, or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

§ 46.2-2011.24. Grounds for denying, suspending, or revoking licenses, permits, or certificates.

A license, permit, or certificate issued pursuant to this chapter may be denied, suspended, or revoked on one or more of the following grounds, where applicable:

1. Material misstatement or omission in application for license, certificate, permit, identification marker, or vehicle registration;
2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with a lawful order, any provision of this chapter or any regulation promulgated by the Department under this chapter, or any term, condition, or restriction of a license, permit, or certificate;
3. Failure to comply with zoning or other land use regulations, ordinances, or statutes;
4. Use of deceptive business acts or practices;
5. Knowingly advertising by any means any assertion, representation, or statement of fact that is untrue, misleading, or deceptive relating to the conduct of the business for which a license, certificate, permit, identification marker, or vehicle registration is held or sought;
6. Having been found, through a judicial or administrative hearing, to have committed fraudulent or deceptive acts in connection with the business for which a license, permit, or certificate is held or sought or any consumer-related fraud;
7. Having been convicted of any criminal act involving the business for which a license, permit, or certificate is held or sought;
8. Failure to comply with § 46.2-2056 or any regulation promulgated pursuant thereto;
9. Improper leasing, renting, lending, or otherwise allowing the improper use of a license, certificate, permit, identification marker, or vehicle registration;
10. Having been convicted of a felony;
11. Having been convicted of any misdemeanor involving lying, cheating, stealing, or moral turpitude;
12. Failure to submit to the Department any tax, fees, dues, fines, or penalties owed to the Department;
13. Failure to furnish the Department information, documentation, or records required or requested pursuant to statute or regulation;
14. Knowingly and willfully filing any false report, account, record, or memorandum;
15. Failure to meet or maintain application certifications or requirements of public convenience and necessity, character, fitness, and financial responsibility pursuant to this chapter;
16. Willfully altering or changing the appearance or wording of any license, permit, certificate, identification marker, license plate, or vehicle registration;
17. Failure to provide services in accordance with license, permit, or certificate terms, limitations, conditions, or requirements;
18. Failure to maintain and keep on file with the Department motor carrier liability insurance, issued by a company licensed to do business in the Commonwealth, or a bond, certificate of insurance,
certain to the Commonwealth;

19. Failure to comply with the Workers' Compensation Act of Title 65.2;
20. Failure to properly register a motor vehicle under this title;
21. Failure to comply with any federal motor carrier statute, rule, or regulation;
22. Failure to comply with the requirements of the Americans with Disabilities Act or the Virginians with Disabilities Act (§ 51.5-1 et seq.); or
23. Inactivity of a motor carrier as may be evidenced by the absence of a motor vehicle registered to operate under such certificate or permit for a period of greater than three months; or
24. Failure to comply with any provision regarding the filing and registered agent requirements set forth in Title 13.1.

§ 46.2-2011.29. Surrender of identification marker, license plate, and registration card; removal by law enforcement; operation of vehicle denied.
A. For purposes of this section, “identification marker” does not include trade dress.
B. It shall be unlawful for a licensee, permittee, or certificate holder, or for the registrant or operator of a vehicle registered under subsection B of § 46.2-2099.50, whose license, permit, certificate, or vehicle's registration as a TNC partner vehicle, has been revoked, suspended, canceled, or renewal thereof denied pursuant to this chapter to fail or refuse to surrender, on demand, to the Department license plates, identification markers, and registration cards issued under this title.

C. Except as provided in subsection D, if any law enforcement officer finds that a motor carrier vehicle bearing Virginia license plates or temporary transport plates is being operated in violation of subsection A of this section B, such law enforcement officer shall remove the license plate, identification marker, and registration card and shall forward the same to the Department.
D. If the officer finds that a TNC partner vehicle bearing Virginia license plates is being operated in violation of subsection B, such law enforcement officer shall direct the operator of the vehicle to promptly remove any identification marker and any registration card issued under subsection B of § 46.2-2099.50 and return the same to the Department. If any law enforcement officer finds that a TNC partner vehicle not bearing Virginia license plates is being operated in violation of subsection B, such law enforcement officer shall remove any identification marker and any registration card issued under subsection B of § 46.2-2099.50 and shall forward the same to the Department.
E. When informed that a vehicle is being operated in violation of this section, the driver shall drive the vehicle to a nearby location off the public highways and not remove it or allow it to be moved until the motor carrier is in compliance with all provisions of this chapter.

§ 46.2-2051. Application of article.
Unless otherwise stated, this article shall apply to all motor carriers except transportation network companies.

Article 15. Transportation Network Companies.

§ 46.2-2099.45. Certificates required unless exempted.
Unless otherwise exempted, no person shall engage in the business of a transportation network company on any highway within the Commonwealth on an intrastate basis unless such person has secured from the Department a certificate of fitness authorizing such business.

§ 46.2-2099.46. Control, supervision, and regulation by Department.
Except as otherwise provided in this chapter, every transportation network company, TNC partner, and TNC partner vehicle shall be subject to exclusive control, supervision, and regulation by the Department, but enforcement of statutes and Department regulations shall be not only by the Department but also by any other law enforcement officer. Nothing in this section shall be construed as authorizing the adoption of local ordinances providing for local regulation of transportation network companies, TNC partners, or TNC partner vehicles.

§ 46.2-2099.47. Operation except in accordance with chapter prohibited.
No transportation network company or TNC partner shall transport passengers for compensation on any highway in the Commonwealth on an intrastate basis except in accordance with the provisions of this chapter.

§ 46.2-2099.48. General operational requirements for transportation network companies and TNC partner.
A. A transportation network company and a TNC partner shall provide passenger transportation only on a prearranged basis and only by means of a digital platform that enables passengers to connect with TNC partners using a TNC partner vehicle. No TNC partner shall transport a passenger unless a transportation network company has matched the TNC partner to that passenger through the digital platform. A TNC partner shall not solicit, accept, arrange, or provide transportation in any other manner.
B. A transportation network company shall authorize collection of fares for transporting passengers solely through a digital platform. A TNC partner shall not accept payment of fares directly from a
passenger or any other person prearranging a ride or by any means other than electronically via a
digital platform.

C. A transportation network company with knowledge that a TNC partner has violated the provisions
of subsection A or B shall remove the TNC partner from the transportation network company's digital
platform for at least one year.

D. A transportation network company shall publish the following information on its public website
and associated digital platform:

1. The method used to calculate fares or the applicable rates being charged and an option to receive
an estimated fare;
2. Information about its TNC partner screening criteria, including a description of the offenses that
the transportation network company will regard as grounds for disqualifying an individual from acting
as a TNC partner;
3. The means for a passenger or other person to report a TNC partner reasonably suspected of
operating a TNC partner vehicle under the influence of drugs or alcohol;
4. Information about the company's training and testing policies for TNC partners;
5. Information about the company's standards for TNC partner vehicles; and
6. A customer support telephone number or email address and instructions regarding any alternative
methods for reporting a complaint.

E. A transportation network company shall associate a TNC partner with one or more personal
vehicles and shall authorize a TNC partner to transport passengers only in a vehicle specifically
associated with a TNC partner by the transportation network company. The transportation network
company shall arrange transportation solely for previously associated TNC partners and TNC partner
vehicles. A TNC partner shall not transport passengers except in a TNC partner vehicle associated with
the TNC partner by the transportation network company.

F. A TNC partner shall carry at all times while operating a TNC partner vehicle proof of coverage
under each in-force TNC insurance policy, which may be displayed as part of the digital platform, and
each in-force personal automobile insurance policy covering the vehicle. The TNC partner shall present
such proof of insurance upon request to the Commissioner, a law-enforcement officer, an airport owner
and operator, an official of the Washington Metropolitan Area Transit Commission, or any person
involved in an accident that occurs during the operation of a TNC partner vehicle. The transportation
network company shall require the TNC partner’s compliance with the provisions of this subsection.

G. Prior to a passenger’s entering a TNC partner vehicle, a transportation network company shall
provide through the digital platform to the person prearranging the ride the first name and a
photograph of the TNC partner, the make and model of the TNC partner vehicle, and the license plate
number of the TNC partner vehicle.

H. A transportation network company shall provide to each of its TNC partners a credential, which
may be displayed as part of the digital platform, that includes the following information:

1. The name or logo of the transportation network company;
2. The name and a photograph of the TNC partner; and
3. The make, model, and license plate number of each TNC partner vehicle associated with the TNC
partner and the state issuing each such license plate.

The TNC partner shall carry the credential at all times during the operation of a TNC partner
vehicle and shall present the credential upon request to law-enforcement officers, airport owners and
operators, officials of the Washington Metropolitan Area Transit Commission, or a passenger. The
transportation network company shall require the TNC partner’s compliance with this subsection.

I. A transportation network company and its TNC partner shall, at all times during a prearranged
ride, make the following information available through its digital platform immediately upon request to
representatives of the Department, to law-enforcement officers, to officials of the Washington
Metropolitan Area Transit Commission, and to airport owners and operators:

1. The name of the transportation network company;
2. The name of the TNC partner and the identification number issued to the TNC partner by the
transportation network company;
3. The license plate number of the TNC partner vehicle and the state issuing such license plate; and
4. The location, date, and approximate time that each passenger was or will be picked up.

J. Upon completion of a prearranged ride, a transportation network company shall transmit to the
person who prearranged the ride an electronic receipt that includes:

1. A map of the route taken;
2. The date and the times the trip began and ended;
3. The total fare, including the base fare and any additional charges incurred for distance traveled
or duration of the prearranged ride;
4. The TNC partner’s first name and photograph; and
5. Contact information by which additional support may be obtained.

K. The transportation network company shall adopt and enforce a policy of nondiscrimination on the
basis of a passenger’s points of departure and destination and shall notify TNC partners of such policy.
TNC partners shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers.

A transportation network company shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a transportation network company cannot arrange wheelchair-accessible service in a TNC partner vehicle in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

A transportation network company shall not impose additional charges for providing services to persons with disabilities because of those disabilities.

TNC partners shall comply with all applicable laws relating to accommodation of service animals.

A TNC partner may refuse to transport a passenger for any reason not prohibited by law, including any case in which (i) the passenger is acting in an unlawful, disorderly, or endangering manner; (ii) the passenger is unable to care for himself and is not in the charge of a responsible companion; or (iii) the TNC partner has already committed to providing a ride for another passenger.

A TNC partner shall immediately report to the transportation network company any refusal to transport a passenger after accepting a request to transport that passenger.

L. No transportation network company or TNC partner shall conduct any operation on the property of or into any airport unless such operation is authorized by the airport owner and operator and is in compliance with the rules and regulations of that airport. The Department may take action against a transportation network company that violates any regulation of an airport owner and operator, including the suspension or revocation of the transportation network company's certificate.

M. A TNC partner shall access and utilize a digital platform in a manner that is consistent with traffic laws of the Commonwealth.

N. In accordance with § 46.2-812, no TNC partner shall operate a motor vehicle for more than 13 hours in any 24-hour period.

§ 46.2-2099.49. Requirements for TNC partners; mandatory background screening; drug and alcohol policy; mandatory disclosures to TNC partners; duty of TNC partners to provide updated information to transportation network companies.

A. Before authorizing an individual to act as a TNC partner, a transportation network company shall confirm that the person is at least 21 years old and possesses a valid driver's license.

B. 1. Before authorizing an individual to act as a TNC partner, and at least once every two years after authorizing an individual to act as a TNC partner, a transportation network company shall obtain a national criminal history records check of that person. The background check shall include (i) a Multi-State/Multi-Jurisdiction Criminal Records Database Search or a search of a similar nationwide database with validation (primary source search) and (ii) a search of the Sex Offender and Crimes Against Minors Registry and the U.S. Department of Justice’s National Sex Offender Public Website. The person conducting the background check shall be accredited by the National Association of Professional Background Screeners or a comparable entity approved by the Department.

2. Before authorizing an individual to act as a TNC partner, and at least once annually after authorizing an individual to act as a TNC partner, a transportation network company shall obtain and review a driving history research report on that person from the individual's state of licensure.

3. Before authorizing an individual to act as a TNC partner, and at least once every two years after authorizing a person to act as a TNC partner, a transportation network company shall verify that the person is not listed on the Sex Offender and Crimes Against Minors Registry or on the U.S. Department of Justice’s National Sex Offender Public Website.

C. A transportation network company shall not authorize an individual to act as a TNC partner if the criminal history records check required under subsection B reveals that the individual:

1. Is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 or is listed on the U.S. Department of Justice’s National Sex Offender Public Website;

2. Has ever been convicted of or has ever pled guilty or nolo contendere to a violent felony offense as listed in subsection C of § 17.1-805, or a substantially similar law of another state or of the United States;

3. Within the preceding seven years has been convicted of or has pled guilty or nolo contendere to any of the following offenses, either under Virginia law or a substantially similar law of another state or of the United States: (i) any felony offense other than those included in subdivision 2; (ii) any offense under § 18.2-266, 18.2-266.1, 18.2-272, or 46.2-341.24; or (iii) any offense resulting in revocation of a driver's license pursuant to § 46.2-389 or 46.2-391; or

4. Within the preceding three years has been convicted of or has pled guilty or nolo contendere to any of the following offenses, either under Virginia law or a substantially similar law of another state or of the United States: (i) three or more moving violations; (ii) eluding a law-enforcement officer, as described in § 46.2-817; (iii) reckless driving, as described in Article 7 (§ 46.2-852 et seq.) of Chapter 8; (iv) operating a motor vehicle in violation of § 46.2-301; or (v) refusing to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath, as described in § 18.2-268.3.

D. A transportation network company shall employ a zero-tolerance policy with respect to the use of
drugs and alcohol by TNC partners and shall include a notice concerning the policy on its website and associated digital platform.

E. A transportation network company shall make the following disclosures in writing to a TNC partner or prospective TNC partner:

1. The transportation network company shall disclose the liability insurance coverage and limits of liability that the transportation network company provides while the TNC partner uses a vehicle in connection with the transportation network company's digital platform.

2. The transportation network company shall disclose any physical damage coverage provided by the transportation network company for damage to the vehicle used by the TNC partner in connection with the transportation network company's digital platform.

3. The transportation network company shall disclose the uninsured motorist and underinsured motorist coverage and policy limits provided by the transportation network company while the TNC partner uses a vehicle in connection with the transportation network company's digital platform and advise the TNC partner that the TNC partner's personal automobile insurance policy may not provide uninsured motorist and underinsured motorist coverage when the TNC partner uses a vehicle in connection with a transportation network company's digital platform.

4. The transportation network company shall include the following disclosure prominently in writing to a TNC partner or prospective TNC partner: "If the vehicle that you plan to use to transport passengers for our transportation network company has a lien against it, you must notify the lienholder that you will be using the vehicle for transportation services that may violate the terms of your contract with the lienholder."

F. A TNC partner shall inform each transportation network company that has authorized him to act as a TNC partner of any event that may disqualify him from continuing to act as a TNC partner, including any of the following: a change in the registration status of the TNC partner vehicle; the revocation, suspension, cancellation, or restriction of the TNC partner's driver's license; a change in the insurance coverage of the TNC partner vehicle; a motor vehicle moving violation; and a criminal arrest, plea, or conviction.

§ 46.2-2099.50. Requirements for TNC partner vehicles; registration with and identification markers issued by Department; identification markers issued by transportation network company.

A. A TNC partner vehicle shall:
1. Be a personal vehicle;
2. Have a seating capacity of no more than eight persons, including the driver;
3. Be validly titled and registered in the Commonwealth or in another state;
4. Not have been issued a certificate of title, either in Virginia or in any other state, branding the vehicle as salvage, nonrepairable, rebuilt, or any equivalent classification;
5. Have a valid Virginia safety inspection and carry proof of that inspection in the vehicle;
6. Be covered under a TNC insurance policy meeting the requirements of § 46.2-2099.51 or 46.2-2099.52, as applicable; and
7. Be registered with the Department for use as a TNC partner vehicle and display an identification marker issued by the Department as provided in subsection B.

No TNC partner shall operate a TNC partner vehicle unless that vehicle meets the requirements of this subsection.

B. A vehicle owner, lessee, or TNC partner shall register a personal vehicle for use as a TNC partner vehicle. A TNC partner that is not the vehicle owner or lessee shall, prior to registering any TNC partner vehicle with the Department, secure the consent of each owner, lessor, and lessee of the vehicle as applicable for its registration as a TNC partner vehicle and for its use as a TNC partner vehicle by the TNC partner. A transportation network company shall have the option of registering a TNC partner vehicle on behalf of a TNC partner electronically through a secure portal maintained by the Department provided the TNC partner, if the TNC partner is not the vehicle owner or lessee, certifies that it has secured consent from each owner, lessor, and lessee of the vehicle for its registration as a TNC partner vehicle and for its use as a TNC partner vehicle by the TNC partner.

Prior to registering for use as a TNC partner vehicle any vehicle that has been titled and registered in another state, the vehicle owner or lessee, or a transportation network company on behalf of the owner or lessee, shall provide the Department with such information as the Department requires to establish a customer record for that person and that person's vehicle. A transportation network company shall have the option to submit this information electronically through a secure portal maintained by the Department.

For each TNC partner vehicle a transportation network company authorizes, the transportation network company or TNC partner shall provide to the Department, in a form acceptable to the Department, any information reasonably necessary for the Department to identify the vehicle and register it for use as a TNC partner vehicle.

Upon registering a vehicle for use as a TNC partner vehicle, the Department shall issue a temporary registration, an identification marker to the vehicle owner or lessee, and a registration card indicating the vehicle's registration for use as a TNC partner vehicle.
The Commissioner may deny, suspend, cancel, or revoke the TNC partner vehicle registration and identification marker for any of the following reasons: (i) the vehicle is not properly registered, (ii) the vehicle does not carry insurance as required by this article, (iii) the vehicle is sold, or (iv) the vehicle is used by a TNC partner in a manner not authorized by this chapter.

Registration of a TNC partner vehicle under this subsection shall remain valid until (a) the vehicle is no longer authorized to operate as a TNC partner vehicle by a transportation network company; (b) the TNC partner, vehicle owner, or lessee requests cancellation of the registration; (c) there is a transfer of vehicle ownership, other than a transfer from the lessor of the vehicle to the lessee; (d) the vehicle’s lease terminates and ownership is not transferred to the lessee; or (e) the Department suspends, revokes, or cancels the registration of the vehicle for use as a TNC partner vehicle. The fee for the replacement of a lost, mutilated, or illegible identification marker or registration card shall be the same as the fee set forth in § 46.2-692 for the replacement of a decal or vehicle registration card. However, if the TNC partner vehicle is not titled and registered in Virginia, the replacement fee for an identification marker shall be $40.

Any vehicle registered with the Department as a personal vehicle and subject to further registration as a TNC partner vehicle pursuant to this section shall be presumed to be used for nonbusiness purposes for the purpose of determining whether it is a qualifying vehicle under § 58.1-3523 absent clear and convincing evidence to the contrary, and any registration pursuant to this section shall not create any presumption of business or commercial use of the vehicle or of business activity on the part of the TNC partner, for purposes of any state or local requirement.

C. Before authorizing a vehicle to be used as a TNC partner vehicle, a transportation network company shall confirm that the vehicle meets the requirements of subsection A and shall provide each TNC partner with proof of any TNC insurance policy maintained by the transportation network company.

For each TNC partner vehicle it authorizes, a transportation network company shall issue trade dress to the TNC partner associated with that vehicle. The trade dress shall be sufficient to identify the transportation network company or digital platform with which the vehicle is affiliated and shall be displayed in a manner that complies with Virginia law. The trade dress shall be of such size, shape, and color as to be readily identifiable during daylight hours from a distance of 50 feet while the vehicle is not in motion and shall be reflective, illuminated, or otherwise patently visible in darkness. The trade dress may take the form of a removable device that meets the identification and visibility requirements of this subsection.

The transportation network company shall submit to the Department proof that the transportation network company has established the trade dress required under this subsection by filing with the Department an illustration or photograph of the trade dress.

A TNC partner shall keep the trade dress issued under this subsection visible at all times while the vehicle is being operated as a TNC partner vehicle.

No person shall operate a vehicle bearing trade dress issued under this subsection without the authorization of the transportation network company issuing the trade dress.

D. Any information provided to the Department pursuant to this section, whether held by the Department or another public entity, shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Neither the Department nor any such public entity shall disclose any such information to a nongovernmental entity absent a court order or subpoena. In the event information provided pursuant to this section is sought through a court order or subpoena, the Department or other public entity shall promptly notify the transportation network company prior to disclosure so as to afford the transportation network company the opportunity to take appropriate actions to prevent disclosure. The Department shall not disclose such information to a governmental entity other than to enable that entity to perform its governmental function.

§ 46.2-2099.51. TNC insurance until January 1, 2016.

A. Until January 1, 2016, at all times during the operation of a TNC partner vehicle, a transportation network company or TNC partner shall keep in force TNC insurance as provided in this section.

B. The following requirements shall apply to TNC insurance from the moment a TNC partner accepts a prearranged ride request on a transportation network company’s digital platform until the TNC partner completes the transaction on the digital platform or until the prearranged ride is complete, whichever is later:

1. TNC insurance shall provide motor vehicle liability coverage. Such coverage shall be primary and the minimum amount of liability coverage for death, bodily injury, and property damage shall be $1 million.

2. TNC insurance shall provide uninsured motorist coverage and underinsured motorist coverage. Such coverage shall apply from the moment a passenger enters a TNC partner vehicle until the passenger exits the vehicle. The minimum amount of uninsured motorist coverage and underinsured motorist coverage for death, bodily injury, and property damage shall be $1 million.

3. The requirements of this subsection may be satisfied by any of the following:
a. TNC insurance maintained by a TNC partner;
b. TNC insurance maintained by a transportation network company; or
c. Any combination of subdivisions a and b.

A transportation network company may meet its obligations under this subsection through a policy obtained by a TNC partner under subdivision a or c only if the transportation network company verifies that the policy is maintained by the TNC partner.

4. Insurers providing insurance coverage under this subsection shall have the exclusive duty to defend any liability claim, including any claim against a TNC partner, arising from an accident occurring within the time periods specified in this subsection. Neither the TNC partner's nor the vehicle owner's personal automobile insurance policy shall have the duty to defend or indemnify the TNC partner's activities in connection with the transportation network company, unless the policy expressly provides otherwise for the period of time to which this subsection is applicable or the policy contains an amendment or endorsement to provide that coverage.

5. Coverage under a TNC insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim, nor shall a personal automobile insurance policy be required to first deny a claim.

6. Nothing in this subsection shall be construed to require a personal automobile insurance policy to provide primary or excess coverage. Neither the TNC partner's nor the vehicle owner's personal automobile insurance policy shall provide any coverage to the TNC partner, the vehicle owner, or any third party, unless the policy expressly provides for that coverage during the period of time to which this subsection is applicable or the policy contains an amendment or endorsement to provide that coverage.

C. The following requirements shall apply to TNC insurance:

(i) from the moment a TNC partner logs on to a transportation network company's associated digital platform until the TNC partner accepts a request to transport a passenger and
(ii) from the moment the TNC partner completes the transaction on the digital platform or the prearranged ride is complete, whichever is later, until the TNC partner either accepts another prearranged ride request on the digital platform or logs off the digital platform:

1. TNC insurance shall provide motor vehicle liability coverage. Such coverage shall be secondary and shall provide liability coverage of at least $125,000 per person and $250,000 per incident for death and bodily injury and at least $50,000 for property damage.

2. The requirements for the coverage required by this subsection may be satisfied by any of the following:

a. TNC insurance maintained by a TNC partner;
b. TNC insurance maintained by a transportation network company that provides coverage in the event that a TNC partner's insurance policy under subdivision a has ceased to exist or has been canceled or in the event that the TNC partner does not otherwise maintain TNC insurance; or
c. Any combination of subdivisions a and b.

A transportation network company may meet its obligations under this subsection through a policy obtained by a TNC partner pursuant to subdivision a or c only if the transportation network company verifies that the policy is maintained by the TNC partner and is specifically written to cover the TNC partner's use of a vehicle in connection with a transportation network company's digital platform.

3. If the TNC partner vehicle is insured under a personal automobile insurance policy that does not exclude coverage, then such policy shall provide primary coverage and an insurance policy maintained by the transportation network company under subdivision 2 c shall provide excess coverage up to at least the limits required by subdivision 1.

D. In the event that the digital platform becomes inaccessible due to failure or malfunction while a TNC partner is en route to or transporting a passenger during a prearranged ride described in subsection B, TNC insurance coverage shall be presumed to be that required in subdivision B 1 until the passenger exits the vehicle.

E. In every instance where TNC insurance maintained by a TNC partner to fulfill the insurance obligations of this section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

F. This section shall not limit the liability of a transportation network company arising out of an accident involving a TNC partner in any action for damages against a transportation network company for an amount above the required insurance coverage.

G. Any person, or an attorney acting on his behalf, who suffers a loss in an automobile accident with a reasonable belief that the accident involves a TNC partner vehicle driven by a TNC partner in connection with a transportation network company and who provides the transportation network company with the date, approximate time, and location of the accident, and if available the name of the TNC partner and if available the accident report, may request in writing from the transportation network company information relating to the insurance coverage and the company providing the coverage. The transportation network company shall respond electronically or in writing within 30 days. The transportation network company's response shall contain the following information: (i) whether, at the approximate time of the accident, the TNC partner was logged into the transportation network
company's digital platform and, if so logged in, whether a trip request had been accepted or a passenger was in the TNC partner vehicle; (ii) the name of the insurance carrier providing primary coverage; and (iii) the identity and last known address of the TNC partner.

H. No contract, receipt, rule, or regulation shall exempt any transportation network company from the liability that would exist had no contract been made or entered into, and no such contract, receipt, rule, or regulation for exemption from liability for injury or loss occasioned by the neglect or misconduct of such transportation network company shall be valid. The liability referred to in this subsection shall mean the liability imposed by law upon a transportation network company for any loss, damage, or injury to passengers in its custody and care as a transportation network company.

I. Any insurance required by this section may be placed with an insurer that has been admitted in Virginia or with an insurer providing surplus lines insurance as defined in § 38.2-4805.2.

J. Any insurance policy required by this section shall satisfy the financial responsibility requirement for a motor vehicle under § 46.2-706 during the period such vehicle is being operated as a TNC partner vehicle.

K. The Department shall not issue the certificate of fitness required under § 46.2-2099.45 to any transportation network company that has not certified to the Department that every TNC partner vehicle it has authorized to operate on its digital platform is covered by an insurance policy that meets the requirements of this section.

L. Each transportation network company shall keep on file with the Department proof of an insurance policy maintained by the transportation network company in accordance with this section. Such proof shall be in a form acceptable to the Commissioner. A record of the policy shall remain in the files of the Department six months after the certificate is suspended or revoked for any cause.

M. The Department may suspend a certificate if the certificate holder fails to comply with the requirements of this section. Any person whose certificate has been suspended pursuant to this subsection may request a hearing as provided in subsection D of § 46.2-2011.26.

N. In a claims coverage investigation, a transportation network company and its insurer shall cooperate with insurers involved in the claims coverage investigation to facilitate the exchange of information, including the dates and times of any accident involving a TNC partner and the precise times that the TNC partner logged in and was logged out of the transportation network company's digital platform.

§ 46.2-2099.52. TNC insurance.

A. On and after January 1, 2016, at all times during the operation of a TNC partner vehicle, a transportation network company or TNC partner shall keep in force TNC insurance as provided in this section.

B. The following requirements shall apply to TNC insurance from the moment a TNC partner accepts a prearranged ride request on a transportation network company's digital platform until the TNC partner completes the transaction on the digital platform or until the prearranged ride is complete, whichever is later:

1. TNC insurance shall provide motor vehicle liability coverage. Such coverage shall be primary and the minimum amount of liability coverage for death, bodily injury, and property damage shall be $1 million.

2. TNC insurance shall provide uninsured motorist coverage and underinsured motorist coverage. Such coverage shall apply from the moment a passenger enters a TNC partner vehicle until the passenger exits the vehicle. The minimum amount of uninsured motorist coverage and underinsured motorist coverage for death, bodily injury, and property damage shall be $1 million.

3. The requirements of this subsection may be satisfied by any of the following:
   a. TNC insurance maintained by a TNC partner;
   b. TNC insurance maintained by a transportation network company; or
   c. Any combination of subdivisions a and b.

A transportation network company may meet its obligations under this subsection through a policy obtained by a TNC partner under subdivision a or c only if the transportation network company verifies that the policy is maintained by the TNC partner.

4. Insurers providing insurance coverage under this subsection shall have the exclusive duty to defend any liability claim, including any claim against a TNC partner, arising from an accident occurring within the time periods specified in this subsection. Neither the TNC partner nor the vehicle owner's personal automobile insurance policy shall have the duty to defend or indemnify the TNC partner's activities in connection with the transportation network company, unless the policy expressly provides otherwise for the period of time to which this subsection is applicable or the policy contains an amendment or endorsement to provide that coverage.

5. Coverage under a TNC insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim, nor shall a personal automobile insurance policy be required to first deny a claim.

6. Nothing in this subsection shall be construed to require a personal automobile insurance policy to provide primary or excess coverage. Neither the TNC partner's nor the vehicle owner's personal
automobile insurance policy shall provide any coverage to the TNC partner, the vehicle owner, or any third party, unless the policy expressly provides for that coverage during the period of time to which this subsection is applicable or the policy contains an amendment or endorsement to provide that coverage.

C. The following requirements shall apply to TNC insurance (i) from the moment a TNC partner logs on to a transportation network company's associated digital platform until the TNC partner accepts a request to transport a passenger and (ii) from the moment the TNC partner completes the transaction on the digital platform or the prearranged ride is complete, whichever is later, until the TNC partner either accepts another prearranged ride request on the digital platform or logs off the digital platform:

1. TNC insurance shall provide motor vehicle liability coverage. Such coverage shall be primary and shall provide liability coverage of at least $50,000 per person and $100,000 per incident for death and bodily injury and at least $25,000 for property damage.

2. The requirements for the coverage required by this subsection may be satisfied by any of the following:
   a. TNC insurance maintained by a TNC partner;
   b. TNC insurance maintained by a transportation network company that provides coverage in the event that a TNC partner's insurance policy under subdivision a has ceased to exist or has been canceled or in the event that the TNC partner does not otherwise maintain TNC insurance; or
   c. Any combination of subdivisions a and b.

A transportation network company may meet its obligations under this subsection through a policy obtained by a TNC partner pursuant to subdivision a or c only if the transportation network company verifies that the policy is maintained by the TNC partner and is specifically written to cover the TNC partner's use of a vehicle in connection with a transportation network company's digital platform.

D. In the event that the digital platform becomes inaccessible due to failure or malfunction while a TNC partner is en route to or transporting a passenger during a prearranged ride described in subsection B, TNC insurance coverage shall be presumed to be that required in subdivision B 1 until the passenger exits the vehicle.

E. In every instance where TNC insurance maintained by a TNC partner to fulfill the insurance obligations of this section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

F. This section shall not limit the liability of a transportation network company arising out of an accident involving a TNC partner in any action for damages against a transportation network company for an amount above the required insurance coverage.

G. Any person, or an attorney acting on his behalf, who suffers a loss in an automobile accident with a reasonable belief that the accident involves a TNC partner vehicle driven by a TNC partner in connection with a transportation network company and who provides the transportation network company with the date, approximate time, and location of the accident, and if available the name of the TNC partner and if available the accident report, may request in writing from the transportation network company information relating to the insurance coverage and the company providing the coverage. The transportation network company shall respond electronically or in writing within 30 days. The transportation network company's response shall contain the following information: (i) whether, at the approximate time of the accident, the TNC partner was logged into the transportation network company's digital platform and, if so logged in, whether a trip request had been accepted or a passenger was in the TNC partner vehicle; (ii) the name of the insurance carrier providing primary coverage; and (iii) the identity and last known address of the TNC partner.

H. No contract, receipt, rule, or regulation shall exempt any transportation network company from the liability that would exist had no contract been made or entered into, and no such contract, receipt, rule, or regulation for exemption from liability for injury or loss occasioned by the neglect or misconduct of such transportation network company shall be valid. The liability referred to in this subsection shall mean the liability imposed by law upon a transportation network company for any loss, damage, or injury to passengers in its custody and care as a transportation network company.

I. Any insurance required by this section may be placed with an insurer that has been admitted in Virginia or with an insurer providing surplus lines insurance as defined in § 38.2-4805.2.

J. Any insurance policy required by this section shall satisfy the financial responsibility requirement for a motor vehicle under § 46.2-706 during the period such vehicle is being operated as a TNC partner vehicle.

K. The Department shall not issue the certificate of fitness required under § 46.2-2099.45 to any transportation network company that has not certified to the Department that every TNC partner vehicle it has authorized to operate on its digital platform is covered by an insurance policy that meets the requirements of this section.

L. Each transportation network company shall keep on file with the Department proof of an insurance policy maintained by the transportation network company in accordance with this section. Such proof shall be in a form acceptable to the Commissioner. A record of the policy shall remain in the files of the Department six months after the certificate is revoked or suspended for any cause.
M. The Department may suspend a certificate if the certificate holder fails to comply with the requirements of this section. Any person whose certificate has been suspended pursuant to this subsection may request a hearing as provided in subsection D of § 46.2-2011.26.

N. In a claims coverage investigation, a transportation network company and its insurer shall cooperate with insurers involved in the claims coverage investigation to facilitate the exchange of information, including the dates and times of any accident involving a TNC partner and the precise times that the TNC partner logged in and was logged out of the transportation network company’s digital platform.

§ 46.2-2099.53. Recordkeeping and reporting requirements for transportation network companies.
A. Records maintained by a transportation network company shall be adequate to confirm compliance with subsection D of § 46.2-2099.48 and with §§ 46.2-2099.49 and 46.2-2099.50 and shall at a minimum include:
1. True and accurate results of each national criminal history records check for each individual that the transportation network company authorizes to act as a TNC partner;
2. True and accurate results of the driving history research report for each individual that the transportation network company authorizes to act as a TNC partner;
3. Driver’s license records of TNC partners, including records associated with participation in a driver record monitoring program;
4. True and accurate results of the sex offender screening for each individual that the transportation network company authorizes to act as a TNC partner;
5. Proof of compliance with the requirements enumerated in subdivisions A 1 and 3 through 6 of § 46.2-2099.50;
6. Proof of compliance with the notice and disclosure requirements of subsection D of § 46.2-2099.48 and subsections D and E of § 46.2-2099.49; and
7. Proof that the transportation network company obtained certification from the TNC partner that the TNC partner secured the consent of each owner, lessor, and lessee of the vehicle for its registration as a TNC partner vehicle and for its use as a TNC partner vehicle by the TNC partner.

A transportation network company shall retain all records required under this subsection for a period of three years. Such records shall be retained in a manner that permits systematic retrieval and shall be made available to the Department in a format acceptable to the Commissioner for the purposes of conducting an audit on no more than an annual basis.

B. A transportation network company shall maintain the following records and make them available, in an acceptable format, on request to the Commissioner, a law enforcement officer, an official of the Washington Metropolitan Area Transit Commission, or an airport owner and operator to investigate and resolve a complaint or respond to an incident:
1. Data regarding TNC partner activity while logged into the digital platform, including beginning and ending times and locations of each prearranged ride;
2. Records regarding any actions taken against a TNC partner;
3. Contracts or agreements between the transportation network company and its TNC partners;
4. Information identifying each TNC partner, including the TNC partner’s name, date of birth, and driver’s license number and the state issuing the license; and
5. Information identifying each TNC partner vehicle the transportation network company has authorized, including the vehicle’s make, model, model year, vehicle identification number, and license plate number and the state issuing the license plate.

Requests for information pursuant to subdivision 2 or 3 shall be in writing.

C. Information obtained by the Department, law-enforcement officers, officials of the Washington Metropolitan Area Transit Commission, or airport owners and operators pursuant to this section shall be considered privileged information and shall only be used by the Department, law-enforcement officers, officials of the Washington Metropolitan Area Transit Commission, and airport owners and operators for purposes specified in subsection A or B. Such information shall not be subject to disclosure except on the written request of the Commissioner, a law enforcement officer, an official of the Washington Metropolitan Area Transit Commission, or an airport owner and operator who requires such information for the purposes specified in subsection A or B.

D. Except as provided in subsection C, information obtained by the Department, law-enforcement officers, officials of the Washington Metropolitan Area Transit Commission, or airport owners and operators pursuant to this section shall not be disclosed to anyone without the transportation network company's express written permission and shall not be subject to disclosure through a court order or through a third-party request. This provision shall not be construed to mean that a person is denied the right to seek such information directly from a transportation network company during a court proceeding.

E. Except as required under this section, a transportation network company shall not disclose any personal information, as defined in § 2.2-3801, about a user of its digital platform unless:
1. The transportation network company obtains the user’s consent to disclose the personal information;
2. The disclosure is necessary to comply with a legal obligation; or
3. The disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

This limitation regarding disclosure does not apply to the disclosure of aggregated user data or to information about the user that is not personal information as defined in § 2.2-3801.

2. That the Department of Motor Vehicles shall periodically consult with local government officials to determine whether transportation network companies have had an effect on the availability of wheelchair-accessible transportation services. If evidence suggests an effect, the Department shall work collaboratively with appropriate stakeholders to develop recommendations to be submitted to the Chairmen of the House and Senate Committees on Transportation.

3. That beginning July 1, 2016, the Department of Motor Vehicles shall review enforcement activity undertaken regarding the provisions of this act, insurance policies available to TNC partners that may require changes to the provisions of subdivisions E 1 and 2 of § 46.2-2099.49 as created by this act, the fees set forth in § 46.2-2011.5 of the Code of Virginia as amended by this act, and in § 46.2-2099.50 as created by this act to determine whether those fees adequately cover the Department’s costs of administering the additional responsibilities imposed on the Department under this act. The Department shall report the results of its review to the Chairmen of the House and Senate Committees on Transportation no later than December 1, 2016.

4. That the provisions of subsection K of § 46.2-2099.48 as created by this act, which require a digital platform to allow customers or passengers prearranging rides to indicate whether a passenger requires a wheelchair-accessible vehicle or a vehicle that is otherwise accessible to individuals with disabilities, shall become effective on July 1, 2016.

5. That the transportation network companies shall advise TNC partners that a TNC partner's personal automobile insurance policy may not provide collision or comprehensive coverage for damage to the vehicle when the TNC partner uses a vehicle in connection with a transportation network company's digital platform, unless such policy expressly provides for TNC insurance coverage. Such notice shall be provided to each TNC partner until January 1, 2016.

6. That notwithstanding any other provision of law, a personal automobile insurer may, at its discretion, offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy, that covers a motor vehicle with a seating capacity of eight or fewer persons, including the driver, while used in connection with a transportation network company's digital platform.

7. That the provisions of this act adding § 46.2-2099.52 shall become effective on January 1, 2016.

8. That no provision of this act or existing law shall be construed to prevent any motor carrier regulated under the existing provisions of Chapter 20 (§ 46.2-2000 et seq.) of Title 46.2 from offering services through an online digital platform, unless such motor carrier chooses to operate as a transportation network company.
SENATE BILL 374
By Ketron

HOUSE BILL 404
By Butt

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17 and Title 57, relative to prohibiting powdered or crystalline alcohol.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 3, Part 4, is amended by adding the following language as a new section:

(a) No person shall sell or offer for sale for human consumption powdered or crystalline alcohol.

(b) Subsection (a) does not apply to any of the following:

(1) Any substance regulated by the food and drug administration in the United States department of health and human services that is not either of the following:

(A) Beer or intoxicating liquor; or

(B) A compound that could be converted into beer or intoxicating liquor;

(2) A medication that requires a prescription; or

(3) An over-the-counter medication.

(c) A violation of subsection (a) is a Class A misdemeanor. In addition to any criminal penalty imposed by this subsection (c), the commission may suspend or revoke any license or permit issued under this title held by any person who violates subsection (a).

(d) As used in this section:
(1) “Over-the-counter medication” means medication that may be legally sold and purchased without a prescription;

(2) “Powdered or crystalline alcohol” means a product that is manufactured into a powdered or crystalline form and that contains any amount of alcohol; and

(3) “Prescription” means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

SECTION 2. This act shall take effect July 1, 2015, the public welfare requiring it.
AN ACT concerning State government.

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 Secure Choice Savings Program Act.

Section 5. Definitions. Unless the context requires a different meaning or as expressly provided in this Section, all terms shall have the same meaning as when used in a comparable context in the Internal Revenue Code. As used in this Act:

"Board" means the Illinois Secure Choice Savings Board established under this Act.

"Department" means the Department of Revenue.

"Director" means the Director of Revenue.

"Employee" means any individual who is 18 years of age or older, who is employed by an employer, and who has wages that are allocable to Illinois during a calendar year under the provisions of Section 304(a)(2)(B) of the Illinois Income Tax Act.

"Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in Illinois, whether for profit or not for profit, that (i) has at no time during the previous calendar year employed fewer than 25 employees in the State, (ii) has been in business at least 2
years, and (iii) has not offered a qualified retirement plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code of 1986 in the preceding 2 years.

"Enrollee" means any employee who is enrolled in the Program.

"Fund" means the Illinois Secure Choice Savings Program Fund.

"Internal Revenue Code" means Internal Revenue Code of 1986, or any successor law, in effect for the calendar year.

"IRA" means a Roth IRA (individual retirement account) under Section 408A of the Internal Revenue Code.

"Participating employer" means an employer or small employer that provides a payroll deposit retirement savings arrangement as provided for by this Act for its employees who are enrollees in the Program.

"Payroll deposit retirement savings arrangement" means an arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the Program.

"Program" means the Illinois Secure Choice Savings Program.

"Small employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in Illinois, whether for profit or not for profit, that (i) employed less than 25 employees at any one time in the State
throughout the previous calendar year, or (ii) has been in business less than 2 years, or both items (i) and (ii), but that notifies the Department that it is interested in being a participating employer.

"Wages" means any compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by an enrollee from a participating employer during the calendar year.

Section 10. Establishment of Illinois Secure Choice Savings Program. A retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the Illinois Secure Choice Savings Program, is hereby established and shall be administered by the Board for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner.

Section 15. Illinois Secure Choice Savings Program Fund.

(a) The Illinois Secure Choice Savings Program Fund is hereby established as a trust outside of the State treasury, with the Board created in Section 20 as its trustee. The Fund shall include the individual retirement accounts of enrollees, which shall be accounted for as individual accounts. Moneys in the Fund shall consist of moneys received from enrollees and participating employers pursuant to automatic payroll deductions and contributions to savings made under this Act.
The Fund shall be operated in a manner determined by the Board, provided that the Fund is operated so that the accounts of enrollees established under the Program meet the requirements for IRAs under the Internal Revenue Code.

(b) The amounts deposited in the Fund shall not constitute property of the State and the Fund shall not be construed to be a department, institution, or agency of the State. Amounts on deposit in the Fund shall not be commingled with State funds and the State shall have no claim to or against, or interest in, such funds.

Section 16. Illinois Secure Choice Administrative Fund. The Illinois Secure Choice Administrative Fund ("Administrative Fund") is created as a nonappropriated separate and apart trust fund in the State Treasury. The Board shall use moneys in the Administrative Fund to pay for administrative expenses it incurs in the performance of its duties under this Act. The Board shall use moneys in the Administrative Fund to cover start-up administrative expenses it incurs in the performance of its duties under this Act. The Administrative Fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund.
Section 20. Composition of the Board. There is created the Illinois Secure Choice Savings Board.

(a) The Board shall consist of the following 7 members:

   (1) the State Treasurer, or his or her designee, who shall serve as chair;

   (2) the State Comptroller, or his or her designee;

   (3) the Director of the Governor's Office of Management and Budget, or his or her designee;

   (4) two public representatives with expertise in retirement savings plan administration or investment, or both, appointed by the Governor;

   (5) a representative of participating employers, appointed by the Governor; and

   (6) a representative of enrollees, appointed by the Governor.

(b) Members of the Board shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their Board duties from funds appropriated for the purpose.

(c) The initial appointments for the Governor's appointees shall be as follows: one public representative for 4 years; one public representative for 2 years; the representative of participating employers for 3 years; and the representative of enrollees for 1 year. Thereafter, all of the Governor's appointees shall be for terms of 4 years.
(d) A vacancy in the term of an appointed Board member shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(e) Each appointment by the Governor shall be subject to approval by the State Treasurer, who, upon approval, shall certify his or her approval to the Secretary of State. Each appointment by the Governor shall also be subject to the advice and consent of the Senate. In case of a vacancy during a recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, at which time the Governor shall appoint some person to fill the office. If the State Treasurer does not approve or disapprove the appointment by the Governor within 60 session days after receipt thereof, the person shall be deemed to have been approved by the State Treasurer. Any appointment that has not been acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate.

(f) Each Board member, prior to assuming office, shall take an oath that he or she will diligently and honestly administer the affairs of the Board and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Program. The oath shall be certified by the officer before whom it is taken and immediately filed in the office of the Secretary of State.
Section 25. Fiduciary Duty. The Board, the individual members of the Board, the trustee appointed under subsection (b) of Section 30, any other agents appointed or engaged by the Board, and all persons serving as Program staff shall discharge their duties with respect to the Program solely in the interest of the Program's enrollees and beneficiaries as follows:

(1) for the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the Program;

(2) by investing with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims; and

(3) by using any contributions paid by employees and employers into the trust exclusively for the purpose of paying benefits to the enrollees of the Program, for the cost of administration of the Program, and for investments made for the benefit of the Program.

Section 30. Duties of the Board. In addition to the other duties and responsibilities stated in this Act, the Board shall:

(a) Cause the Program to be designed, established and operated in a manner that:

(1) accords with best practices for retirement savings
vehicles;

(2) maximizes participation, savings, and sound investment practices;

(3) maximizes simplicity, including ease of administration for participating employers and enrollees;

(4) provides an efficient product to enrollees by pooling investment funds;

(5) ensures the portability of benefits; and

(6) provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement.

(b) Appoint a trustee to the IRA Fund in compliance with Section 408 of the Internal Revenue Code.

(c) Explore and establish investment options, subject to Section 45 of this Act, that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the State.

(d) Establish the process by which interest, investment earnings, and investment losses are allocated to individual program accounts on a pro rata basis and are computed at the interest rate on the balance of an individual’s account.

(e) Make and enter into contracts necessary for the administration of the Program and Fund, including, but not limited to, retaining and contracting with investment managers, private financial institutions, other financial and
service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary.

(e-5) Conduct a review of the performance of any investment vendors every 4 years, including, but not limited to, a review of returns, fees, and customer service. A copy of reviews conducted under this subsection (e-5) shall be posted to the Board's Internet website.

(f) Determine the number and duties of staff members needed to administer the Program and assemble such a staff, including, as needed, employing staff, appointing a Program administrator, and entering into contracts with the State Treasurer to make employees of the State Treasurer's Office available to administer the Program.

(g) Cause moneys in the Fund to be held and invested as pooled investments described in Section 45 of this Act, with a view to achieving cost savings through efficiencies and economies of scale.

(h) Evaluate and establish the process by which an enrollee is able to contribute a portion of his or her wages to the Program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the Program, including, but not limited to, contracting with financial service companies and third-party administrators with the
capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements.

(i) Design and establish the process for enrollment under Section 60 of this Act, including the process by which an employee can opt not to participate in the Program, select a contribution level, select an investment option, and terminate participation in the Program.

(j) Evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the Program.

(k) Accept any grants, appropriations, or other moneys from the State, any unit of federal, State, or local government, or any other person, firm, partnership, or corporation solely for deposit into the Fund, whether for investment or administrative purposes.

(l) Evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the Program, and indemnify as needed each member of the Board from personal loss or liability resulting from a member's action or inaction as a member of the Board.

(m) Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the Program, including the costs associated with subsection (b) of Section 20 of this Act, subsections (e), (f), (h), and (l) of
this Section, subsection (b) of Section 45 of this Act, subsection (a) of Section 80 of this Act, and subsection (n) of Section 85 of this Act. Subject to appropriation, the State may pay administrative costs associated with the creation and management of the Program until sufficient assets are available in the Fund for that purpose. Thereafter, all administrative costs of the Fund, including repayment of any start-up funds provided by the State, shall be paid only out of moneys on deposit therein. However, private funds or federal funding received under subsection (k) of Section 30 of this Act in order to implement the Program until the Fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The Board shall keep annual administrative expenses as low as possible, but in no event shall they exceed 0.75% of the total trust balance.

(n) Allocate administrative fees to individual retirement accounts in the Program on a pro rata basis.

(o) Set minimum and maximum contribution levels in accordance with limits established for IRAs by the Internal Revenue Code.

(p) Facilitate education and outreach to employers and employees.

(q) Facilitate compliance by the Program with all applicable requirements for the Program under the Internal Revenue Code, including tax qualification requirements or any
other applicable law and accounting requirements.

(r) Carry out the duties and obligations of the Program in an effective, efficient, and low-cost manner.

(s) Exercise any and all other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of this Act pertaining to the Program.

(t) Deposit into the Illinois Secure Choice Administrative Fund all grants, gifts, donations, fees, and earnings from investments from the Illinois Secure Choice Savings Program Fund that are used to recover administrative costs. All expenses of the Board shall be paid from the Illinois Secure Choice Administrative Fund.

Section 35. Risk Management. The Board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. This investment policy shall prohibit the Board, Program, and Fund from borrowing for investment purposes. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the Program and Fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The Board shall consider
the statement of investment policy and any changes in the investment policy at a public hearing.

Section 40. Investment firms.

(a) The Board shall engage, after an open bid process, an investment manager or managers to invest the Fund and any other assets of the Program. Moneys in the Fund may be invested or reinvested by the State Treasurer's Office or may be invested in whole or in part under contract with the State Board of Investment, private investment managers, or both, as selected by the Board. In selecting the investment manager or managers, the Board shall take into consideration and give weight to the investment manager's fees and charges in order to reduce the Program's administrative expenses.

(b) The investment manager or managers shall comply with any and all applicable federal and state laws, rules, and regulations, as well as any and all rules, policies, and guidelines promulgated by the Board with respect to the Program and the investment of the Fund, including, but not limited to, the investment policy.

(c) The investment manager or managers shall provide such reports as the Board deems necessary for the Board to oversee each investment manager's performance and the performance of the Fund.

Section 45. Investment options.
(a) The Board shall establish as an investment option a life-cycle fund with a target date based upon the age of the enrollee. This shall be the default investment option for enrollees who fail to elect an investment option unless and until the Board designates by rule a new investment option as the default as described in subsection (c) of this Section.

(b) The Board may also establish any or all of the following additional investment options:

(1) a conservative principal protection fund;

(2) a growth fund;

(3) a secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return; if the Board elects to establish a secure return fund, the Board may procure any insurance, annuity, or other product to insure the value of individuals' accounts and guarantee a rate of return; the cost of such funding mechanism shall be paid out of the Fund; under no circumstances shall the Board, Program, Fund, the State, or any participating employer assume any liability for investment or actuarial risk; the Board shall determine whether to establish such investment options based upon an analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;

(4) an annuity fund.

(c) If the Board elects to establish a secure return fund, the Board shall then determine whether such option shall
replace the target date or life-cycle fund as the default investment option for enrollees who do not elect an investment option. In making such determination, the Board shall consider the cost, risk profile, benefit level, and ease of enrollment in the secure return fund. The Board may at any time thereafter revisit this question and, based upon an analysis of these criteria, establish either the secure return fund or the life-cycle fund as the default for enrollees who do not elect an investment option.

Section 50. Benefits. Interest, investment earnings, and investment losses shall be allocated to individual Program accounts as established by the Board under subsection (d) of Section 30 of this Act. An individual's retirement savings benefit under the Program shall be an amount equal to the balance in the individual's Program account on the date the retirement savings benefit becomes payable. The State shall have no liability for the payment of any benefit to any participant in the Program.

Section 55. Employer and employee information packets and disclosure forms.

(a) Prior to the opening of the Program for enrollment, the Board shall design and disseminate to all employers an employer information packet and an employee information packet, which shall include background information on the Program,
appropriate disclosures for employees, and information regarding the vendor Internet website described in subsection (i) of Section 60 of this Act.

(b) The Board shall provide for the contents of both the employee information packet and the employer information packet.

(c) The employee information packet shall include a disclosure form. The disclosure form shall explain, but not be limited to, all of the following:

(1) the benefits and risks associated with making contributions to the Program;

(2) the mechanics of how to make contributions to the Program;

(3) how to opt out of the Program;

(4) how to participate in the Program with a level of employee contributions other than 3%;

(5) the process for withdrawal of retirement savings;

(6) how to obtain additional information about the Program;

(7) that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this Act;

(8) that the Program is not an employer-sponsored retirement plan; and
(9) that the Program Fund is not guaranteed by the State.

(d) The employee information packet shall also include a form for an employee to note his or her decision to opt out of participation in the Program or elect to participate with a level of employee contributions other than 3%.

(e) Participating employers shall supply the employee information packet to employees upon launch of the Program. Participating employers shall supply the employee information packet to new employees at the time of hiring, and new employees may opt out of participation in the Program or elect to participate with a level of employee contributions other than 3% at that time.

Section 60. Program implementation and enrollment. Except as otherwise provided in Section 93 of this Act, the Program shall be implemented, and enrollment of employees shall begin, within 24 months after the effective date of this Act. The provisions of this Section shall be in force after the Board opens the Program for enrollment.

(a) Each employer shall establish a payroll deposit retirement savings arrangement to allow each employee to participate in the Program at most nine months after the Board opens the Program for enrollment.

(b) Employers shall automatically enroll in the Program each of their employees who has not opted out of participation
in the Program using the form described in subsection (c) of Section 55 of this Act and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the Program. Small employers may, but are not required to, provide payroll deduction retirement savings arrangements for each employee who elects to participate in the Program.

(c) Enrollees shall have the ability to select a contribution level into the Fund. This level may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the Board. If an enrollee fails to select a contribution level using the form described in subsection (c) of Section 55 of this Act, then he or she shall contribute 3% of his or her wages to the Program, provided that such contributions shall not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.

(d) Enrollees may select an investment option from the permitted investment options listed in Section 45 of this Act. Enrollees may change their investment option at any time, subject to rules promulgated by the Board. In the event that an enrollee fails to select an investment option, that enrollee
shall be placed in the investment option selected by the Board as the default under subsection (c) of Section 45 of this Act. If the Board has not selected a default investment option under subsection (c) of Section 45 of this Act, then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

(e) Following initial implementation of the Program pursuant to this Section, at least once every year, participating employers shall designate an open enrollment period during which employees who previously opted out of the Program may enroll in the Program.

(f) An employee who opts out of the Program who subsequently wants to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating employer at an earlier time.

(g) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the Program.

(h) An employee may terminate his or her participation in
the Program at any time in a manner prescribed by the Board.

(i) The Board shall establish and maintain an Internet website designed to assist employers in identifying private sector providers of retirement arrangements that can be set up by the employer rather than allowing employee participation in the Program under this Act; however, the Board shall only establish and maintain an Internet website under this subsection if there is sufficient interest in such an Internet website by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the Internet website. The Board must provide public notice of the availability of and the process for inclusion on the Internet website before it becomes publicly available. This Internet website must be available to the public before the Board opens the Program for enrollment, and the Internet website address must be included on any Internet website posting or other materials regarding the Program offered to the public by the Board.

Section 65. Payments. Employee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the Fund using one or more payroll deposit retirement savings arrangements established by the Board under subsection (h) of Section 30 of this Act, either:

(1) on or before the last day of the month following
the month in which the compensation otherwise would have
been payable to the employee in cash; or

(2) before such later deadline prescribed by the Board
for making such payments, but not later than the due date
for the deposit of tax required to be deducted and withheld
relating to collection of income tax at source on wages or
for the deposit of tax required to be paid under the
unemployment insurance system for the payroll period to
which such payments relate.

Section 70. Duty and liability of the State.

(a) The State shall have no duty or liability to any party
for the payment of any retirement savings benefits accrued by
any individual under the Program. Any financial liability for
the payment of retirement savings benefits in excess of funds
available under the Program shall be borne solely by the
entities with whom the Board contracts to provide insurance to
protect the value of the Program.

(b) No State board, commission, or agency, or any officer,
employee, or member thereof is liable for any loss or
deficiency resulting from particular investments selected
under this Act, except for any liability that arises out of a
breach of fiduciary duty under Section 25 of this Act.

Section 75. Duty and liability of participating employers.

(a) Participating employers shall not have any liability
for an employee's decision to participate in, or opt out of, the Program or for the investment decisions of the Board or of any enrollee.

(b) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the Program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the Program. A participating employer shall not be liable with regard to investment returns, Program design, and benefits paid to Program participants.

Section 80. Audit and reports.
(a) The Board shall annually submit:

(1) an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Program during each calendar year by July 1 of the following year to the Governor, the Comptroller, the State Treasurer, and the General Assembly; and

(2) a report prepared by the Board, which shall include, but is not limited to, a summary of the benefits provided by the Program, including the number of enrollees in the Program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the Program and the Fund.
The annual audit shall be made by an independent certified public accountant and shall include, but is not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not State employees for the administration of the Program.

(b) In addition to any other statements or reports required by law, the Board shall provide periodic reports at least annually to participating employers, reporting the names of each enrollee employed by the participating employer and the amounts of contributions made by the participating employer on behalf of each employee during the reporting period, as well as to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their Program accounts for the reporting period. Such reports may include any other information regarding the Program as the Board may determine.

Section 85. Penalties.

(a) An employer who fails without reasonable cause to enroll an employee in the Program within the time prescribed under Section 60 of this Act shall be subject to a penalty equal to:

(1) $250 for each employee for each calendar year or portion of a calendar year during which the employee neither was enrolled in the Program nor had elected out of
participation in the Program; or

(2) for each calendar year beginning after the date a penalty has been assessed with respect to an employee, $500 for any portion of that calendar year during which such employee continues to be unenrolled without electing out of participation in the Program.

(b) After determining that an employer is subject to penalty under this Section for a calendar year, the Department shall issue a notice of proposed assessment to such employer, stating the number of employees for which the penalty is proposed under item (1) of subsection (a) of this Section and the number of employees for which the penalty is proposed under item (2) of subsection (a) of this Section for such calendar year, and the total amount of penalties proposed.

Upon the expiration of 90 days after the date on which a notice of proposed assessment was issued, the penalties specified therein shall be deemed assessed, unless the employer had filed a protest with the Department under subsection (c) of this Section.

If, within 90 days after the date on which it was issued, a protest of a notice of proposed assessment is filed under subsection (c) of this Section, the penalties specified therein shall be deemed assessed upon the date when the decision of the Department with respect to the protest becomes final.

(c) A written protest against the proposed assessment shall be filed with the Department in such form as the Department may
by rule prescribe, setting forth the grounds on which such protest is based. If such a protest is filed within 90 days after the date the notice of proposed assessment is issued, the Department shall reconsider the proposed assessment and shall grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the Department shall issue a notice of decision to the employer, setting forth the Department's findings of fact and the basis of decision. The decision of the Department shall become final:

(1) if no action for review of the decision is commenced under the Administrative Review Law, on the date on which the time for commencement of such review has expired; or

(2) if a timely action for review of the decision is commenced under the Administrative Review Law, on the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(d) As soon as practicable after the penalties specified in a notice of proposed assessment are deemed assessed, the Department shall give notice to the employer liable for any unpaid portion of such assessment, stating the amount due and demanding payment. If an employer neglects or refuses to pay the entire liability shown on the notice and demand within 10 days after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of the State of
Illinois upon all property and rights to property, whether real or personal, belonging to the employer, and the provisions in the Illinois Income Tax Act regarding liens, levies and collection actions with regard to assessed and unpaid liabilities under that Act, including the periods for taking any action, shall apply.

(e) An employer who has overpaid a penalty assessed under this Section may file a claim for refund with the Department. A claim shall be in writing in such form as the Department may by rule prescribe and shall state the specific grounds upon which it is founded. As soon as practicable after a claim for refund is filed, the Department shall examine it and either issue a refund or issue a notice of denial. If such a protest is filed, the Department shall reconsider the denial and grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the Department shall issue a notice of decision to the employer. The notice shall set forth briefly the Department's findings of fact and the basis of decision in each case decided in whole or in part adversely to the employer. A denial of a claim for refund becomes final 90 days after the date of issuance of the notice of the denial except for such amounts denied as to which the employer has filed a protest with the Department. If a protest has been timely filed, the decision of the Department shall become final:

(1) if no action for review of the decision is
commenced under the Administrative Review Law, on the date on which the time for commencement of such review has expired; or

(2) if a timely action for review of the decision is commenced under the Administrative Review Law, on the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(f) No notice of proposed assessment may be issued with respect to a calendar year after June 30 of the fourth subsequent calendar year. No claim for refund may be filed more than 1 year after the date of payment of the amount to be refunded.

(g) The provisions of the Administrative Review Law and the rules adopted pursuant to it shall apply to and govern all proceedings for the judicial review of final decisions of the Department in response to a protest filed by the employer under subsections (c) and (e) of this Section. Final decisions of the Department shall constitute "administrative decisions" as defined in Section 3-101 of the Code of Civil Procedure.

(h) Whenever notice is required by this Section, it may be given or issued by mailing it by first-class mail addressed to the person concerned at his or her last known address.

(i) All books and records and other papers and documents relevant to the determination of any penalty due under this Section shall, at all times during business hours of the day,
be subject to inspection by the Department or its duly authorized agents and employees.

(j) The Department may require employers to report information relevant to their compliance with this Act on returns otherwise due from the employers under Section 704A of the Illinois Income Tax Act and failure to provide the requested information on a return shall cause such return to be treated as unprocessable.

(k) For purposes of any provision of State law allowing the Department or any other agency of this State to offset an amount owed to a taxpayer against a tax liability of that taxpayer or allowing the Department to offset an overpayment of tax against any liability owed to the State, a penalty assessed under this Section shall be deemed to be a tax liability of the employer and any refund due to an employer shall be deemed to be an overpayment of tax of the employer.

(l) Except as provided in this subsection, all information received by the Department from returns filed by an employer or from any investigation conducted under the provisions of this Act shall be confidential, except for official purposes within the Department or pursuant to official procedures for collection of penalties assessed under this Act. Nothing contained in this subsection shall prevent the Director from publishing or making available to the public reasonable statistics concerning the operation of this Act wherein the contents of returns are grouped into aggregates in such a way
that the specific information of any employer shall not be disclosed. Nothing contained in this subsection shall prevent the Director from divulging information to an authorized representative of the employer or to any person pursuant to a request or authorization made by the employer or by an authorized representative of the employer.

(m) Civil penalties collected under this Act and fees collected pursuant to subsection (n) of this Section shall be deposited into the Tax Compliance and Administration Fund. The Department may, subject to appropriation, use moneys in the fund to cover expenses it incurs in the performance of its duties under this Act. Interest attributable to moneys in the Tax Compliance and Administration Fund shall be credited to the Tax Compliance and Administration Fund.

(n) The Department may charge the Board a reasonable fee for its costs in performing its duties under this Section to the extent that such costs have not been recovered from penalties imposed under this Section.

(o) This Section shall become operative 9 months after the Board notifies the Director that the Program has been implemented. Upon receipt of such notification from the Board, the Department shall immediately post on its Internet website a notice stating that this Section is operative and the date that it is first operative. This notice shall include a statement that rather than enrolling employees in the Program under this Act, employers may sponsor an alternative arrangement,
including, but not limited to, a defined benefit plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, a Savings Incentive Match Plan for Employees (SIMPLE) plan, or an automatic payroll deduction IRA offered through a private provider. The Board shall provide a link to the vendor Internet website described in subsection (i) of Section 60 of this Act.

Section 90. Rules. The Board and the Department shall adopt, in accordance with the Illinois Administrative Procedure Act, any rules that may be necessary to implement this Act.

Section 93. Delayed implementation. If the Board does not obtain adequate funds to implement the Program within the timeframe set forth under Section 60 of this Act, the Board may delay the implementation of the Program.

Section 95. Federal considerations. The Board shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the Program. The Board may not implement the Program if the IRA arrangements offered under the Program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the
Program is an employee benefit plan and State or employer liability is established under the federal Employee Retirement Income Security Act.

Section 500. The State Finance Act is amended by adding Section 5.855 as follows:

(30 ILCS 105/5.855 new)

Sec. 5.855. The Illinois Secure Choice Administrative Fund.
An Act

ENROLLED SENATE
BILL NO. 862

By: Jolley and Dahm of the Senate

and

Banz, Moore, Ritze, Bennett
and Christian of the House

An Act relating to gold and silver coins; establishing gold and silver coins as legal tender; prohibiting certain act except as provided; amending 68 O.S. 2011, Section 1357, as last amended by Section 1, Chapter 364, O.S.L. 2013 (68 O.S. Supp. 2013, Section 1357), which relates to exemptions; modifying qualifications relating to exemption for gold, silver, platinum, palladium or other bullion items; deleting term; providing for codification; and providing an effective date.

SUBJECT: Gold and silver usage

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4500 of Title 62, unless there is created a duplication in numbering, reads as follows:

Gold and silver coins issued by the United States government are legal tender in the State of Oklahoma. No person may compel another person to tender or accept gold or silver coins that are issued by the United States government, except as agreed upon by contract.
SECTION 2. AMENDATORY 68 O.S. 2011, Section 1357, as last amended by Section 1, Chapter 364, O.S.L. 2013 (68 O.S. Supp. 2013, Section 1357), is amended to read as follows:

Section 1357. Exemptions - General.

There are hereby specifically exempted from the tax levied by the Oklahoma Sales Tax Code:

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. Transportation of persons where the fare of each person does not exceed One Dollar ($1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in the Oklahoma Sales Tax Code. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by the Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals;

5. Sales of programs relating to sporting and entertainment events, and sales of advertising on billboards (including signage,
posters, panels, marquees, or on other similar surfaces, whether indoors or outdoors) or in programs relating to sporting and entertainment events, and sales of any advertising, to be displayed at or in connection with a sporting event, via the Internet, electronic display devices, or through public address or broadcast systems. The exemption authorized by this paragraph shall be effective for all sales made on or after January 1, 2001;

6. Sales of any advertising, other than the advertising described by paragraph 5 of this section, via the Internet, electronic display devices, or through the electronic media, including radio, public address or broadcast systems, television (whether through closed circuit broadcasting systems or otherwise), and cable and satellite television, and the servicing of any advertising devices;

7. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

8. Sale of natural or artificial gas and electricity, and associated delivery or transmission services, when sold exclusively for residential use. Provided, this exemption shall not apply to any sales tax levied by a city or town, or a county, or any other jurisdiction in this state;

9. In addition to the exemptions authorized by Section 1357.6 of this title, sales of drugs sold pursuant to a prescription written for the treatment of human beings by a person licensed to prescribe the drugs, and sales of insulin and medical oxygen. Provided, this exemption shall not apply to over-the-counter drugs;
10. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

11. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

12. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

13. Sales of food or food products, or any equipment or supplies used in the preparation of the food or food products to or by an organization which:

   a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or

   b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

14. a. Sales of tangible personal property or services to or by organizations which are exempt from taxation
pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and:

(1) are primarily involved in the collection and distribution of food and other household products to other organizations that facilitate the distribution of such products to the needy and such distributee organizations are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), or

(2) facilitate the distribution of such products to the needy.

b. Sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business shall not be exempt under this paragraph;

15. Sales of tangible personal property or services to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

16. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars ($2,000,000.00);
17. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 16 of this section. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility;

18. Sales of the following telecommunications services:

   a. Interstate and International "800 service". "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission, or

   b. Interstate and International "900 service". "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call into the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission,

   c. Interstate and International "private communications service". "Private communications service" means a "telecommunications service" that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in
which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels,

d. "Value-added nonvoice data service". "Value-added nonvoice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing,

e. Interstate and International telecommunications service which is:

(1) rendered by a company for private use within its organization, or

(2) used, allocated, or distributed by a company to its affiliated group,

f. Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund, and

g. Telecommunications nonrecurring charges, including but not limited to the installation, connection, change or initiation of telecommunications services which are not associated with a retail consumer sale;

19. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

20. Sales of aircraft and aircraft parts, provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent
employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

21. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

   a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and

   b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer;

22. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic device" shall have the same meaning as provided in Section 1357.6 of this title, but shall not include corrective eye glasses, contact lenses or hearing aids;
23. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series filmed or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996. In order to qualify for the exemption, the motion picture or television production company shall file any documentation and information required to be submitted pursuant to rules promulgated by the Tax Commission;

24. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft;

25. Sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state;

26. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services;

27. Effective January 1, 1991, leases of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power;

28. Beginning July 1, 2005, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint;
29. Sales of materials and supplies to the owner or operator of a ship, motor vessel or barge that is used in interstate or international commerce if the materials and supplies:
   a. are loaded on the ship, motor vessel or barge and used in the maintenance and operation of the ship, motor vessel or barge, or
   b. enter into and become component parts of the ship, motor vessel or barge;

30. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the former residence of the decedent by a person who is not required to be licensed pursuant to the Transient Merchant Licensing Act, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:
   a. such sale or event may not be held for a period exceeding three (3) consecutive days,
   b. the sale must be conducted within six (6) months of the date of death of the decedent, and
   c. the exemption allowed by this paragraph shall not be allowed for property that was not part of the decedent's estate;

31. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to five-to-one water-to-oil, and such oil and gas development projects have been classified by the Corporation Commission as a reservoir dewatering unit;

32. Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media;
33. Sales of modular dwelling units when built at a production facility and moved in whole or in parts, to be assembled on-site, and permanently affixed to the real property and used for residential or commercial purposes. The exemption provided by this paragraph shall equal forty-five percent (45%) of the total sales price of the modular dwelling unit. For purposes of this paragraph, "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of this title;

34. Sales of tangible personal property or services to persons who are residents of Oklahoma and have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard and who have been certified by the United States Department of Veterans Affairs or its successor to be in receipt of disability compensation at the one-hundred-percent rate and the disability shall be permanent and have been sustained through military action or accident or resulting from disease contracted while in such active service or the surviving spouse of such person if the person is deceased and the spouse has not remarried; provided, sales for the benefit of the person to a spouse of the eligible person or to a member of the household in which the eligible person resides and who is authorized to make purchases on the person's behalf, when such eligible person is not present at the sale, shall also be exempt for purposes of this paragraph. Sales qualifying for the exemption authorized by this paragraph shall not exceed Twenty-five Thousand Dollars ($25,000.00) per year per individual while the disabled veteran is living. Sales qualifying for the exemption authorized by this paragraph shall not exceed One Thousand Dollars ($1,000.00) per year for an unremarried surviving spouse. Upon request of the Tax Commission, a person asserting or claiming the exemption authorized by this paragraph shall provide a statement, executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded Twenty-five Thousand Dollars ($25,000.00) per year per living disabled veteran or One Thousand Dollars ($1,000.00) per year for an unremarried surviving spouse. If the amount of such exempt sales exceeds such amount, the sales tax in excess of the authorized amount shall be treated as a direct sales tax liability and may be recovered by the Tax Commission in the same manner provided by law for other taxes, including penalty and interest;
35. Sales of electricity to the operator, specifically designated by the Corporation Commission, of a spacing unit or lease from which oil is produced or attempted to be produced using enhanced recovery methods, including, but not limited to, increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or circulate fluids in a producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead. In order to be eligible for the sales tax exemption authorized by this paragraph, the total content of oil recovered after the use of enhanced recovery methods shall not exceed one percent (1%) by volume. The exemption authorized by this paragraph shall be applicable only to the state sales tax rate and shall not be applicable to any county or municipal sales tax rate;

36. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public;

37. Sales of vitamins, minerals and dietary supplements by a licensed chiropractor to a person who is the patient of such chiropractor at the physical location where the chiropractor provides chiropractic care or services to such patient. The provisions of this paragraph shall not be applicable to any drug, medicine or substance for which a prescription by a licensed physician is required;

38. Sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code 519130 which operates web sites that use a search engine to generate
and maintain extensive databases of Internet addresses and content in an easily searchable format;

39. Sales of tangible personal property consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a rural electric cooperative for construction or expansion of a facility shall be considered sales made to a rural electric cooperative;

40. Sales of tangible personal property or services to a business primarily engaged in the repair of consumer electronic goods, including, but not limited to, cell phones, compact disc players, personal computers, MP3 players, digital devices for the storage and retrieval of information through hard-wired or wireless computer or Internet connections, if the devices are sold to the business by the original manufacturer of such devices and the devices are repaired, refitted or refurbished for sale by the entity qualifying for the exemption authorized by this paragraph directly to retail consumers or if the devices are sold to another business entity for sale to retail consumers;

41. Before July 1, 2019, sales of rolling stock when sold or leased by the manufacturer, regardless of whether the purchaser is a public services corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by a common carrier directly in the rendition of public service. For purposes of this paragraph, "rolling stock" means locomotives, autocars and railroad cars; and

42. Sales of gold, silver, platinum, palladium or other bullion items such as coins and bars and legal tender of any nation, which legal tender is sold according to its value as precious metal or as an investment. To qualify for the exemption, the gold, silver, platinum, palladium or other bullion items must be stored within a recognized depository facility. As used in the paragraph, "bullion" means any precious metal, including, but not limited to, gold, silver, platinum and palladium, that is in such a state or condition that its value depends upon its precious metal content and not its form. As used in this paragraph, "depository facility" means an
institution that accepts delivery of precious metals on behalf of the purchaser and provides storage of such precious metals, but shall not include financial institutions as defined in subsection E of Section 71 of Title 62 of the Oklahoma Statutes. The exemption authorized by this paragraph shall not apply to fabricated metals that have been processed or manufactured for artistic use or as jewelry.

SECTION 3. This act shall become effective November 1, 2014.
HB384

156953-7

By Representatives Buttram, Baker, Collins and Hubbard (M)

RFD: Ways and Means Education

First Read: 30-JAN-14
ENROLLED, An Act,

Relating to state income tax; to provide a state income tax credit to individuals and businesses that make contributions for qualifying educational expenses directly associated with the Career-Technical Dual Enrollment Program as defined by the State Board of Education for tax years beginning January 1, 2015, and thereafter; and to specify the obligations of the Department of Postsecondary Education, the Commissioner of Revenue, and the Department of Revenue in implementing the act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For the purposes of this act, the following words shall have the following meanings:

(1) CAREER-TECHNICAL DUAL ENROLLMENT PROGRAM. A program that allows eligible high school students to enroll in college-level career technical education courses, as designed by the Chancellor of the Department of Postsecondary Education, that are offered at Alabama Community College System institutions and allows such enrolled students to concurrently earn high school and college credit in courses toward a certificate or degree, or both, and which prepares them to enter the workforce in high skill, high wage, or high demand occupations.

(2) CONTRIBUTION. A donation of cash.
(3) ELIGIBLE STUDENT. A high school student who meets the eligibility requirements and standards as prescribed by State Board of Education policy to enroll for Career-Technical Education Dual Enrollment/Dual Credit courses.

(4) QUALIFYING EDUCATIONAL EXPENSES. Tuition, fees, books, materials, and supplies required of or on behalf of a student by the Alabama Community College System institution or institutions for participation in a Career-Technical Dual Enrollment Program.

(5) TAXPAYER. An individual taxpayer, a married couple filing a joint tax return, a limited liability company, a corporation, or any other business entity lawfully organized and created under the laws of this state or other state.

Section 2. (a)(1) For tax years commencing January 1, 2014, and thereafter, a taxpayer who files a state income tax return and is not a dependent of another taxpayer may claim a tax credit for a contribution made to the Department of Postsecondary Education for qualifying educational expenses directly associated with the Career-Technical Dual Enrollment Program as defined by State Board of Education policy.

(2) The tax credit may be claimed by the taxpayer in an amount equal to 50 percent of the total contribution or contributions made to the Department of Postsecondary
Education during the taxable year for which the credit is claimed, but such credit is not to exceed an amount greater than 50 percent of the taxpayer's total Alabama income tax liability, and in no case more than five hundred thousand dollars ($500,000) for any given tax year.

(3) The cumulative amount of tax credits issued pursuant to this act shall not exceed five million dollars ($5,000,000) annually. The Department of Revenue, in conjunction with the Department of Postsecondary Education, shall develop procedures to ensure that this cap is not exceeded, shall also prescribe the various methods by which these credits are to be issued, and shall develop procedures to notify taxpayers at such points in time when the five million dollar ($5,000,000) annual limitation has been reached for the tax credit pursuant to this act.

(4) A taxpayer may carry forward all or part of a tax credit granted to the taxpayer under this act for a period of up to three years.

(b)(1) The Department of Revenue shall adopt rules and procedures consistent with this section as necessary to implement the provisions of this act.

(2) The Department of Revenue shall provide a standardized format for a receipt to be issued by the Department of Postsecondary Education to a taxpayer to indicate the value of a contribution received. The Department
of Revenue shall require the taxpayer to provide a copy of the receipt when claiming the tax credit pursuant to this act.

(c) The tax credit provided in this section may be first claimed for the 2014 2015 tax year and may not be claimed for any tax year prior to the 2014 2015 tax year.

Section 3. (a) The Department of Revenue may require a taxpayer to submit copies of receipts or other similar financial documentation with the taxpayer's state income tax return as necessary to confirm eligibility for the tax credit.

(b) The Department of Revenue shall promulgate rules and develop any tax forms, directions, and worksheets as necessary to effectuate the intent of this act.

Section 4. (a) The Commissioner of Revenue shall annually report the total amount of tax credits claimed and authorized pursuant to this act, on or before the fifteenth day of each regular session, to the Director of Finance, the Chair of the House Ways and Means Education Committee, and the Chair of the Senate Finance and Taxation Education Committee.

(b) The Department of Postsecondary Education shall include in its regular quarterly report amounts expended for qualifying educational expenses pursuant to this act to the Director of Finance, the Chair of the House Ways and Means Education Committee, and the Chair of the Senate Finance and Taxation Education Committee.
Section 5. (a) The Department of Postsecondary Education shall be responsible for administering the Career-Technical Dual Enrollment Program, for promulgating rules necessary for the department to implement the provisions of this act, and for allocating or disbursing the funds made available by this act for qualifying educational expenses. However, the Department of Postsecondary Education may annually allocate up to two hundred thousand dollars ($200,000) out of the funds received pursuant to this act for qualifying educational expenses for administrative costs directly associated with implementing the provisions of this act.

(b) The Department of Postsecondary Education shall work with business and industry partners, the Alabama Workforce Training Council, the Alabama Community College System, and the Regional Workforce Development Councils to ensure that the funds received pursuant to this act are allocated in a manner consistent with addressing the identified needs in each workforce region regarding the Career-Technical Dual Enrollment Program.

(c) Notwithstanding any other provision of this act, a taxpayer that makes a contribution toward qualifying educational expenses for the Career-Technical Dual Enrollment Program may direct that up to 80 percent of the taxpayer's contribution be allocated by the Department of Postsecondary
Education to specific career technical programs or courses at a particular Alabama Community College System institution. The remaining or otherwise undirected portion of any such contribution shall be allocated or disbursed by the Department of Postsecondary Education pursuant to the provisions of this act.

(d) Any portion of funds from contributions received pursuant to this act during a tax year and remaining unallocated at the end of that tax year may be used by the Department of Postsecondary Education in subsequent tax years for qualifying educational expenses.

Section 6. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
AN ACT to amend the Indiana Code concerning state and local administration.

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

SECTION 1. IC 5-28-7-1, as added by P.L.4-2005, Section 34, is amended to read as follows [EFFECTIVE JULY 1, 2014]:

Sec. 1. As used in the following definitions apply throughout this chapter:

(1) "Business" includes an entity that has the objective of supplying a service or an article of trade or commerce.

(2) "School corporation" has the meaning set forth in IC 20-18-2-16(a).

(3) "Charter school" has the meaning set forth in IC 20-18-2-2.5.

SECTION 2. IC 5-28-7-2, as amended by P.L.67-2013, Section 1, is amended to read as follows [EFFECTIVE JULY 1, 2014]:

Sec. 2. The corporation shall do the following:

(1) Establish policies to carry out a training assistance program, the purpose of which is to provide assistance to the following:

(A) New or expanding businesses, for the training or retraining of potential or incumbent employees and the retraining and upgrading of the skills of potential or incumbent employees.

(B) Businesses in Indiana, for the retraining and upgrading of employees' skills required to support new or existing capital investment.

(C) Businesses in Indiana, for the development of basic workforce skills of employees, including the following:

HEA 1003 — CC 1
(i) Literacy.
(ii) Communication skills.
(iii) Computational skills.
(iv) Other transferable workforce skills approved by the corporation.

(D) School corporations and charter schools, to support career pathways for students through cooperative arrangements with businesses for the education and training of students in high wage, high demand jobs that require industry certifications.

(2) Provide promotional materials regarding the training program.
(3) Determine the eligibility of an industry for the training program.
(4) Require a commitment by a business receiving training assistance under this chapter to continue operations at a site on which the training assistance is used for at least five (5) years after the date the training assistance expires. If a business fails to comply with this commitment, the corporation shall require the business to repay the training assistance provided to the business under this chapter.

SECTION 3. IC 5-28-7-4, AS ADDED BY P.L.4-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. Participation in the training program is limited to businesses entities that:
(1) meet the eligibility requirements of the corporation; and
(2) comply with this chapter.

SECTION 4. IC 5-28-7-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The corporation may award grants from the training 2000 fund to school corporations and charter schools to support cooperative arrangements with businesses for training students.

(b) A school corporation or a charter school must apply to the corporation for a grant under this section in the manner prescribed by the corporation.

(c) The corporation may consult with Indiana works councils to develop the application and eligibility requirements for grants awarded under this section.

SECTION 5. IC 6-3.1-13-13, AS AMENDED BY P.L.4-2005, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) The corporation may make credit awards under this chapter for any of the following:

HEA 1003 — CC 1
(1) To foster job creation in Indiana.
(2) or, as provided in section 15.5 of this chapter, To foster job retention in Indiana.
(3) For taxable years beginning after December 31, 2014, and before January 1, 2019, to foster employment in Indiana of students who participate in a course of study that includes a cooperative arrangement between an educational institution and an employer for the training of students in high wage, high demand jobs that require an industry certification.
(b) The credit shall be claimed for the taxable years specified in the taxpayer's tax credit agreement.

SECTION 6. IC 6-3.1-13-14, AS AMENDED BY P.L.4-2005, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) A person that proposes a project to create new jobs in Indiana may apply, as provided in section 15 of this chapter, to the corporation to enter into an agreement for a tax credit under this chapter.
(b) A person that proposes to retain existing jobs in Indiana may apply, as provided in section 15.5 of this chapter, to the corporation to enter into an agreement for a tax credit under this chapter.
(c) This subsection applies to taxable years beginning after December 31, 2014, and before January 1, 2019. A person that proposes to employ in Indiana students who have participated in a course of study that includes a cooperative arrangement between an educational institution and an employer for the training of students in high wage, high demand jobs that require an industry certification may apply, as provided in section 15.7 of this chapter, to the corporation to enter into an agreement for a tax credit under this chapter.
(d) The director shall prescribe the form of the application.

SECTION 7. IC 6-3.1-13-15.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15.7. (a) This section applies to an application proposing to employ students who have participated in a course of study that includes a cooperative arrangement between an educational institution and an employer for the training of students in high wage, high demand jobs that require an industry certification.
(b) A taxpayer who wishes to claim the credit provided by this chapter for employment of candidates to which this section applies may submit an application to the corporation after June 30, 2014, for a taxable year beginning after December 31, 2014, and before
January 1, 2019, in the manner prescribed by the corporation.

(c) After receipt of an application, the corporation may enter into an agreement with the applicant for a tax credit under this chapter if the corporation determines that the applicant:

(1) participates in at least one (1) cooperative arrangement with an educational institution for the training of students in high wage, high demand jobs that require an industry certification; and

(2) meets any additional eligibility conditions established by the corporation.

(d) The corporation may consult with the Indiana career council to develop eligibility and performance conditions that an applicant must meet to qualify for a credit award to which this section applies.

(e) The aggregate amount of tax credits awarded under this section for a state fiscal year may not exceed two million five hundred thousand dollars ($2,500,000).

SECTION 8. IC 6-3.1-13-19.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 19.7. (a) In the case of a credit awarded for employment in Indiana of students who have participated in a course of study that includes a cooperative arrangement between an educational institution and an employer for the training of students in high wage, high demand jobs that require an industry certification, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the applicant's own cooperative arrangements between the applicant and educational institutions for the training of students in high wage, high demand jobs that require an industry certification.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain the applicant's cooperative arrangements between the applicant and educational institutions for the training of students in high wage, high demand jobs that require an industry certification for at least two (2) years following the last taxable year in which the applicant claims the tax credit or carries over an unused part of the tax credit under section 18...
of this chapter. A taxpayer is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A specific method for determining the number of employees who:

(A) were students who participated in a course of study that included a cooperative arrangement between an employer and an educational institution for the training of students in high wage, high demand jobs that require an industry certification; and

(B) are employed during a taxable year.

(6) A requirement that the taxpayer annually shall report to the corporation:

(A) the number of employees who participated in a course of study that includes a cooperative arrangement between an employer and an educational institution for the training of students in high wage, high demand jobs that require an industry certification;

(B) the income tax revenue withheld in connection with the employees described in clause (A); and

(C) any other information the director needs to perform the director's duties under this chapter.

(7) A requirement that the director is authorized to verify with the appropriate state agencies the information reported under subdivision (6), and after doing so shall issue a certificate to the taxpayer stating that the information has been verified.

(8) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(9) Any other performance conditions that the corporation determines are appropriate.

(b) A taxpayer who is awarded a credit under this chapter for employees who participated in a course of study that included a cooperative agreement between an employer and an educational institution for the training of students in high wage, high demand jobs that require an industry certification may claim the credit only for employees whose course of study included a cooperative arrangement between the taxpayer and an educational institution for the training of students in high wage, high demand jobs that
require an industry certification.

SECTION 9. IC 22-4.5-9-2 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 2. As used in this chapter, "system" refers to the Indiana workforce intelligence system established by IC 22-4.5-10-3.

SECTION 10. IC 22-4.5-9-4, AS AMENDED BY SEA 24-2014, SECTION 101, AND BY HEA 1064-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Sec. 4. (a) The council shall do all of the following:

(1) Provide coordination to align the various participants in the state's education, job skills development, and career training system.

(2) Match the education and skills training provided by the state's education, job skills development, and career training system with the currently existing and future needs of the state's job market.

(3) Provide administrative oversight of the system.

(4) In addition to the department's annual report provided under IC 22-4-18-7, submit, not later than August 1, 2013, and not later than November 1 each year thereafter, to the legislative council in an electronic format under IC 5-14-6 an inventory of current job and career training activities conducted by:

(A) state and local agencies; and

(B) whenever the information is readily available, private groups, associations, and other participants in the state's education, job skills development, and career training system.

The inventory must provide at least the information listed in IC 22-4-18-7(a)(1) through IC 22-4-18-7(a)(5) for each activity in the inventory.

(5) Submit, not later than July 1, 2014, to the legislative council in an electronic format under IC 5-14-6 a strategic plan to improve the state's education, job skills development, and career training system. The council shall submit, not later than December 1, 2013, to the legislative council in an electronic format under IC 5-14-6 a progress report concerning the development of the strategic plan. The strategic plan developed under this subdivision must include at least the following:

(A) Proposed changes, including recommended legislation and rules, to increase coordination, data sharing, and communication among the state, local, and private agencies, groups, and associations that are involved in education, job skills development, and career training.

(B) Proposed changes to make Indiana a leader in employment opportunities related to the fields of science, technology,
engineering, and mathematics (commonly known as STEM). (C) Proposed changes to address both:
   (i) the shortage of qualified workers for current employment opportunities; and
   (ii) the shortage of employment opportunities for individuals with a baccalaureate or more advanced degree.

(6) (5) Complete, not later than August 1, 2014, a return on investment and utilization study of career and technical education programs in Indiana. The study conducted under this subdivision must include at least the following:

(A) An examination of Indiana's career and technical education programs to determine:
   (i) the use of the programs; and
   (ii) the impact of the programs on college and career readiness, employment, and economic opportunity.

(B) A survey of the use of secondary, college, and university facilities, equipment, and faculty by career and technical education programs.

(C) Recommendations concerning how career and technical education programs:
   (i) give a preference for courses leading to employment in high wage, high demand jobs; and
   (ii) add performance based funding to ensure greater competitiveness among program providers and to increase completion of industry recognized credentials and dual credit courses that lead directly to employment or postsecondary study.

(7) (6) Coordinate the performance of its duties under this chapter with:

(A) the education roundtable established by IC 20-19-4-2; and
(B) the Indiana works councils established by IC 20-19-6-4.

(b) In performing its duties, the council shall obtain input from the following:

(1) Indiana employers and employer organizations.
(2) Public and private institutions of higher education.
(3) Regional and local economic development organizations.
(4) Indiana labor organizations.
(5) Individuals with expertise in career and technical education.
(6) Military and veterans organizations.
(7) Organizations representing women, African-Americans, Latinos, and other significant minority populations and having an interest in issues of particular concern to these populations.
(8) Individuals and organizations with expertise in the logistics industry.

(9) Any other person or organization that a majority of the voting members of the council determines has information that is important for the council to consider.

SECTION 11. IC 22-4.5-9-9, AS ADDED BY P.L.60-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. The governor may request the assistance of any state agency, board, commission, committee, department, division, or other entity of the executive department of state government as necessary to provide staff and administrative support to the council.

and the system.

SECTION 12. IC 22-4.5-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1.5. As used in this chapter, "governance committee" refers to the INK governance committee established by section 7 of this chapter.

SECTION 13. IC 22-4.5-10-2, AS ADDED BY P.L.60-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. As used in this chapter, "system" "INK" refers to the Indiana workforce intelligence system network of knowledge established by section 3 of this chapter.

SECTION 14. IC 22-4.5-10-3, AS ADDED BY P.L.60-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. The Indiana workforce intelligence system network of knowledge is established as a statewide longitudinal data system that contains educational and workforce information:

(1) from educational institutions at all levels; and

(2) about the state's workforce;

to improve the effect of the state's educational delivery system on the economic opportunities of individuals and the state's workforce, and to guide state and local decision makers.

SECTION 15. IC 22-4.5-10-4, AS ADDED BY P.L.60-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The system INK must do the following:

(1) Effectively organize, manage, break down, and analyze educational, and workforce, and other data.

(2) Generate timely and accurate information about student progress and outcomes over time, including students' preparation for postsecondary education and the workforce.

(3) Generate timely and accurate information that is available to the public about the effectiveness of the state's job training
programs, including at least the following:

(A) The number of participants in each program.
(B) The number of participants who, as a result of the training received in the program:
   (i) secured employment; or
   (ii) were retained by an employer.
(C) The average wage of the participants who secured employment or were retained by an employer.

(4) Support the economic development and other activities of state and local governments.

(b) The INK may not obtain or store the following student data:

(1) Disciplinary records.
(2) Juvenile delinquency records.
(3) Criminal records.
(4) Medical and health records.

SECTION 16. IC 22-4.5-10-5, AS ADDED BY P.L.60-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The department of education (established by IC 20-19-3-1), the department of workforce development (established by IC 22-4.1-2-1), the commission for higher education (established by IC 21-18-2-1), and other agencies of the state that collect relevant data related to educational and workforce outcomes shall submit that data to the system INK on a timely basis and shall ensure the following:

(1) Routine and ongoing compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g), IC 22-4-19-6, and other relevant privacy laws and policies, including the following:
   (A) The required use of data that cannot be used to identify information relating to a specific individual or entity.
   (B) The required disposition of information that is no longer needed.
   (C) The provision of a data security plan, including the performance of regular audits for compliance with data privacy and security standards.
   (D) The implementation of guidelines and policies to prevent the reporting of other data that may potentially be used to identify information relating to a specific individual or entity.
(2) The use of data only in summary form in reports and responses to information requests. Data that may identify specific individuals or entities because of the size or uniqueness of the population involved may not be reported in any form.

HEA 1003 — CC 1
(b) After June 30, 2014, other agencies of the state shall submit to the INK on a timely basis relevant data, including data at the individual level, as determined by the INK governance committee.

(c) The data submitted to INK under subsections (a) and (b):
   (1) remains under the ownership and control of the agency submitting the data; and
   (2) may be used only for the purposes of this chapter, unless the agency that submitted the data consents to the additional use.

(d) After June 30, 2014, the following may submit educational, workforce, and other relevant data, as applicable, to the INK by working with and through the INK executive director:
   (1) Private sector business or commercial employers, groups, associations, agencies, and other entities.
   (2) Private institutions of higher education.

SECTION 17. IC 22-4.5-10-6, AS ADDED BY P.L.60-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) The:
   (1) council, before July 1, 2014; and
   (2) governor, governance committee, working in collaboration with the executive director, after June 30, 2014;
shall provide administrative oversight to the system INK through the executive director.

(b) Administrative oversight of the system INK includes all the following:
   (1) Provide general oversight and direction for the development and maintenance of the system INK, including the organizational framework for the day to day management of the INK.
   (2) Approve an annual budget for the system. Work with the executive director and other state agencies participating in the INK to establish the following:
      (A) A standard compliance time frame for the submission of data to the INK.
      (B) Interagency policies and agreements to ensure equal access to the INK.
      (C) Interagency policies and agreements to ensure the ongoing success of the INK.
   (3) Hire staff necessary to administer the system INK.
   (4) Develop and implement a detailed data security and safeguarding plan that includes:
      (A) access by authenticated authorization;
(B) privacy compliance standards;
(C) notification and other procedures to protect system data if a breach of the system INK occurs; and
(D) policies for data retention and disposition.

(5) Oversee Develop and implement policies to provide routine and ongoing compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g), IC 22-4-19-6, and other relevant privacy laws and policies.

(6) Establish the policy and research agenda for the INK.

(6) (7) Review research requirements and Establish policies for responding to data requests from the state, local agencies, the general assembly, and the public. The policies established under this subdivision must provide for access to data in the INK requested by the legislative department of state government. If the data requested by the legislative department includes data that is restricted by federal law, regulation, or executive order, the governance committee shall provide access to the legislative department to the restricted data to the extent permitted by the applicable federal law, regulation, or executive order.

(7) (8) Oversee the development of public access to the system INK in a manner that:
(A) permits research using the data in aggregated form; and
(B) cannot provide information that allows the identification of a specific individual or entity.

(8) Identify additional sources of data for the system from among state entities and require those entities to submit relevant data to the system.

(9) Submit, not later than September 1, 2015, and not later than September 1 each year thereafter, to the governor, to the legislative council in an electronic format under IC 5-14-6, and to the council, a report covering the following for the most recent fiscal year:
(A) An update concerning the administration of the INK and the governance committee's activities.
(B) An overview of all studies performed.
(C) Any proposed or planned expansions of the data maintained by the INK.
(D) Any other recommendations made by the executive director and the governance committee.

(c) Funding for the development, maintenance, and use of the system INK may be obtained from any of the following sources:

HEA 1003 — CC 1
(1) Appropriations made by the general assembly for this purpose.
(2) Grants or other assistance from local educational agencies or institutions of higher education.
(3) Federal grants.
(4) User fees.
(5) Grants or amounts received from other public or private entities.
(d) The council (before July 1, 2014) and the governor through the executive director (after June 30, 2014) may contract with public or private entities for the following purposes:
(1) To develop and maintain the system, INK, including the analytical and security capabilities of the INK. Contracts made under this subdivision must include:
   (A) express provisions that safeguard the privacy and security of the INK; and
   (B) penalties for failure to comply with the provisions described in clause (A).
(2) To conduct research in support of the activities and objectives listed in section 4 of this chapter.
(3) To conduct research on topics at the request of the council, the governor, or the general assembly.

SECTION 18. IC 22-4.5-10-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) The INK governance committee is established.
(b) The governance committee consists of at least the following six members:
(1) The commissioner of the department of workforce development, or the commissioner's designee with authority to act on behalf of the commissioner.
(2) The commissioner of the commission for higher education, or the commissioner's designee with authority to act on behalf of the commissioner.
(3) The state superintendent of public instruction, or the state superintendent's designee with authority to act on behalf of the state superintendent.
(4) One member representing private colleges and universities appointed by the governor.
(5) One member representing the business community in Indiana appointed by the governor.
(6) The INK executive director. The INK executive director serves in a nonvoting advisory capacity.

HEA 1003 — CC 1
(c) The governor may appoint additional members to the governance committee as necessary to ensure the continued success of the INK. Additional members appointed under this subsection must represent other state agencies or partner organizations, as determined by the governance committee, that submit data to the INK.

(d) A member of the governance committee appointed by the governor serves at the pleasure of the governor.

(e) The governor shall make the initial appointments under this section not later than July 15, 2014.

(f) A vacancy on the governance committee is filled in the same manner as the original appointment.

(g) The governor shall appoint the chair of the governance committee from its voting members. The chair serves for one (1) year, or until a successor is selected.

(h) The governance committee shall meet at least quarterly or at the call of the chair.

(i) A majority of the voting members of the governance committee constitutes a quorum for the purpose of conducting business. The affirmative vote of a majority of the members of the governance committee is required for the governance committee to take official action.

SECTION 19. IC 22-4.5-10-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) The governor shall:

(1) appoint an INK executive director from a list of three (3) candidates submitted by the governance committee; or

(2) reject all of the candidates on the list submitted by the governance committee.

(b) If the governor rejects all of the candidates on the list submitted by the governance committee, the governor shall notify the chair of the governance committee.

(c) Not later than thirty (30) days after the date the governance committee receives the governor's notice under subsection (b), the governance committee shall submit to the governor a second list of three (3) new candidates for the position of INK executive director. The governor shall appoint the INK executive director from the second list of candidates submitted by the governance committee.

(d) The INK executive director serves at the pleasure of the governor.

(e) Whenever a vacancy in the position of INK executive director occurs, the governor shall notify the chair of the
governance committee. Not later than ten (10) days after the date the governance committee receives notice of the vacancy, the chair shall call a meeting of the governance committee to begin the process of filling the vacancy. Not later than thirty (30) days after the date the governance committee receives notice of the vacancy, the governance committee shall submit to the governor a list of three (3) candidates to fill the vacancy.

(f) The governance committee shall submit to the governor the initial list of three (3) candidates for INK executive director not later than August 15, 2014.

(g) The executive director is responsible for the daily administration of the INK.

(h) The executive director shall do all the following:

1. Work with the governance committee, state agencies, and other entities participating in the INK to develop and implement appropriate policies and procedures concerning the INK's data quality, integrity, transparency, security, and confidentiality.

2. Coordinate the provision and delivery of data, as determined by the governance committee, to ensure that research project timelines and deliverables to stakeholders are met.

3. Provide reports concerning the INK and the executive director's activities to the governor and the governance committee.

4. Work in collaboration with the governance committee to hire staff as necessary to administer the INK.

5. Perform other duties as assigned by the governor.

SECTION 20. IC 22-4.5-10-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) Each member of the governance committee who is not a state employee is entitled to the following:

1. The salary per diem provided under IC 4-10-11-2.1(b).

2. Reimbursement for traveling expenses as provided under IC 4-13-1-4.

3. Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the governance committee who is a state employee is entitled to the following:

HEA 1003 — CC 1
(1) Reimbursement for traveling expenses as provided under IC 4-13-1-4.

(2) Other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

SECTION 21. IC 22-4.5-10.5-3, AS AMENDED BY SEA 24-2014, SECTION 102, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) The department, in consultation with the commission for higher education, the department of education, the office of the secretary of family and social services, and any other agency the department determines is necessary, shall include in the Indiana workforce intelligence system network of knowledge established by IC 22-4.5-10-3 as added by HB 1002-2013; SECTION 2; information regarding the middle skill credentials awarded in Indiana for the immediately preceding state fiscal year.

(b) The information required under subsection (a) must include:

(1) the aggregate number of enrollees in programs leading to middle skill credentials from:
   (A) public institutions of higher education;
   (B) private institutions of higher education;
   (C) postsecondary proprietary educational institutions;
   (D) community colleges;
   (E) area vocational schools;
   (F) high school vocational programs;
   (G) apprenticeship programs; and
   (H) other public or private workforce training programs; and

(2) aggregate data of industry based certifications awarded as the result of the completion of education and employment training programs.

(c) The department shall publish the information described in subsection (b) in the department's annual report.
AN ACT
RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Metts, Goldin, Pichardo, Jabour, and Miller

Date Introduced: February 13, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 28-5-6 of the General Laws in Chapter 28-5 entitled "Fair Employment Practices" is hereby amended to read as follows:

28-5-6. Definitions. -- When used in this chapter:

(1) "Age" means anyone who is at least forty (40) years of age.

(2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this chapter shall be interpreted to permit otherwise.

(3) "Commission" means the Rhode Island commission against discrimination created by this chapter.

(4) "Conviction" means, for the purposes of this chapter only, any verdict or finding of guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

(5) "Disability" means a disability as defined in section 42-87-1.

(6) "Discriminate" includes segregate or separate.

(7) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(8) "Employer" includes the state and all political subdivisions of the state and any
person in this state employing four (4) or more individuals, and any person acting in the interest
of an employer directly or indirectly.

(ii) Nothing in this subdivision shall be construed to apply to a religious corporation,
association, educational institution, or society with respect to the employment of individuals of its
religion to perform work connected with the carrying on of its activities.

Employment agency” includes any person undertaking with or without
compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

“Firefighter” means an employee the duties of whose position includes work
connected with the control and extinguishment of fires or the maintenance and use of firefighting
apparatus and equipment, including an employee engaged in this activity who is transferred or
promoted to a supervisory or administrative position.

“Gender identity or expression” includes a person's actual or perceived gender,
as well as a person's gender identity, gender-related self image, gender-related appearance, or
gender-related expression; whether or not that gender identity, gender-related self image, gender-
related appearance, or gender-related expression is different from that traditionally associated
with the person's sex at birth.

“Labor organization” includes any organization which exists for the purpose, in
whole or in part, of collective bargaining or of dealing with employers concerning grievances,
terms or conditions of employment, or of other mutual aid or protection in relation to
employment.

“Law enforcement officer” means an employee the duties of whose position
include investigation, apprehension, or detention of individuals suspected or convicted of
offenses against the criminal laws of the state, including an employee engaged in such activity
who is transferred or promoted to a supervisory or administrative position. For the purpose of this
subdivision, “detention” includes the duties of employees assigned to guard individuals
incarcerated in any penal institution.

“Person” includes one or more individuals, partnerships, associations,
organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

“Religion” includes all aspects of religious observance and practice, as well as
belief, unless an employer, union or employment agency demonstrates that it is unable to
reasonably accommodate to an employee's or prospective employee's or union member's religious
observance or practice without undue hardship on the conduct of its business.

“Sexual orientation” means having or being perceived as having an orientation
for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the
status of persons and does not render lawful any conduct prohibited by the criminal laws of this
state nor impose any duty on a religious organization. This definition does not confer legislative
approval of that status, but is intended to assure the basic human rights of persons to obtain and
hold employment, regardless of that status.

The terms, as used regarding persons with disabilities:
(i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same
meaning as those items are defined in section 42-87-1.1; and
(ii) "Hardship" means an "undue hardship" as defined in section 42-87-1.1.

SECTION 2. Section 28-5-7 of the General Laws in Chapter 28-5 entitled 'Fair
Employment Practices' is hereby amended to read as follows:

28-5-7. Unlawful employment practices. -- It shall be an unlawful employment
practice:
(1) For any employer:
(i) To refuse to hire any applicant for employment because of his or her race or color,
religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
ancestral origin;
(ii) Because of those reasons, to discharge an employee or discriminate against him or
her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or
any other matter directly or indirectly related to employment. However, if an insurer or employer
extends insurance related benefits to persons other than or in addition to the named employee,
nothing in this subdivision shall require those benefits to be offered to unmarried partners of
named employees;
(iii) In the recruiting of individuals for employment or in hiring them, to utilize any
employment agency, placement service, training school or center, labor organization, or any other
employee referring source which the employer knows, or has reasonable cause to know,
discriminates against individuals because of their race or color, religion, sex, sexual orientation,
gender identity or expression, disability, age, or country of ancestral origin;
(iv) To refuse to reasonably accommodate an employee's or prospective employee's
disability unless the employer can demonstrate that the accommodation would pose a hardship on
the employer's program, enterprise, or business; or
(v) When an employee has presented to the employer an internal complaint alleging
harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
timely manner in writing to that employee the disposition of the complaint, including a
description of any action taken in resolution of the complaint; provided, however, no other personnel information shall be disclosed to the complainant.

(2) (i) For any employment agency to fail or refuse to properly classify or refer for employment or otherwise discriminate against any individual because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestry; or

(ii) For any employment agency, placement service, training school or center, labor organization, or any other employee referring source to comply with an employer's request for the referral of job applicants if the request indicates either directly or indirectly that the employer will not afford full and equal employment opportunities to individuals regardless of their race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestry;

(3) For any labor organization:

(i) To deny full and equal membership rights to any applicant for membership because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestry origin;

(ii) Because of those reasons, to deny a member full and equal membership rights, expel him or her from membership, or otherwise discriminate in any manner against him or her with respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of the labor organization or by a collective labor agreement or other contract;

(iii) To fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestry origin; or

(iv) To refuse to reasonably accommodate a member's or prospective member's disability unless the labor organization can demonstrate that the accommodation would pose a hardship on the labor organization's program, enterprise, or business;

(4) Except where based on a bona fide occupational qualification certified by the commission or where necessary to comply with any federal mandated affirmative action programs, for any employer or employment agency, labor organization, placement service, training school or center, or any other employee referring source, prior to employment or admission to membership of any individual, to:

(i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her
race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

(ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

(iii) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

(iv) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin; or

(v) Establish, announce, or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin of that group;

(5) For any employer or employment agency, labor organization, placement service, training school or center, or any other employee referring source to discriminate in any manner against any individual because he or she has opposed any practice forbidden by this chapter, or because he or she has made a charge, testified, or assisted in any manner in any investigation, proceeding, or hearing under this chapter;

(6) For any person, whether or not an employer, employment agency, labor organization, or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful employment practice, or to obstruct or prevent any person from complying with the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful employment practice;

(7) For any employer to include on any application for employment, except applications for law enforcement agency positions or positions related to law enforcement agencies, a question inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been arrested, or charged with convicted of any crime; provided, that nothing in this subdivision shall prevent an employer from inquiring whether the applicant has ever been convicted of any crime;

(i) If a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a person's conviction of one or more specified criminal offenses, an employer may include a question or otherwise inquire whether the applicant
has ever been convicted of any of those offenses; or

(ii) If a standard fidelity bond or an equivalent bond is required for the position for which
the applicant is seeking employment and his or her conviction of one or more specified criminal
offenses would disqualify the applicant from obtaining such a bond, an employer may include a
question or otherwise inquire whether the applicant has ever been convicted of any of those
offenses; and

(iii) Notwithstanding, any employer may ask an applicant for information about his or her
criminal convictions at the first interview or thereafter, in accordance with all applicable state and
federal laws.

(8)(i) For any person who, on June 7, 1988, is providing either by direct payment or by
making contributions to a fringe benefit fund or insurance program, benefits in violation with
sections 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988 or if there is an applicable collective bargaining agreement in effect on June 7, 1988, until
the termination of that agreement, in order to come into compliance with sections 28-5-6, 28-5-7
and 28-5-38, to reduce the benefits or the compensation provided any employee on June 7, 1988,
either directly or by failing to provide sufficient contributions to a fringe benefit fund or
insurance program.

(ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
and employees, the payments or contributions required to comply with sections 28-5-6, 28-5-7
and 28-5-38 may be made by employers and employees in the same proportion.

(iii) Nothing in this section shall prevent the readjustment of benefits or compensation
for reasons unrelated to compliance with sections 28-5-6, 28-5-7 and 28-5-38.

SECTION 3. This act shall take effect on January 1, 2014.
AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE WITH REGARD TO EMPLOYMENT PRACTICES.

WHEREAS, the incarceration rate of the United States has tripled since 1980 and is nearly eight times its historic average; and

WHEREAS, it is in the interest of the entire community that persons reentering society after incarceration become productive members of society, and the ability of these persons to obtain employment is key to their productivity; and

WHEREAS, research has shown that many individuals with prior criminal histories pose no greater risk of future criminality than do people with no criminal history and are equally qualified, reliable, and trustworthy candidates for employment; and

WHEREAS, lack of employment is a significant cause of recidivism, and people who are employed are significantly less likely to be re-arrested; and

WHEREAS, persons who have paid their debts to society deserve a fair chance at employment and this act is intended to give the individual with a criminal record an opportunity to be judged on his or her own merit during the submission of the application and at least until the completion of one interview; and

WHEREAS, at least 40 cities, 7 counties, and 7 states have passed ordinances and statutes or enacted policies to remove barriers to the employment of those with criminal histories; and
WHEREAS, it is the intent and purpose of this law to improve the economic viability, health, and security of Delaware communities and to assist people with conviction histories to reintegrate into the community and to provide for their families and themselves; and

WHEREAS, obstacles to employment for people with criminal records and other barriers to re-entry are creating permanent members of an underclass that threatens the health of the community and undermines public safety;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 710, Title 19 of the Delaware Code by adding a new subsection (14) as shown by underlining as follows and redesignating current subsections (14) through (18) as (15) through (19) respectively:

(14) “Public employer” means the State of Delaware, its agencies, or political subdivisions.

Section 2. Amend Section 711, Title 19 of the Delaware Code by inserting a new subsection (g) as shown by underlining as follows and redesignating current subsections (g) through (k) as (h) through (l) respectively:

(g)(1) It shall be an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history, credit history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.

(2) If an applicant is otherwise qualified, a public employer may inquire into or consider an applicant’s criminal record, criminal history, credit history or credit score after the completion of the first interview.

(3) A public employer may disqualify an applicant from employment based on criminal history where the exclusion is job related for the position in question and consistent with business necessity. The public employer shall consider the following factors in its hiring decision:

(a) The nature and gravity of the offense or conduct;

(b) The time that has passed since the offense or conduct and/or the completion of the sentence; and

(c) The nature of the job held or sought.

(4) This subsection does not apply to any state, county or municipal police force, the Department of Correction, the Department of Justice, the Public Defender’s Office, the Courts, or any position where federal or state statute requires or expressly permits the consideration of an applicant’s criminal history.
Section 3. Amend Chapter 69, Title 29 of the Delaware Code by adding a new section 6909B as shown by underlining as follows:

6909B. Fair Background Check Practices.

The State shall include in all formal solicitations a section stating the State does not consider the criminal record, criminal history, credit history, or credit score of an applicant for State employment during the initial application process unless otherwise required by state and/or federal law, and vendors doing business with the State are encouraged to adopt similar policies.

Section 4. This Act becomes effective 180 days following its enactment into law.
An Act to amend and reenact §§ 2.2-2470 and 2.2-2472 of the Code of Virginia, relating to local workforce investment boards; pay for performance incentives.

Be it enacted by the General Assembly of Virginia:
1. That §§ 2.2-2470 and 2.2-2472 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2470. Definitions.
As used in this article:
"Local workforce investment board" means a local workforce investment board established under § 117 of the WIA.
"One stop" means a conceptual approach to service delivery intended to provide a single point of access for receiving a wide range of workforce development and employment services, either on-site or electronically, through a single system.
"One-stop center" means a physical site where core services are provided, either on-site or electronically, and access to intensive services, training services, and other partner program services are available for employers, employees, and job seekers.
"One-stop operator" means a single entity or consortium of entities that operate a one-stop center or centers. Operators may be public or private entities competitively selected or designated through an agreement with a local workforce board.
"Virginia Workforce Network" includes the programs and activities enumerated in subsection G of § 2.2-2472.
"WIA" means the federal Workforce Investment Act of 1998 (P.L. 105-220), as amended.
"WIOA" means the federal Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128).

§ 2.2-2472. Powers and duties of the Board; Virginia Workforce Network created.
A. The Board shall undertake the following actions to implement and foster workforce training and better align education and workforce programs to meet current and projected skills requirements of an increasingly technological, global workforce:
1. Provide policy advice to the Governor on workforce and workforce development issues;
2. Provide policy direction to local workforce investment boards;
3. Provide recommendations on the policy, plans, and procedures for secondary and postsecondary career and technical education activities authorized under the federal Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. § 2301 et seq.) to ensure alignment with the state's plan for coordinating programs authorized under Title I of the WIA and under the federal Wagner-Peyser Act (29 U.S.C. § 49 et seq.);
4. Provide recommendations on the policy, plans, and procedures for other education and workforce development programs that provide resources and funding for training and employment services as identified by the Governor or Board;
5. Identify current and emerging statewide workforce needs of the business community;
6. Forecast and identify training requirements for the new workforce;
7. Recommend strategies that will match trained workers with available jobs to include strategies for increasing business engagement in education and workforce development;
8. Develop WIA incentive grant applications and approve criteria for awarding incentive grants;
9. Develop and approve criteria for the reallocation of unexpended WIA funds from local workforce investment boards;
10. Conduct a review of budgets, which shall be submitted annually to the Board by each agency conducting federal and state funded career and technical and adult education and workforce development programs, that identify the agency's sources and expenditures of administrative, workforce training, and leadership funds for workforce development programs;
11. Administer the Virginia Career Readiness Certificate Program in accordance with § 2.2-2477 and review and recommend industry credentials that align with high demand occupations;
12. Define the Board's role in certifying WIA training providers, including those not subject to the authority expressed in Chapter 21.1 (§ 23-276.1 et seq.) of Title 23;
13. Provide an annual report to the Governor concerning its actions and determinations under subdivisions 1 through 13;
14. Create procedures, guidelines, and directives applicable to local workforce investment boards and the operation of one-stops, as necessary and appropriate to carry out the purposes of this article; and
15. Perform any act or function in accordance with the purposes of this article.
B. The Board may establish such committees as it deems necessary including the following:

1. A committee to accomplish the federally mandated requirements of the WIA;
2. An advanced technology committee to focus on high-technology workforce training needs and skills attainment solutions through sector strategies, career readiness, and career pathways;
3. A performance and accountability committee to coordinate with the Virginia Employment Commission, State Council of Higher Education for Virginia, and the Council on Virginia's Future to develop the metrics and measurements for publishing comprehensive workforce score cards and other longitudinal data that will enable the Virginia Workforce Network to measure comprehensive accountability and performance; and
4. A military transition assistance committee to focus on military transition assistance, including reforms to (i) improve the integration of the federal Local Veterans Employment Representative Program and the Disabled Veterans Outreach Program into all Virginia Workforce Centers and (ii) reduce process and qualification barriers to training and employment services.

C. The Board and the Governor's cabinet secretaries shall assist the Governor in complying with the provisions of the WIA and ensuring the coordination and effectiveness of all federal and state funded career and technical and adult education and workforce development programs and providers comprising elements of Virginia's Career Pathways System and Workforce Network.

D. The Board shall assist the Governor in the following areas with respect to workforce development: development of the WIA Wagner-Peyser State Plan; development and continuous improvement of a statewide workforce development and career pathways system that ensures career readiness and coordinates and aligns career and technical education, adult education, and federal and state workforce programs; development of linkages to ensure coordination and nonduplication among programs and activities; review of local plans; designation of local areas; development of local discretionary allocation formulas; development and continuous improvement of comprehensive state performance measures including, without limitation, performance measures reflecting the degree to which one-stop centers provide comprehensive services with all mandatory partners and the degree to which local workforce investment boards have obtained funding from sources other than the WIA; preparation of the annual report to the U.S. Secretary of Labor; development of a statewide employment statistics system; and development of a statewide system of one-stop centers that provide comprehensive workforce services to employers, employees, and job seekers.

The Board shall share information regarding its meetings and activities with the public.

E. Each local workforce investment board shall develop and submit to the Governor and the Virginia Board of Workforce Development an annual workforce demand plan for its workforce investment board area based on a survey of local and regional businesses that reflects the local employers’ needs and requirements and the availability of trained workers to meet those needs and requirements; designate or certify one-stop operators; identify eligible providers of youth activities; identify eligible providers of intensive services if unavailable at one-stop; develop a budget; conduct local oversight of one-stop operators and training providers in partnership with its local chief elected official; negotiate local performance measures, including incentives for good performance and penalties for inadequate performance; assist in developing statewide employment statistics; coordinate workforce investment activities with economic development strategies and the annual demand plan, and develop linkages among them; develop and enter into memoranda of understanding with one-stop partners and implement the terms of such memoranda; promote participation by the private sector; actively seek sources of financing in addition to WIA funds; report performance statistics to the Virginia Board of Workforce Development; and certify local training providers in accordance with criteria provided by the Virginia Board of Workforce Development. Further, a local training provider certified by any workforce investment board has reciprocal certification for all workforce investment boards.

Each local workforce investment board shall share information regarding its meetings and activities with the public.

F. Each chief local elected official shall consult with the Governor regarding designation of local workforce investment areas; appoint members to the local board in accordance with state criteria; serve as the local grant recipient unless another entity is designated in the local plan; negotiate local performance measures with the Governor; ensure that all mandated partners are active participants in the local workforce investment board and one-stop center; and collaborate with the local workforce investment board on local plans and program oversight.

G. Local workforce investment boards are encouraged to implement pay-for-performance contract strategy incentives for rapid reemployment services consistent within the WIOA as an alternative model to traditional programs. Such incentives shall focus on (i) partnerships that lead to placements of eligible job seekers in unsubsidized employment and (ii) placement in unsubsidized employment for hard-to-serve job seekers. At the discretion of the local workforce investment board, funds to the extent permissible under §§ 128(b) and 133(b) of the WIOA may be allocated for pay-for-performance partnerships.

H. Each local workforce investment board shall develop and enter into a memorandum of understanding concerning the operation of the one-stop delivery system in the local area with each entity
that carries out any of the following programs or activities:

1. Programs authorized under Title I of the WIA;
2. Programs authorized under the Wagner-Peyser Act (29 U.S.C. § 49 et seq.);
3. Adult education and literacy activities authorized under Title II of the WIA;
5. Postsecondary career and technical education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. § 2301 et seq.);
7. Activities pertaining to employment and training programs for veterans authorized under 38 U.S.C. § 4100 et seq.;
8. Programs authorized under Title 60.2, in accordance with applicable federal law;
9. Workforce development activities or work requirements of the Temporary Assistance to Needy Families (TANF) program known in Virginia as the Virginia Initiative for Employment, Not Welfare (VIEW) program established pursuant to § 63.2-608;
10. Workforce development activities or work programs authorized under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.); and
11. Other programs or activities as required by the WIA.

H 1. The Chief Workforce Development Advisor shall be responsible for the coordination of the Virginia Workforce Network and the implementation of the WIA.
An Act To Increase Employment Opportunities for Veterans

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §4573, sub-§5, as amended by PL 1995, c. 393, §19, is further amended to read:

5. Federal Indian policy. Nothing in this Act may be construed to prohibit any employment policy or action that is permitted under 42 United States Code, Section 2000e-2(i) (1982) of the federal Equal Employment Opportunity Act governing employment of Indians;

Sec. 2. 5 MRSA §4573, sub-§6, ¶B, as enacted by PL 1995, c. 393, §20, is amended to read:

B. Nothing in this Act may be construed to preempt, modify or amend any state, county or local law, ordinance, rule or regulation applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services; and

Sec. 3. 5 MRSA §4573, sub-§7 is enacted to read:

7. Veteran preference. For a private employer to apply a voluntary veteran preference, pursuant to Title 26, chapter 7, subchapter 11, to employment decisions regarding hiring, promotion or retention during a reduction in workforce.

Sec. 4. 26 MRSA c. 7, sub-c. 11 is enacted to read:

SUBCHAPTER 11
VETERAN PREFERENCE

§876. Short title

This subchapter may be known and cited as "the Voluntary Veteran Preference Employment Policy Act."

§877. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. DD Form 214. "DD Form 214" means an Armed Forces Report of Transfer or Discharge or its predecessor or successor forms.

2. Private employer. "Private employer" means a sole proprietor, corporation, partnership, limited liability company or other entity with one or more employees. "Private employer" does not include the State, a county, a municipality, a township, a school district or a public institution of higher education.

3. Veteran. "Veteran" means a person who has served on active duty in the United States Armed Forces, or has served in the national guard of any state or the Reserves of the United States Armed Forces, and was discharged or released with an honorable discharge.

4. Veteran preference employment policy. "Veteran preference employment policy" means a private employer's preference for hiring, promoting or retaining a veteran over another qualified applicant or employee.

§878. Veteran preference employment policy

A private employer may have a veteran preference employment policy. The policy must be in writing and must be applied uniformly to employment decisions regarding hiring, promotion or retention during a reduction in workforce. A private employer may require that a veteran submit a DD Form 214 to be eligible for the preference.
AN ACT TO AMEND SECTION 1-13-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES AND EXCEPTIONS, SO AS TO PROVIDE THAT IT IS NOT AN UNLAWFUL EMPLOYMENT PRACTICE FOR A PRIVATE EMPLOYER TO GIVE HIRING PREFERENCES TO A VETERAN, AND TO EXTEND THE PREFERENCE TO THE VETERAN'S SPOUSE IF THE VETERAN HAS A SERVICE-CONNECTED PERMANENT AND TOTAL DISABILITY.

Be it enacted by the General Assembly of the State of South Carolina:

Employment preference for veterans allowed

SECTION 1. Section 1-13-80(I) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"( ) It is not an unlawful employment practice for a private employer to give preference in employment to a veteran. This preference is also extended to the veteran's spouse if the veteran has a service-connected permanent and total disability. A private employer who gives a preference in employment provided by this item does not violate any other provision of this chapter by virtue of giving the preference. For purposes of this item, 'veteran' has the same meaning as provided in Section 25-11-40."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 29th day of May, 2014.

Approved the 2nd day of June, 2014.

This web page was last updated on July 24, 2014 at 3:35 PM
the amount of the special fees collected under subsection 12, paragraph "a", in the previous month for gold star plates.

b. Notwithstanding subsection 12, paragraph "a", an owner who is approved for special registration plates under this subsection shall be issued one set of special registration plates bearing a gold star emblem at no charge.

Sec. 28. Section 321.34, Code 2014, is amended by adding the following new subsection:

NEW SUBSECTION. 27. United States veteran plates.

   a. An owner referred to in subsection 12 who served in the armed forces of the United States and was discharged under honorable conditions may, upon written application to the department and upon presentation of satisfactory proof of military service and discharge under honorable conditions, order special registration plates bearing a distinguishing processed emblem depicting the word "veteran" below an image of the American flag. The application is subject to approval by the department. The special plate fees collected by the director under subsection 12, paragraph "a", from the annual validation of letter-number designated United States veteran plates, and subsection 12, paragraph "c", from the issuance and annual validation of personalized United States veteran plates, shall be paid monthly to the treasurer of state and deposited in the road use tacreated under section 321.145, subsection 2, to the veterans license fee fund created in section 35A.11 the amount of the special fees collected under subsection 12, paragraph "a", in the previous month for United States veteran plates.

   b. Notwithstanding subsection 12, paragraph "a", an owner who is approved for a special registration plate under this subsection shall be issued one set of special registration plates bearing a distinguishing processed emblem depicting the word "veteran" below an image of the American flag at no charge.

DIVISION IV

VETERANS PREFERENCE

Sec. 29. NEW SECTION. 35.3 Veterans preference in private employment permitted.

1. A private employer may grant preference in hiring and promotion to an individual who is a veteran.

2. a. A private employer may grant preference in hiring and promotion to the spouse of a veteran who has sustained a permanent, compensable service-connected disability as
a permanent, compensable service-connected disability as adjudicated by the United States veterans administration or by the retirement board of one of the armed forces of the United States.

b. A private employer may grant preference in hiring and promotion to the surviving spouse of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict or who died as a result of such service.

3. Granting a hiring or promotion preference under this section does not violate any state law or local ordinance regarding equal employment opportunity, including but not limited to chapter 216.

4. The hiring and promotion preferences allowable under this section shall only be granted if consistent with applicable federal laws and regulations.

DIVISION V

POSTSECONDARY EDUCATION REPORTING

Sec. 30. Section 260C.14, Code 2014, is amended by adding the following new subsection:

NEW SUBSECTION. 24. a. Beginning December 15, 2015, annually file a report with the governor and the general assembly providing information and statistics for the previous five academic years on the number of students who are veterans per year who received education credit for military education, training, and service, that number as a percentage of veterans known to be enrolled at the college, the average number of credits received by students, and the average number of credits applied towards the award of a certificate, competency-based credential, postsecondary diploma, or associate degree.

b. For purposes of this subsection, "veteran" means a veteran as defined in section 35.1.

Sec. 31. Section 261.9, subsection 1, unnumbered paragraph 1, Code 2014, is amended to read as follows:

"Accredited private institution" means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state and which meets the criteria in paragraphs "a" and "b" and all of the criteria in paragraphs "c" through "h" except that institutions defined in paragraph "c" of this subsection are exempt from the requirements of paragraphs "e" and "f":

Sec. 32. Section 261.9, subsection 1, Code 2014, is amended
LONG TITLE

General Description:
This bill addresses provisions related to tax credits.

Highlighted Provisions:
This bill:
- enacts tax credits for the employment of persons who are homeless;
- repeals provisions related to tax credits and enacts the Tax Credit Administration Act; and
  - enacts the Tax Credit for Employment of Persons Who Are Homeless Act, including:
    - defining terms;
    - addressing the procedures and requirements for the Department of Workforce Services to authorize, and a person to claim, a tax credit; and
 requires the Department of Workforce Services to make certain reports to the
Legislature.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides effective dates.

Utah Code Sections Affected:

ENACTS:

35A-5-301, Utah Code Annotated 1953
35A-5-302, Utah Code Annotated 1953
35A-5-303, Utah Code Annotated 1953
35A-5-304, Utah Code Annotated 1953
35A-5-305, Utah Code Annotated 1953
35A-5-306, Utah Code Annotated 1953
59-7-616, Utah Code Annotated 1953
59-7-901, Utah Code Annotated 1953
59-7-902, Utah Code Annotated 1953
59-7-903, Utah Code Annotated 1953
59-10-1032, Utah Code Annotated 1953

REPEALS:

59-7-615, as enacted by Laws of Utah 2002, Chapter 62

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 35A-5-301 is enacted to read:

Part 3. Tax Credit for Employment of Persons Who Are Homeless Act

35A-5-301. Title.

This part is known as the "Tax Credit for Employment of Persons Who Are Homeless
Act."
Section 2. Section 35A-5-302 is enacted to read:


As used in this part:
(1) "Date of hire" means the date a person who is homeless first performs labor or services for compensation for an employer.
(2) "Governmental entity" is as defined in Section 59-2-511.
(3) "Permanent housing, permanent supportive, or transitional facility" means a facility:
   (a) located within the state;
   (b) that provides supervision of residents of the facility; and
   (c) that is:
      (i) a publicly or privately operated shelter:
         (A) designed to provide temporary living accommodations, including a welfare hotel, congregate shelter, or transitional housing for the mentally ill; and
         (B) that receives federal homeless assistance funding distributed by the United States Department of Housing and Urban Development; or
      (ii) an emergency shelter that receives homeless assistance funding from a county, city, or town.
(4) "Person who is homeless" means an individual whose primary nighttime residence is a permanent housing, permanent supportive, or transitional facility.
(5) "Wage requirement" means that an employer pays a person who is homeless $4,000 or more in wages during a time period that:
   (a) begins on the date of hire; and
   (b) ends no later than two calendar quarters after the calendar quarter in which the date of hire occurs.

Section 3. Section 35A-5-303 is enacted to read:


(1) An employer who employs a person who is homeless and seeks to receive a tax
credit certificate under this part shall file an application with the department with respect to each person who is homeless that the employer employs.

(2) The application shall be on a form the department provides to the employer.

(3) The application shall require the employer to certify that:

(a) the person who is homeless who the employer employs:

(i) on the date of hire, has a primary nighttime residence at a permanent housing, permanent supportive, or transitional facility;

(ii) is an employee, and not an independent contractor, of the employer;

(iii) is legally eligible to work in the United States; and

(iv) has not worked for the employer for more than 40 hours during the 60-day period immediately preceding the date of hire; and

(b) the employer:

(i) complies with all state, federal, or local requirements related to the employment of the person who is homeless; and

(ii) is not a governmental entity.

(4) The application:

(a) shall list, for each person who is homeless that the employer employs:

(i) the person's name;

(ii) the person's Social Security number; and

(iii) the person's current address;

(b) shall list the employer's federal employer identification number; and

(c) may require additional information as determined by the department.

(5) An employer shall provide documentation to the department to support the certifications and other information the employer provides in the application described in this section.

(6) If the department determines that, on the basis of the documentation and other information the employer provides, the employer has satisfied the certification requirements of Subsection (3) and provided the information described in Subsection (4), the department shall
enter into a participation agreement with the employer as provided in Section 35A-5-304 for each person who is homeless who the employer employs.

(7) If the department determines that, on the basis of the documentation and other information the employer provides, the employer has not satisfied the certification requirements of Subsection (3) or provided the information described in Subsection (4), the department:

(a) shall deny the application; or

(b) inform the employer that the documentation the employer provided is inadequate and request the employer to submit new or additional documentation.

Section 4. Section 35A-5-304 is enacted to read:


(1) If the department enters into a participation agreement with an employer, the participation agreement shall:

(a) be provided by the department; and

(b) establish the requirements the employer is required to meet to be eligible to receive a tax credit certificate, including:

(i) requiring the employer to meet the certification requirements of Subsection 35A-5-303(3);

(ii) requiring the employer to provide written notice to the department within 10 days after the date the employer meets the wage requirement; and

(iii) requiring the employer to provide documentation or other information the department requests:

(A) to establish the hours and dates that the person who is homeless works for the employer; and

(B) to support the employer's eligibility to receive a tax credit certificate under this part.

(2) An agreement under this section does constitute a right to receive a tax credit certificate under this part.
Section 5. Section 35A-5-305 is enacted to read:

35A-5-305. Tax credit certificate.
(1) An employer shall provide written notice to the department within 10 days after the date the employer meets the wage requirement as provided in the participation agreement described in Section 35A-5-304.
(2) The department shall determine whether an employer has met the requirements of the participation agreement under Section 35A-5-304 to receive a tax credit certificate:
   (a) after the employer provides the written notice described in Subsection (1) to the department; and
   (b) no later than 60 days after the date that the employer provides the department unemployment insurance wage information:
      (i) for the person who is homeless;
      (ii) as required by Subsection 35A-4-305(8); and
      (iii) for each calendar quarter during which the employer pays wages to meet the wage requirement.
(3) Subject to the other provisions of this section, if the department determines that an employer has met the requirements of the participation agreement under Section 35A-5-304 to receive a tax credit certificate, the department may issue a tax credit certificate to the employer.
(4) A tax credit certificate under this section:
   (a) shall list the amount of tax credit allowable for the taxable year in an amount that does not exceed $2,000;
   (b) shall list the name and federal employer number of the employer;
   (c) shall list the name, Social Security identification number, and current address of the person who is homeless with respect to whom the employer has met the wage requirement; and
   (d) may include any other information required by the department.
(5) Subject to Subsections (6) and (7), the department shall issue tax credit certificates under this section in the order that the department receives the written notice described in Subsection (1).
(6) The department may not issue tax credit certificates that total more than $100,000 in a fiscal year.

(7) (a) Subject to Subsection (7)(b), if the department would have issued tax credit certificates that total more than $100,000 in a fiscal year but for the limit provided in Subsection (6), the department shall issue the tax credit certificates that exceed $100,000 in the next fiscal year.

(b) If the department issues tax credit certificates in accordance with Subsection (7)(a):

(i) the tax credit certificates may not total more than $100,000; and

(ii) the department may not issue tax credit certificates for an amount that exceeds the limit described in Subsection (7)(b)(i) in a future fiscal year.

(8) The department shall provide a copy of a tax credit certificate the department issues under this section to the State Tax Commission.

Section 6. Section 35A-5-306 is enacted to read:


Beginning with the 2016 interim, the department shall report annually to the Economic Development and Workforce Services Interim Committee and the Revenue and Taxation Interim Committee:

(1) on or before the November interim meeting; and

(2) on the amount of tax credits the department grants under this part.

Section 7. Section 59-7-616 is enacted to read:

59-7-616. Nonrefundable tax credit for employment of a person who is homeless.

(1) As used in this section:

(a) "Eligible employer" means a person who receives a tax credit certificate from the Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless Act.

(b) "Person who is homeless" is as defined in Section 35A-5-302.

(2) Subject to the other provisions of this section, an eligible employer that is a corporation may claim a nonrefundable tax credit as provided in this section against a tax under
this chapter.

(3) The tax credit under this section is the amount of tax credit listed on a tax credit certificate that the Department of Workforce Services issues to an employer for a taxable year under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless Act.

(4) An eligible employer may carry forward a tax credit under this section for a period that does not exceed the next five taxable years if:

(a) the eligible employer is allowed to claim a tax credit under this section; and

(b) the amount of the tax credit exceeds the eligible employer's tax liability under this chapter for that taxable year.

(5) An eligible employer shall retain a tax credit certificate the eligible employer receives from the Department of Workforce Services for the same time period a person is required to keep books and records under Section 59-1-1406.

Section 8. Section 59-7-901 is enacted to read:

Part 9. Tax Credit Administration Act

59-7-901. Title.

This part is known as the "Tax Credit Administration Act."

Section 9. Section 59-7-902 is enacted to read:

59-7-902. Definitions.

As used in this part:

(1) "Tax credit" means a nonrefundable tax credit listed on a tax return.

(2) "Tax return" means:

(a) a corporate return as defined in Section 59-7-101 filed in accordance with this chapter; or

(b) a tax return filed in accordance with Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act.

Section 10. Section 59-7-903 is enacted to read:

59-7-903. Removal of tax credit from tax return -- Prohibition on claiming or
carrying forward a tax credit -- Commission reporting requirements.

(1) Subject to Subsection (2), the commission shall remove a tax credit from a tax return and a person filing a tax return may not claim or carry forward the tax credit if:

(a) the total amount of tax credit claimed or carried forward by all persons who file a tax return is less than $10,000 per taxable year for three consecutive taxable years; and

(b) less than 10 persons per year for the three consecutive taxable years described in Subsection (1)(a) file a tax return claiming or carrying forward the tax credit.

(2) If the commission determines the requirements of Subsection (1) are met, the commission shall remove a tax credit from a tax return and a person filing a tax return may not claim or carry forward the tax credit beginning two taxable years after the January 1 immediately following the date the commission determines the requirements of Subsection (1) are met.

(3) The commission shall, on or before the November interim meeting of the year after the taxable year in which the commission determines the requirements of Subsection (1) are met:

(a) report to the Revenue and Taxation Interim Committee that, in accordance with this section:

(i) the commission is required to remove a tax credit from a return on which the tax credit appears; and

(ii) a person filing a tax return may not claim or carry forward the tax credit; and

(b) notify each state agency required by statute to assist in the administration of the tax credit that, in accordance with this section:

(i) the commission is required to remove a tax credit from a return on which the tax credit appears; and

(ii) a person filing a tax return may not claim or carry forward the tax credit.

Section 11. Section 59-10-1032 is enacted to read:

59-10-1032. Nonrefundable tax credit for employment of a person who is homeless.
(1) As used in this section:
   (a) "Eligible employer" means a person who receives a tax credit certificate from the Department of Workforce Services in accordance with Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless Act.
   (b) "Person who is homeless" is as defined in Section 35A-5-302.
(2) Subject to the other provisions of this section, an eligible employer that is a claimant, estate, or trust may claim a nonrefundable tax credit as provided in this section against a tax under this chapter.
(3) The tax credit under this section is the amount of tax credit listed on a tax credit certificate that the Department of Workforce Services issues to an employer for a taxable year under Title 35A, Chapter 5, Part 3, Tax Credit for Employment of Persons Who Are Homeless Act.
(4) An eligible employer may carry forward a tax credit under this section for a period that does not exceed the next five taxable years if:
   (a) the eligible employer is allowed to claim a tax credit under this section; and
   (b) the amount of the tax credit exceeds the eligible employer's tax liability under this chapter for that taxable year.
(5) An eligible employer shall retain a tax credit certificate the eligible employer receives from the Department of Workforce Services for the same time period a person is required to keep books and records under Section 59-1-1406.

Section 12. Effective dates.
(1) Except as provided in Subsection (2), this bill takes effect on May 13, 2014.
(2) The actions affecting the following sections take effect for a taxable year beginning on or after January 1, 2015:
   (a) Section 59-7-616;
   (b) Section 59-7-901;
   (c) Section 59-7-902;
   (d) Section 59-7-903; and
Section 59-10-1032.

Section 13. Repealer.

This bill repeals:

Section 59-7-615, Removal of tax credit from tax form and prohibition on claiming or carrying forward a tax credit -- Conditions for removal and prohibition on claiming or carrying forward a tax credit -- Commission reporting requirements.
Conference Committee Report on  
House Bill No. 1981 / Senate Bill No. 2226

The House and Senate Conference Committee appointed pursuant to motions to resolve the differences between the two houses on House Bill No. 1981 (Senate Bill No. 2226) has met and recommends that the following amendments be deleted: Senate Amendment 1 (16690), House Amendment 1 (15669), House Amendment 2 (16174), House Amendment 3 (16619).

The Committee further recommends that the following amendment be adopted:

by deleting all language after the caption and substituting instead the following language:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part:

50-1-501. This part shall be known and may be cited as the “Healthy Workplace Act”.

50-1-502. As used in this part:

1. “Abusive conduct” means acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, such as:

   (A) Repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets;

   (B) Verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace; or

   (C) The sabotage or undermining of an employee’s work performance in the workplace;

2. “Agency” means any department, commission, board, office or other agency of the executive, legislative or judicial branch of state government; and
(3) "Employer" means any agency, county, metropolitan government, municipality, or other political subdivision of this state.

50-1-503.

(a) No later than March 1, 2015, the Tennessee advisory commission on intergovernmental relations (TACIR) shall create a model policy for employers to prevent abusive conduct in the workplace. The model policy shall be developed in consultation with the department of human resources and interested municipal and county organizations including, but not limited to, the Tennessee Municipal League, the Tennessee County Services Association, the municipal technical advisory service (MTAS), and the county technical assistance service (CTAS).

(b) The model policy created pursuant to subsection (a) shall:

(1) Assist employers in recognizing and responding to abusive conduct in the workplace; and

(2) Prevent retaliation against any employee who has reported abusive conduct in the workplace.

(c) Each employer may adopt the policy created pursuant to subsection (a) as a policy to address abusive conduct in the workplace.

50-1-504.

Notwithstanding § 29-20-205, if an employer adopts the model policy created by TACIR pursuant to subsection (a) or adopts a policy that conforms to the requirements set out in subsection (b), then the employer shall be immune from suit for any employee's abusive conduct that results in negligent or intentional infliction of mental anguish. Nothing in this section shall be construed to limit the personal liability of an employee for any abusive conduct in the workplace.
Nurse Licensure Compact  
March 17, 2015

ARTICLE I  
Findings and Declaration of Purpose 

a. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

b. The general purposes of this Compact are to:

1. Facilitate the states’ responsibility to protect the public’s health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
6. Decrease redundancies in the consideration and issuance of nurse licenses; and
7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II

Definitions

As used in this Compact:

a. “Adverse action” means any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual’s license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any other encumbrance on licensure affecting a nurse’s authorization to practice, including issuance of a cease and desist action.

b. “Alternative program” means a non-disciplinary monitoring program approved by a licensing board.

c. “Coordinated licensure information system” means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

d. “Current significant investigative information” means:
   1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
   2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

f. “Home state” means the party state which is the nurse’s primary state of residence.

g. “Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.
h. “Multistate license” means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

i. “Multistate licensure privilege” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

j. “Nurse” means RN or LPN/VN, as those terms are defined by each party state’s practice laws.

k. “Party state” means any state that has adopted this Compact.

l. “Remote state” means a party state, other than the home state.

m. “Single-state license” means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

n. “State” means a state, territory or possession of the United States and the District of Columbia.

o. “State practice laws” means a party state’s laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “State practice laws” do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III
General Provisions and Jurisdiction

a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records.
c. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state’s qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;

2. i. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

   ii. Has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

3. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual’s native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

4. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

9. Is not currently enrolled in an alternative program;

10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and

11. Has a valid United States Social Security number.
d. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse’s multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse’s authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

e. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

f. Individuals not residing in a party state shall continue to be able to apply for a party state’s single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

g. Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse’s then-current home state, provided that:

1. A nurse, who changes primary state of residence after this Compact’s effective date, must meet all applicable Article III.c. requirements to obtain a multistate license from a new home state.

2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact’s effective date shall be ineligible to retain or renew a multistate license, and the nurse’s multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission").
ARTICLE IV
Applications for Licensure in a Party State

a. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

b. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

c. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.
   1. The nurse may apply for licensure in advance of a change in primary state of residence.
   2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

d. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V
Additional Authorities Invested in Party State Licensing Boards

a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:
   1. Take adverse action against a nurse’s multistate licensure privilege to practice within that party state.
      i. Only the home state shall have the power to take adverse action against a nurse’s license issued by the home state.
      ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such
conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse’s authority to practice within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

b. If adverse action is taken by the home state against a nurse’s multistate license, the nurse’s multistate licensure privilege to practice in all other party states shall be deactivated until all
encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse’s multistate license shall include a statement that the nurse’s multistate licensure privilege is deactivated in all party states during the pendency of the order.

c. Nothing in this Compact shall override a party state’s decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse’s participation in an alternative program.

ARTICLE VI

Coordinated Licensure Information System and Exchange of Information

a. All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.
f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:
   1. Identifying information;
   2. Licensure data;
   3. Information related to alternative program participation; and
   4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

a. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

   1. The Commission is an instrumentality of the party states.

   2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

   3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting and Meetings

   1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any
administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator’s participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

   i. Noncompliance of a party state with its obligations under this Compact;
   
   ii. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission’s internal personnel practices and procedures;
   
   iii. Current, threatened or reasonably anticipated litigation;
   
   iv. Negotiation of contracts for the purchase or sale of goods, services or real estate;
   
   v. Accusing any person of a crime or formally censuring any person;
   
   vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
   
   vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
   
   viii. Disclosure of investigatory records compiled for law enforcement purposes;
   
   ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or
   
   x. Matters specifically exempted from disclosure by federal or state statute.
6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal
counsel or designee shall certify that the meeting may be closed and shall reference each
relevant exempting provision. The Commission shall keep minutes that fully and clearly describe
all matters discussed in a meeting and shall provide a full and accurate summary of actions
taken, and the reasons therefor, including a description of the views expressed. All documents
considered in connection with an action shall be identified in such minutes. All minutes and
docs of a closed meeting shall remain under seal, subject to release by a majority vote of
the Commission or order of a court of competent jurisdiction.

c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its
conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of
this Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:
   i. For the establishment and meetings of other committees; and
   ii. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission,
   ensuring reasonable advance notice of all meetings and providing an opportunity for attendance
   of such meetings by interested parties, with enumerated exceptions designed to protect the
   public's interest, the privacy of individuals, and proprietary information, including trade secrets.
The Commission may meet in closed session only after a majority of the administrators vote to
close a meeting in whole or in part. As soon as practicable, the Commission must make public a
copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes
allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the
   officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies
   and programs of the Commission. Notwithstanding any civil service or other similar laws of any
party state, the bylaws shall exclusively govern the personnel policies and programs of the
Commission; and

6. Providing a mechanism for winding up the operations of the Commission and the equitable
disposition of any surplus funds that may exist after the termination of this Compact after the
payment or reserving of all of its debts and obligations;

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient
form on the website of the Commission.

e. The Commission shall maintain its financial records in accordance with the bylaws.

f. The Commission shall meet and take such actions as are consistent with the provisions of this
Compact and the bylaws.

g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this
Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided
that the standing of any licensing board to sue or be sued under applicable law shall not be
affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including, but not limited to, employees of
a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of
nursing, including but not limited to sharing administrative or staff expenses, office space or other
resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such
individuals appropriate authority to carry out the purposes of this Compact, and to establish the
Commission’s personnel policies and programs relating to conflicts of interest, qualifications of
personnel and other related personnel matters;
7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

9. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

10. To establish a budget and make expenditures;

11. To borrow money;

12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;

13. To provide and receive information from, and to cooperate with, law enforcement agencies;

14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

h. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts
and disbursements of the Commission shall be subject to the audit and accounting procedures
established under its bylaws. However, all receipts and disbursements of funds handled by the
Commission shall be audited yearly by a certified or licensed public accountant, and the report of
the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense and Indemnification

1. The administrators, officers, executive director, employees and representatives of the
Commission shall be immune from suit and liability, either personally or in their official capacity,
for any claim for damage to or loss of property or personal injury or other civil liability caused by
or arising out of any actual or alleged act, error or omission that occurred, or that the person
against whom the claim is made had a reasonable basis for believing occurred, within the scope
of Commission employment, duties or responsibilities; provided that nothing in this paragraph
shall be construed to protect any such person from suit or liability for any damage, loss, injury or
liability caused by the intentional, willful or wanton misconduct of that person.

2. The Commission shall defend any administrator, officer, executive director, employee or
representative of the Commission in any civil action seeking to impose liability arising out of any
actual or alleged act, error or omission that occurred within the scope of Commission
employment, duties or responsibilities, or that the person against whom the claim is made had a
reasonable basis for believing occurred within the scope of Commission employment, duties or
responsibilities; provided that nothing herein shall be construed to prohibit that person from
retaining his or her own counsel; and provided further that the actual or alleged act, error or
omission did not result from that person’s intentional, willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director,
employee or representative of the Commission for the amount of any settlement or judgment
obtained against that person arising out of any actual or alleged act, error or omission that
occurred within the scope of Commission employment, duties or responsibilities, or that such
person had a reasonable basis for believing occurred within the scope of Commission
employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

**ARTICLE VIII**

**Rulemaking**

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission; and
2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

d. The notice of proposed rulemaking shall include:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment, and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.
g. The Commission shall publish the place, time and date of the scheduled public hearing.

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of Commission or party state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

l. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall
be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE IX

Oversight, Dispute Resolution and Enforcement

a. Oversight

1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

b. Default, Technical Assistance and Termination

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:
   i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the Commission; and
   ii. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be
given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state’s licensing board and each of the party states.

4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:
   i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.
   ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.
2. By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE X

Effective Date, Withdrawal and Amendment

a. This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact, superseded by this Compact, (“Prior Compact”), shall be deemed to have withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

b. Each party state to this Compact shall continue to recognize a nurse’s multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

c. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state’s withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

d. A party state’s withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state’s licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

e. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.
f. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

g. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

ARTICLE XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.
Advanced Practice Registered Nurse Compact
March 17, 2015

ARTICLE I

Findings and Declaration of Purpose

a. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with APRN licensure requirements and the effectiveness of enforcement activities related to state APRN licensure laws;
2. Violations of APRN licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
3. The expanded mobility of APRNs and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of APRN licensure and regulation;
4. New practice modalities and technology make compliance with individual state APRN licensure laws difficult and complex;
5. The current system of duplicative APRN licensure for APRNs practicing in multiple states is cumbersome and redundant for both APRNs and states;
6. Uniformity of APRN licensure requirements throughout the states promotes public safety and public health benefits.

b. The general purposes of this Compact are to:

1. Facilitate the states’ responsibility to protect the public’s health and safety;
2. Ensure and encourage the cooperation of party states in the areas of APRN licensure and regulation, including promotion of uniform licensure requirements;
3. Facilitate the exchange of information between party states in the areas of APRN regulation, investigation and adverse actions;
4. Promote compliance with the laws governing APRN practice in each jurisdiction;
5. Invest all party states with the authority to hold an APRN accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of APRN licenses; and

7. Provide opportunities for interstate practice by APRNs who meet uniform licensure requirements.

ARTICLE II

Definitions

As used in this Compact:

a. “Advanced practice registered nurse” or “APRN” means a registered nurse who has gained additional specialized knowledge, skills and experience through a program of study recognized or defined by the Interstate Commission of APRN Compact Administrators (“Commission”), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an APRN role that is congruent with an APRN educational program, certification, and Commission rules.

b. “Adverse action” means any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against an APRN, including actions against an individual’s license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any other encumbrance on licensure affecting an APRN’s authorization to practice, including the issuance of a cease and desist action.

c. “Alternative program” means a, non-disciplinary monitoring program approved by a licensing board.

d. “APRN licensure” means the regulatory mechanism used by a party state to grant legal authority to practice as an APRN.

e. “APRN uniform licensure requirements” means minimum uniform licensure, education and examination requirements as adopted by the Commission.

f. “Coordinated licensure information system” means an integrated process for collecting, storing and sharing information on APRN licensure and enforcement activities related to APRN licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

g. "Current significant investigatory information" means:
1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the APRN to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the APRN represents an immediate threat to public health and safety regardless of whether the APRN has been notified and had an opportunity to respond.

h. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

i. “Home state” means the party state that is the APRN’s primary state of residence.

j. “Licensing board” means a party state’s regulatory body responsible for regulating the practice of advanced practice registered nursing.

k. “Multistate license” means an APRN license to practice as an APRN issued by a home state licensing board that authorizes the APRN to practice as an APRN in all party states under a multistate licensure privilege, in the same role and population focus as the APRN is licensed in the home state.

l. “Multistate licensure privilege” means a legal authorization associated with an APRN multistate license that permits an APRN to practice as an APRN in a remote state, in the same role and population focus as the APRN is licensed in the home state.

m. “Non-controlled prescription drug” means a device or drug that is not a controlled substance and is prohibited under state or federal law from being dispensed without a prescription. The term includes a device or drug that bears or is required to bear the legend “Caution: federal law prohibits dispensing without prescription” or “prescription only” or other legend that complies with federal law.

n. “Party state” means any state that has adopted this Compact.

o. “Population focus” means a specific patient population that is congruent with the APRN educational program, certification, and Commission rules.

p. “Prescriptive authority” means the legal authority to prescribe medications and devices as defined by party state laws.

q. “Remote state” means a party state that is not the home state.
"Single-state license" means an APRN license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

"State” means a state, territory or possession of the United States and the District of Columbia.

"State practice laws” means a party state’s laws, rules, and regulations that govern APRN practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain an APRN license, except for qualifications or requirements of the home state.

**ARTICLE III**

**General Provisions and Jurisdiction**

a. A state must implement procedures for considering the criminal history records of applicants for initial APRN licensure or APRN licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by APRN applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records.

b. By rule, the Commission shall adopt the APRN Uniform Licensure Requirements (“ULRs”). The ULRs shall provide the minimum requirements for APRN multistate licensure in party states, provided that the Commission may adopt rules whereby an APRN, with an unencumbered license on the effective date of this Compact, may obtain, by endorsement or otherwise, and retain a multistate license in a party state.

c. In order to obtain or retain a multistate license, an APRN must meet, in addition to the ULRs, the home state’s qualifications for licensure or renewal of licensure, as well as, all other applicable home state laws.

d. By rule, the Commission shall identify the approved APRN roles and population foci for licensure as an APRN. An APRN issued a multistate license shall be licensed in an approved APRN role and at least one approved population focus.
e. An APRN multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the APRN to practice as an APRN in each party state, under a multistate licensure privilege, in the same role and population focus as the APRN is licensed in the home state. If an applicant does not qualify for a multistate license, a single-state license may be issued by a home state.

f. Issuance of an APRN multistate license shall include prescriptive authority for noncontrolled prescription drugs, unless the APRN was licensed by the home state prior to the home state’s adoption of this Compact and has not previously held prescriptive authority.

1. An APRN granted prescriptive authority for noncontrolled prescription drugs in the home state may exercise prescriptive authority for noncontrolled prescription drugs in any remote state while exercising a multistate licensure privilege under an APRN multistate license; the APRN shall not be required to meet any additional eligibility requirements imposed by the remote state in exercising prescriptive authority for noncontrolled prescription drugs.

2. Prescriptive authority in the home state for an APRN who was not granted prescriptive authority at the time of initial licensure by the home state, prior to the adoption of this Compact, shall be determined under home state law.

3. Prescriptive authority eligibility for an APRN holding a single-state license shall be determined under the law of the licensing state.

g. For each state in which an APRN seeks authority to prescribe controlled substances, the APRN shall satisfy all requirements imposed by such state in granting and/or renewing such authority.

h. An APRN issued a multistate license is authorized to assume responsibility and accountability for patient care independent of a supervisory or collaborative relationship with a physician. This authority may be exercised in the home state and in any remote state in which the APRN exercises a multistate licensure privilege. For an APRN issued a single-state license in a party state, the requirement for a supervisory or collaborative relationship with a physician shall be determined under applicable party state law.

i. All party states shall be authorized, in accordance with state due process laws, to take adverse action against an APRN’s multistate licensure privilege such as revocation, suspension, probation or any
other action that affects an APRN’s authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

j. An APRN practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. APRN practice is not limited to patient care, but shall include all advanced nursing practice as defined by the state practice laws of the party state in which the client is located. APRN practice in a party state under a multistate licensure privilege will subject the APRN to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

k. This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as satisfying any state law requirement for registered nurse licensure as a precondition for authorization to practice as an APRN in that state.

l. Individuals not residing in a party state shall continue to be able to apply for a party state’s single-state APRN license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice as an APRN in any other party state.

ARTICLE IV

Applications for APRN Licensure in a Party State

a. Upon application for an APRN multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held or is the holder of a licensed practical/vocational nursing license, a registered nursing license or an advanced practice registered nurse license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.
b. An APRN may hold a multistate APRN license, issued by the home state, in only one party state at a time.

c. If an APRN changes primary state of residence by moving between two party states, the APRN must apply for APRN licensure in the new home state, and the multistate license issued by the prior home state shall be deactivated in accordance with applicable Commission rules.
   1. The APRN may apply for licensure in advance of a change in primary state of residence.
   2. A multistate APRN license shall not be issued by the new home state until the APRN provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate APRN license from the new home state.

d. If an APRN changes primary state of residence by moving from a party state to a non-party state, the APRN multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

**ARTICLE V**

**Additional Authorities Invested in Party State Licensing Boards**

a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against an APRN’s multistate licensure privilege to practice within that party state.
   i. Only the home state shall have power to take adverse action against an APRN’s license issued by the home state.
   ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on an APRN’s authority to practice within that party state.

3. Complete any pending investigations of an APRN who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take
appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a party state licensing board for the attendance and testimony of witnesses and/or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing licensing board shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses and/or evidence are located.

5. Obtain and submit, for an APRN licensure applicant, fingerprints or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected APRN the costs of investigations and disposition of cases resulting from any adverse action taken against that APRN.

7. Take adverse action based on the factual findings of another party state, provided that the licensing board follows its own procedures for taking such adverse action.

b. If adverse action is taken by a home state against an APRN’s multistate licensure, the privilege to practice in all other party states under a multistate licensure privilege shall be deactivated until all encumbrances have been removed from the APRN’s multistate license. All home state disciplinary orders that impose adverse action against an APRN’s multistate license shall include a statement that the APRN’s multistate licensure privilege is deactivated in all party states during the pendency of the order.

c. Nothing in this Compact shall override a party state’s decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the
multistate licensure privilege under the multistate license of any APRN for the duration of the APRN’s participation in an alternative program.

**ARTICLE VI**

**Coordinated Licensure Information System and Exchange of Information**

a. All party states shall participate in a coordinated licensure information system of all APRNs, licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each APRN, as submitted by party states, to assist in the coordinated administration of APRN licensure and enforcement efforts.

b. The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and APRN participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic and/or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing the information shall be removed from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:
   1. Identifying information;
   2. Licensure data;
   3. Information related to alternative program participation information; and
   4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

Establishment of the Interstate Commission of APRN Compact Administrators

a. The party states hereby create and establish a joint public agency known as the Interstate Commission of APRN Compact Administrators.

1. The Commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.
2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator’s participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:
   i. Noncompliance of a party state with its obligations under this Compact;
   ii. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission’s internal personnel practices and procedures;
   iii. Current, threatened, or reasonably anticipated litigation;
   iv. Negotiation of contracts for the purchase or sale of goods, services or real estate;
   v. Accusing any person of a crime or formally censuring any person;
   vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
   vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
   viii. Disclosure of investigatory records compiled for law enforcement purposes;
   ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or
   x. Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe
all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:
   i. For the establishment and meetings of other committees; and
   ii. Governing any general or specific delegation of any authority or function of the Commission.

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public’s interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

12
6. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment and/or reserving of all of its debts and obligations;

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the Commission;

e. The Commission shall maintain its financial records in accordance with the bylaws; and

f. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including but not limited to employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission’s personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

9. To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

10. To establish a budget and make expenditures;

11. To borrow money;

12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;

13. To provide and receive information from, and to cooperate with, law enforcement agencies;

14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of APRN licensure and practice.

h. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may levy on and collect an annual assessment from each party state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the
Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense, and Indemnification

1. The administrators, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

2. The Commission shall defend any administrator, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person’s intentional, willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.
ARTICLE VIII

Rulemaking

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:
   1. On the website of the Commission; and
   2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

d. The notice of proposed rulemaking shall include:
   1. The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
   2. The text of the proposed rule or amendment, and the reason for the proposed rule;
   3. A request for comments on the proposed rule from any interested person; and
   4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

g. The Commission shall publish the place, time, and date of the scheduled public hearing.
   1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.
2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;

2. Prevent a loss of Commission or party state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

l. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.
ARTICLE IX
Oversight, Dispute Resolution and Enforcement

a. Oversight
1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.
2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

b. Default, Technical Assistance and Termination
1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:
   i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and
   ii. Provide remedial training and specific technical assistance regarding the default.
2. If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board, the defaulting state's licensing board, and each of the party states.
4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:
   
   i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

   ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact
and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys’ fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

**ARTICLE X**

**Effective Date, Withdrawal and Amendment**

a. This Compact shall come into limited effect at such time as this Compact has been enacted into law in ten (10) party states for the sole purpose of establishing and convening the Commission to adopt rules relating to its operation and the APRN ULRs.

b. On the date of the Commission’s adoption of the APRN ULRs, all remaining provisions of this Compact, and rules adopted by the Commission, shall come into full force and effect in all party states.

c. Any state that joins this Compact subsequent to the Commission’s initial adoption of the APRN uniform licensure requirements shall be subject to all rules that have been previously adopted by the Commission.

d. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state’s withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

e. A party state’s withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state’s licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

f. Nothing contained in this Compact shall be construed to invalidate or prevent any APRN licensure agreement or other cooperative arrangement between a party state and a non-party state that does not conflict with the provisions of this Compact.

g. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon any party state until it is enacted into the laws of all party states.

h. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.
ARTICLE XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.
AN ACT relating to professions and occupations; adopting the Interstate Medical Licensure Compact; requiring reporting; making a conforming amendment; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-26-701 through 33-26-703 are created to read:

ARTICLE 7
INTERSTATE MEDICAL LICENSURE COMPACT

33-26-701. Short title.

This act shall be known and may be cited as the "Interstate Medical Licensure Compact."


The Interstate Medical Licensure Compact is enacted into law and entered into on behalf of this state with all other states legally joining in the compact in a form substantially as follows.

ARTICLE I
Purpose

In order to strengthen access to health care and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the
portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter and therefore requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

ARTICLE II
Definitions

(a) In this compact:

(i) "Bylaws" means those bylaws established by the interstate commission pursuant to article XI for its governance or for directing and controlling its actions and conduct;

(ii) "Commissioner" means the voting representative appointed by each member board pursuant to article XI;

(iii) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board;
(iv) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact;

(v) "Interstate commission" means the interstate commission created pursuant to article XI;

(vi) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization;

(vii) "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state;

(viii) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation and education of physicians as directed by the state government;

(ix) "Member state" means a state that has enacted the compact;

(x) "Practice of medicine" means the clinical prevention, diagnosis or treatment of human disease, injury or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state;

(xi) "Physician" means any person who:

(A) Is a graduate of a medical school accredited by the liaison committee on medical education, the commission on osteopathic college accreditation or a
medical school listed in the international medical education directory or its equivalent;

(B) Passed each component of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX-USA) within three (3) attempts or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(C) Successfully completed graduate medical education approved by the accreditation council for graduate medical education or the American osteopathic association;

(D) Holds specialty certification or a time unlimited specialty certificate recognized by the American board of medical specialties or the American osteopathic association's bureau of osteopathic specialists;

(E) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(F) Has never been convicted, received adjudication, deferred adjudication, community supervision or deferred disposition for any offense by a court of appropriate jurisdiction;

(G) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;
(H) Has never had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration; and

(J) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal or foreign jurisdiction.

(xii) "Offense" means a felony, gross misdemeanor or crime of moral turpitude;

(xiii) "Rule" means a written statement by the interstate commission promulgated pursuant to article XII of the compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact or an organizational, procedural or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state and includes the amendment, repeal or suspension of an existing rule;

(xiv) "State" means any state, commonwealth, district or territory of the United States;

(xv) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

ARTICLE III
Eligibility

(a) A physician must meet the eligibility requirements as defined in article II(a)(xi) to receive an expedited license under the terms and provisions of the compact.
(b) A physician who does not meet the requirements of article II(a)(xi) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

ARTICLE IV
Designation of State of Principal License

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state and the state is:

(i) The state of primary residence for the physician;

(ii) The state where at least twenty-five percent (25%) of the practice of medicine occurs;

(iii) The location of the physician's employer; or

(iv) If no state qualifies under paragraph (a)(i), (ii) or (iii) of this article, the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this article.

(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.
ARTICLE V
Application and issuance of expedited licensure

(a) A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission, subject to the following:

(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where primary sources have already been verified by the state of principal license;

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. § 731.202;

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.
(c) Upon verification under subsection (b) of this article, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (a) of this article, including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) of this article and any fees under subsection (c) of this article, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained though the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees and the issuance of an expedited license.

ARTICLE VI
Fees for Expedited Licensure
(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

ARTICLE VII
Renewal and Continued Participation

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(i) Maintains a full and unrestricted license in a state of principal license;

(ii) Has not been convicted, received adjudication, deferred adjudication, community supervision or deferred disposition for any offense by a court of appropriate jurisdiction;

(iii) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(iv) Has not had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.
(c) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected under subsection (c) of this article, a member board shall renew the physician's license.

(e) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(f) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact.

ARTICLE VIII
Coordinated Information System

(a) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under article V.

(b) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(d) Member boards may report any nonpublic complaint, disciplinary or investigatory information not required by
subsection (c) of this article, to the interstate commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal and used only for investigatory or disciplinary matters.

(g) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

ARTICLE IX
Joint Investigations

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.

(d) Member boards may share any investigative, litigation or compliance materials in furtherance of any joint or individual investigation initiated under the compact.
(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

ARTICLE X
Disciplinary Actions

(a) Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided and:

(i) Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medical practice act of that state; or
(ii) Pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for ninety (90) days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the medical practice act of that state.

ARTICLE XI
Interstate Medical Licensure Compact Commission

(a) The member states hereby create the "Interstate Medical Licensure Compact Commission."

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and shall have all the responsibilities, powers and duties set forth in the compact and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two (2) voting representatives appointed by each member state
who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one (1) representative from each member board. A commissioner shall be:

(i) An allopathic or osteopathic physician appointed to a member board;

(ii) An executive director, executive secretary or similar executive of a member board; or

(iii) A member of the public appointed to a member board.

(e) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one (1) vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person.
from that state who shall meet the requirements of subsection (d) of this article.

(h) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds (2/3) vote of the commissioners present that an open meeting would be likely to:

(i) Relate solely to the internal personnel practices and procedures of the interstate commission;

(ii) Discuss matters specifically exempted from disclosure by federal statute;

(iii) Discuss trade secrets, commercial or financial information that is privileged or confidential;

(iv) Involve accusing a person of a crime or formally censuring a person;

(v) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(vi) Discuss investigative records compiled for law enforcement purposes; or

(vii) Specifically relate to the participation in a civil action or other legal proceeding.

(j) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.
(k) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(m) The interstate commission shall establish an executive committee, which shall include officers, members and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules and other such duties as necessary.

(n) The interstate commission may establish other committees for governance and administration of the compact.

ARTICLE XII
Powers and Duties of the Interstate Commission

(a) The interstate commission shall have the duty and power to:

(i) Oversee and maintain the administration of the compact;

(ii) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(iii) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;
Enforce compliance with compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(v) Establish and appoint committees including, but not limited to, an executive committee as required by article XI, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(vi) Pay or provide for the payment of the expenses related to the establishment, organization and ongoing activities of the interstate commission;

(vii) Establish and maintain one (1) or more offices;

(viii) Borrow, accept, hire or contract for services of personnel;

(ix) Purchase and maintain insurance and bonds;

(x) Employ an executive director who shall have such powers to employ, select or appoint employees, agents or consultants and to determine their qualifications, define their duties and fix their compensation;

(xi) Establish personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel;

(xii) Accept donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of it in a manner consistent with the
conflict of interest policies established by the interstate commission;

(xiii) Lease, purchase, accept contributions or donations of or otherwise to own, hold, improve or use, any property, real, personal or mixed;

(xiv) Sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

(xv) Establish a budget and make expenditures;

(xvi) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(xvii) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(xviii) Coordinate education, training and public awareness regarding the compact, its implementation and its operation;

(xix) Maintain records in accordance with the bylaws;

(xx) Seek and obtain trademarks, copyrights and patents; and

(xx) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

ARTICLE XIII
Finance Powers

(a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(b) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

ARTICLE XIV
Organization and operation of the Interstate Commission

(a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within twelve (12) months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a
vice-chairperson and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in subsection (b) of this article shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error or omission that occurred, or that the officer or employee had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties or responsibilities provided that an officer or employee shall not be protected from suit or liability for damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of the officer or employee. The immunity provided by this article shall be subject to the following:

(i) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of the officer's or employee's employment or duties for acts, errors or omissions occurring within the officer's or employee's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect the officer or employee from suit or liability for damage, loss, injury or
liability caused by the intentional or willful and wanton misconduct of the officer or employee;

(ii) The interstate commission shall defend the executive director, its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend an interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the officer or employee;

(iii) To the extent not covered by the state involved, member state or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the officers and employees arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities or that the officers and employees had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the officers or employees.
(a) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" of 2010 and subsequent amendments thereto.

(c) Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

ARTICLE XVI
Oversight of Interstate Compact

(a) The executive, legislative and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and
intent. The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities or actions of the interstate commission.

(c) The interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact or promulgated rules.

ARTICLE XVII
Enforcement of Interstate Compact

(a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be
awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XVIII
Default Procedures

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact or the rules and bylaws of the interstate commission promulgated under the compact.

(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact or the bylaws or promulgated rules, the interstate commission shall:

(i) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(ii) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges and benefits
conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.

(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(g) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

ARTICLE XIX
Dispute Resolution

(a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

ARTICLE XX
Member States, Effective Date and Amendments

(a) Any state is eligible to become a member state of the compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven (7) states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XXI
Withdrawal
(a) Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt of notice provided under subsection (c) of this article.

(e) The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a
member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

ARTICLE XXII
Dissolution

(a) The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XXIII
Severability and Construction

(a) The provisions of the compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of the compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XXIV
Binding Effect of Compact and Other Laws
(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

33-26-703. Interstate commission members.

Pursuant to article XI(d) of the Interstate Medical Licensure Compact, the governor shall appoint two (2) voting representatives to the interstate medical licensure compact commission. The representatives shall serve staggered two (2) year terms as commissioners.

Section 2. W.S. 33-26-303(a)(intro) is amended to read:

33-26-303. Requirements for granting license.

(a) The board may grant a license to practice medicine in this state as provided in the Interstate
Medical Licensure Compact or, under this article, to any applicant who demonstrates, to the board, that he:

Section 3. This act is effective July 1, 2015.

(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
VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 702

An Act to amend and reenact §§ 46.2-342 and 46.2-345 of the Code of Virginia, relating to designation on driver's licenses and special identification cards of intellectual disability or autism spectrum disorder.

Approved April 6, 2014

[S 367]
or legal guardian as authorized by the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).

K. The Department shall provide a method by which an applicant conducting a Department of Motor Vehicles transaction using electronic means may make a voluntary contribution to the Virginia Donor Registry and Public Awareness Fund (Fund) established pursuant to § 32.1-297.1. The Department shall inform the applicant of the existence of the Fund and also that contributing to the Fund is voluntary.

L. The Department shall collect all moneys contributed pursuant to subsection K and transmit the moneys on a regular basis to the Virginia Transplant Council, which shall credit the contributions to the Fund.

M. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's license that the applicant (i) is an insulin-dependent diabetic, (ii) is hearing or speech impaired, or (iii) has an intellectual disability, as defined in § 37.2-100, or autism spectrum disorder, as defined in § 38.2-3418.17.

N. In the absence of gross negligence or willful misconduct, the Department and its employees shall be immune from any civil or criminal liability in connection with the making of or failure to make a notation of donor designation on any license or card or in any person's driver record.

O. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the uniform donor document, as formerly set forth in subsection F, for organ donation designation until such time as a new method is fully implemented, which shall be no later than July 1, 1994. Any such uniform donor document shall, when properly executed, remain valid and shall continue to be subject to all conditions for execution, delivery, amendment, and revocation as set out in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

P. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ donor information brochure describing the organ donor program and providing instructions for completion of the uniform donor document information describing the bone marrow donation program and instructions for registration in the National Bone Marrow Registry. The Department shall include a copy of such brochure with every driver's license renewal notice or application mailed to licensed drivers in Virginia.

§ 46.2-345. Issuance of special identification cards; fee; confidentiality; penalties.

A. On the application of any person who is a resident of the Commonwealth or the parent or legal guardian of any such person who is under the age of 15, the Department shall issue a special identification card to the person provided:
1. Application is made on a form prescribed by the Department and includes the applicant's full legal name; year, month, and date of birth; social security number; sex; and residence address;
2. The applicant presents, when required by the Department, proof of identity, legal presence, residency, and social security number or non-work authorized status;
3. The Department is satisfied that the applicant needs an identification card or the applicant shows he has a bona fide need for such a card; and
4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit.

Persons 70 years of age or older may exchange a valid Virginia driver's license for a special identification card at no fee. Special identification cards subsequently issued to such persons shall be subject to the regular fees for special identification cards.

B. The fee for the issuance of an original or renewal special identification card is $5. The fee for the issuance of a duplicate or reissue of a special identification card is $5. Persons 21 years old or older may be issued a scenic special identification card for an additional fee of $5.

C. Every special identification card shall expire on the last day of the month of birth of the applicant in years in which the applicant attains an age exactly divisible by five. At no time shall any special identification card be issued for less than three nor more than seven years, except under the provisions of subsection B of § 46.2-328.1 and except that those cards issued to children under the age of 15 shall expire on the child's sixteenth birthday, thereafter the special identification card may be renewed on or before the last day of the month of birth of the applicant and shall be valid for five years, expiring in the next year in which the applicant's age is exactly divisible by five, except under the provisions of subsection B of § 46.2-328.1. Notwithstanding these limitations, the Commissioner may extend the validity period of an expiring card if (i) the Department is unable to process an application for renewal due to circumstances beyond its control, (ii) the extension has been authorized under a directive from the Governor, and (iii) the card was not issued as a temporary special identification card under the provisions of subsection B of § 46.2-328.1. However, in no event shall the validity period be extended more than 90 days per occurrence of such conditions.

D. A special identification card issued under this section may be similar in size, shape, and design to a driver's license, and include a photograph of its holder, but the card shall be readily distinguishable from a driver's license and shall clearly state that it does not authorize the person to whom it is issued to drive a motor vehicle. Every applicant for a special identification card shall appear in person before the Department to apply for a renewal, duplicate or reissue unless specifically permitted by the
Department to apply in another manner.

E. Special identification cards, for persons at least 15 years old but less than 21 years old, shall be immediately and readily distinguishable from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors within the photograph area to identify persons who are at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year when the person will become 21 years old.

F. Special identification cards for persons under age 15 shall bear a full face photograph. The special identification card issued to persons under age 15 shall be readily distinguishable from a driver's license and from other special identification cards issued by the Department. Such cards shall clearly indicate that it does not authorize the person to whom it is issued to drive a motor vehicle.

G. Unless otherwise prohibited by law, a valid Virginia driver's license may be surrendered for a special identification card without the applicant's having to present proof of legal presence as required by § 46.2-328.1 if the Virginia driver's license is unexpired and it has not been revoked, suspended, or cancelled. The special identification card shall be considered a reissue and the expiration date shall be the last day of the month of the surrendered driver's license's month of expiration.

H. Any personal information, as identified in § 2.2-3801, which is retained by the Department from an application for the issuance of a special identification card is confidential and shall not be divulged to any person, association, corporation, or organization, public or private, except to the legal guardian or the attorney of the applicant or to a person, association, corporation, or organization nominated in writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the Department from furnishing the application or any information thereon to any law-enforcement agency.

I. Any person who uses a false or fictitious name or gives a false or fictitious address in any application for an identification card or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in any such application shall be guilty of a Class 2 misdemeanor. However, where the name or address is given, or false statement is made, or fact is concealed, or fraud committed, with the intent to purchase a firearm or where the identification card is obtained for the purpose of committing any offense punishable as a felony, a violation of this section shall constitute a Class 4 felony.

J. The Department may promulgate regulations necessary for the effective implementation of the provisions of this section.

K. The Department shall utilize the various communications media throughout the Commonwealth to inform Virginia residents of the provisions of this section and to promote and encourage the public to take advantage of its provisions.

L. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application for the special identification card.

M. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's special identification card that the applicant has any condition listed in subsection M of § 46.2-342.
AB-2565 Rental property: electric vehicle charging stations. (2013-2014)

Assembly Bill No. 2565

CHAPTER 529

An act to add Sections 1947.6 and 1952.7 to the Civil Code, relating to tenancy.

[ Approved by Governor September 21, 2014. Filed with Secretary of State September 21, 2014. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 2565, Muratsuchi. Rental property: electric vehicle charging stations.

Existing law generally regulates the hiring of real property.

This bill would, for any lease executed, renewed, or extended on and after July 1, 2015, require a lessor of a dwelling to approve a written request of a lessee to install an electric vehicle charging station at a parking space allotted for the lessee in accordance with specified requirements and that complies with the lessor’s approval process for modification to the property. The bill would except from its provisions specified residential property, including a residential rental property with fewer than 5 parking spaces and one subject to rent control. The bill would require the electric vehicle charging station and all modifications and improvements made to the property comply with federal, state, and local law, and all applicable zoning requirements, land use requirements, and covenants, conditions, and restrictions.

The bill would also require a lessee’s written request to make a modification to the property in order to install and use an electric vehicle charging station include his or her consent to enter into a written agreement including specified provisions, including compliance with the lessor’s requirements for the installation, use, maintenance, and removal of the charging station and installation of the infrastructure for the charging station. The bill would also require the lessee to maintain in full force and effect a $1,000,000 lessee’s general liability insurance policy, as specified.

Existing law regulates the terms and conditions of residential and commercial tenancies. Existing law defines and regulates common interest developments and voids any condition affecting the transfer or sale of an interest in a common interest development that prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a designated parking space in the development, as specified.

This bill would void any term in a lease renewed or extended on or after January 1, 2015, that conveys any possessory interest in commercial property that either prohibits or unreasonably restricts, as defined, the installation or use of an electric vehicle charging station in a parking space associated with the commercial property. The bill would prescribe requirements for lessor approval of a lessee request to install or use an electronic vehicle charging station and would require that a lessor approve a request to install a charging station if the lessee agrees in writing to do specified acts, including paying for various costs associated with the charging station and maintaining insurance naming the lessor as an insured.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
SECTION 1. Section 1947.6 is added to the Civil Code, to read:

1947.6. (a) For any lease executed, extended, or renewed on and after July 1, 2015, a lessor of a dwelling shall approve a written request of a lessee to install an electric vehicle charging station at a parking space allotted for the lessee that meets the requirements of this section and complies with the lessor’s procedural approval process for modification to the property.

(b) This section does not apply to residential rental properties where:

(1) Electric vehicle charging stations already exist for lessees in a ratio that is equal to or greater than 10 percent of the designated parking spaces.

(2) Parking is not provided as part of the lease agreement.

(3) A property where there are less than five parking spaces.

(4) A dwelling that is subject to the residential rent control ordinance of a public entity.

(c) For purposes of this section, “electric vehicle charging station” or “charging station” means any level of electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electrical Code, as it reads on the effective date of this section, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.

(d) A lessor shall not be obligated to provide an additional parking space to a lessee in order to accommodate an electric vehicle charging station.

(e) If the electric vehicle charging station has the effect of providing the lessee with a reserved parking space, the lessor may charge a monthly rental amount for that parking space.

(f) An electric vehicle charging station and all modifications and improvements to the property shall comply with federal, state, and local law, and all applicable zoning requirements, land use requirements, and covenants, conditions, and restrictions.

(g) A lessee’s written request to make a modification to the property in order to install and use an electric vehicle charging station shall include, but is not limited to, his or her consent to enter into a written agreement that includes, but is not limited to, the following:

(1) Compliance with the lessor’s requirements for the installation, use, maintenance, and removal of the charging station and installation, use, and maintenance of the infrastructure for the charging station.

(2) Compliance with the lessor’s requirements for the lessee to provide a complete financial analysis and scope of work regarding the installation of the charging station and its infrastructure.

(3) A written description of how, when, and where the modifications and improvements to the property are proposed to be made consistent with those items specified in the “Permitting Checklist” of the “Zero-Emission Vehicles in California: Community Readiness Guidebook” published by the Office of Planning and Research.

(4) Obligation of the lessee to pay the lessor all costs associated with the lessor’s installation of the charging station and its infrastructure prior to any modification or improvement being made to the leased property. The costs associated with modifications and improvements shall include, but are not limited to, the cost of permits, supervision, construction, and, solely if required by the contractor, consistent with its past performance of work for the lessor, performance bonds.

(5) Obligation of the lessee to pay as part of rent for the costs associated with the electrical usage of the charging station, and cost for damage, maintenance, repair, removal, and replacement of the charging station, and modifications or improvements made to the property associated with the charging station.

(h) The lessee shall maintain in full force and effect a lessee’s general liability insurance policy in the amount of one million dollars ($1,000,000) and shall name the lessor as a named additional insured under the policy commencing with the date of approval of construction until the lessee forfeits possession of the dwelling to the lessor.

SEC. 2. Section 1952.7 is added to the Civil Code, to read:
1952.7. (a) (1) Any term in a lease that is executed, renewed, or extended on or after January 1, 2015, that conveys any possessory interest in commercial property that either prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a parking space associated with the commercial property, or that is otherwise in conflict with the provisions of this section, is void and unenforceable.

(2) This subdivision does not apply to provisions that impose reasonable restrictions on the installation of electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(3) This subdivision shall not grant the holder of a possessory interest under the lease described in paragraph (1) the right to install electric vehicle charging stations in more parking spaces than are allotted to the leaseholder in his or her lease, or, if no parking spaces are allotted, a number of parking spaces determined by multiplying the total number of parking spaces located at the commercial property by a fraction, the denominator of which is the total rentable square feet at the property, and the numerator of which is the number of total square feet rented by the leaseholder.

(4) If the installation of an electric vehicle charging station has the effect of granting the leaseholder a reserved parking space and a reserved parking space is not allotted to the leaseholder in the lease, the owner of the commercial property may charge a reasonable monthly rental amount for the parking space.

(b) This section shall not apply to any of the following:

(1) A commercial property where charging stations already exist for use by tenants in a ratio that is equal to or greater than two available parking spaces for every 100 parking spaces at the commercial property.

(2) A commercial property where there are less than 50 parking spaces.

(c) For purposes of this section:

(1) “Electric vehicle charging station” or “charging station” means a station that is designed in compliance with Article 625 of the National Electrical Code, as it reads on the effective date of this section, and delivers electricity from a source outside an electric vehicle into one or more electric vehicles.

(2) “Reasonable costs” includes, but is not limited to, costs associated with those items specified in the “Permitting Checklist” of the “Zero-Emission Vehicles in California: Community Readiness Guidebook” published by the Office of Planning and Research.

(3) “Reasonable restrictions” or “reasonable standards” are restrictions or standards that do not significantly increase the cost of the electric vehicle charging station or its installation or significantly decrease the charging station’s efficiency or specified performance.

(d) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use, or other ordinances, or land use permit requirements.

(e) If lessor approval is required for the installation or use of an electric vehicle charging station, the application for approval shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing.

(f) An electric vehicle charging station installed by a lessee shall satisfy the following provisions:

(1) If lessor approval is required, the lessee first shall obtain approval from the lessor to install the electric vehicle charging station and the lessor shall approve the installation if the lessee complies with the applicable provisions of the lease consistent with the provisions of this section and agrees in writing to do all of the following:

(A) Comply with the lessor’s reasonable standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the lessor as an additional insured under the lessee’s insurance policy in the amount set forth in paragraph (3).

(2) The lessee shall be responsible for all of the following:
(A) Costs for damage to property and the charging station resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, repair, and replacement of the charging station.

(C) The cost of electricity associated with the charging station.

(3) The lessee at all times, shall maintain a lessee liability coverage policy in the amount of one million dollars ($1,000,000), and shall name the lessor as a named additional insured under the policy with a right to notice of cancellation and property insurance covering any damage or destruction caused by the charging station, naming the lessor as its interests may appear.

(g) A lessor may, in its sole discretion, create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station, in compliance with all applicable laws.

(h) Any installation by a lessor or a lessee of an electric vehicle charging station in a common interest development is also subject to all of the requirements of subdivision (f) of Section 4745 of the Civil Code.
AB-1092 Building standards: electric vehicle charging infrastructure. (2013-2014)

Assembly Bill No. 1092

CHAPTER 410

An act to add Section 18941.10 to the Health and Safety Code, relating to building standards.

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

LEGISLATIVE COUNSEL’S DIGEST

AB 1092, Levine. Building standards: electric vehicle charging infrastructure.

The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval and adoption. In the absence of a designated state agency, the commission is required to adopt specific building standards, as prescribed. Existing law requires the commission to publish, or cause to be published, editions of the code in its entirety once every 3 years.

This bill would require the commission, commencing with the next triennial edition of the California Building Standards Code adopted after January 1, 2014, to adopt, approve, codify, and publish mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and nonresidential development. The bill would require the Department of Housing and Community Development to propose mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and submit the proposed mandatory building standards to the commission for consideration. The bill would require the department and the commission, in proposing and adopting the mandatory building standards, to use specified sections of the California Green Building Standards Code as the starting point for the mandatory building standards and to actively consult with interested parties.

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

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

SECTION 1. Section 18941.10 is added to the Health and Safety Code, to read:

18941.10. (a) (1) The commission shall, commencing with the next triennial edition of the California Building Standards Code (Title 24 of the California Code of Regulations) adopted after January 1, 2014, adopt, approve, codify, and publish mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and nonresidential development.

(2) For purposes of paragraph (1), the Department of Housing and Community Development shall propose mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and submit the proposed mandatory building standards to the commission for consideration.
(b) (1) In proposing and adopting mandatory building standards under this section, the Department of Housing and Community Development and the commission shall use Sections A4.106.6, A4.106.6.1, A4.106.6.2, A5.106.5.1, and A5.106.5.3 of the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations) as the starting point for the mandatory building standards and amend those standards as necessary.

(2) In proposing and adopting mandatory building standards under this section, the Department of Housing and Community Development and the commission shall actively consult with interested parties, including, but not limited to, investor-owned utilities, municipal utilities, manufacturers, local building officials, commercial building and apartment owners, and the building industry.
Senate Bill No. 454

CHAPTER 418

An act to add Chapter 8.7 (commencing with Section 44268) to Part 5 of Division 26 of the Health and Safety Code, relating to air resources.

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

LEGISLATIVE COUNSEL’S DIGEST

SB 454, Corbett. Public resources: electric vehicle charging stations.

Existing law establishes the Alternative and Renewable Fuel and Vehicle Technology Program, administered by the State Energy Resources Conservation and Development Commission, which authorizes, among other things, upon appropriation by the Legislature, a grant program to provide funding for homeowners who purchase a plug-in electric vehicle to offset costs associated with modifying electrical sources that include a residential plug-in electric vehicle charging station.

Existing law also creates a grant program for the purchase and lease of zero-emission vehicles, as defined, in the state to be developed and administered by the State Air Resources Board in conjunction with the commission. The program provides grants to specified recipients in an amount equal to 90% of the incremental cost above $1,000 of an eligible new zero-emission light-duty car or truck, as defined.

This bill would create the Electric Vehicle Charging Stations Open Access Act, which would prohibit the charging of a subscription fee on persons desiring to use an electric vehicle charging station, as defined, and would prohibit a requirement for persons to obtain membership in any club, association, or organization as a condition of using the station, except as specified. The bill would require the total actual charges for the use of an electric vehicle charging station to be disclosed to the public at the point of sale. The bill would require an electric vehicle charging station to provide to the general public 2 specified options of payment.

This bill would require the service provider of electric vehicle service equipment, as defined, at an electric vehicle charging station, as defined, to disclose to the National Renewable Energy Laboratory the charging station’s geographic location, a schedule of fees, accepted methods of payment, and the amount of network roaming charges for nonmembers, if any.

This bill, if no interoperability billing standards have been adopted by a national standards organization by January 1, 2015, would authorize the state board to adopt interoperability billing standards, as defined, for network roaming payment methods for electric vehicle charging stations, and would require, if the state board adopts standards, all electric vehicle charging stations that require payment to meet those standards within one year.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:
SECTION 1. The Legislature finds and declares all of the following:

(a) California is the nation's largest market for cars and light-duty trucks.

(b) The transportation sector is the biggest contributor to California's greenhouse gas emissions and accounts for approximately 40 percent of these emissions.

(c) California should encourage the development and success of zero-emission vehicles to protect the environment, stimulate economic growth, and improve the quality of life in the state.

(d) California should encourage and support the development of infrastructure for open and accessible public charging stations.

(e) In order to reach the goal of 1.5 million electric drive vehicles in California by 2025, electric vehicle (EV) consumers need confidence that they can access a robust network of publicly available EV charging stations. Any EV driver should be able to access any publicly available EV charging station, regardless of the system provider.

(f) EV consumers and drivers need to be able to find the stations and know how much they cost.

(g) It is the intent of the Legislature to (1) promote a positive driving experience by assisting in the widespread deployment of electric vehicles, (2) not limit the ability of a property owner or lessee of publicly available parking spaces, as defined in Section 44268, to restrict use of or access to those parking spaces to its customers, and (3) facilitate expanded EV driver access to electric vehicle charging stations in public places.

SEC. 2. Chapter 8.7 (commencing with Section 44268) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 8.7. Electric Vehicle Charging Stations Open Access Act

44268. As used in this chapter, the following terms have the following meanings:

(a) "Battery" means an electrochemical energy storage system powered directly by electrical current.

(b) "Electric vehicle" means a vehicle that uses a plug-in battery to provide all or part of the motive power of the vehicle, including battery electric, plug-in hybrid electric, or plug-in fuel cell vehicle.

(c) "Electric vehicle charging station" means one or more publicly available parking spaces served by electric vehicle service equipment.

(d) "Electric vehicle service equipment" means an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.

(e) "Interoperability billing standards" means the ability for a member of one electric charging station billing network to use another billing network.

(f) "Network roaming" means the act of a member of one electric vehicle charging station billing network using a charging station that is outside of the member's billing network with his or her billing network account information.

(g) "Publicly available parking space" means a parking space that has been designated by a property owner or lessee to be available to, and accessible by, the public and may include on-street parking spaces and parking spaces in surface lots or parking garages. "Publicly available parking space" shall not include a parking space that is part of, or associated with, a private residence, a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, residents of a common interest development, or residents of an adjacent building, or a parking space provided by a producer of electric vehicles as a service. Nothing in this article limits the ability of an owner or lessee of a publicly available parking space whose primary business is other than electric vehicle charging from restricting use of the parking space, such as limiting use to customers and visitors of the business.

44268.2. (a) (1) Persons desiring to use an electric vehicle charging station that requires payment of a fee shall not be required to pay a subscription fee in order to use the station, and shall not be required to obtain...
membership in any club, association, or organization as a condition of using the station. The total actual charges for the use of an electric vehicle charging station, including any additional network roaming charges for nonmembers, shall be disclosed to the public at the point of sale. An electric vehicle charging station that requires payment of a fee shall allow a person desiring to use the station to pay via credit card or mobile technology, or both.

(2) Notwithstanding paragraph (1), an electric vehicle charging station may offer services on a subscription- or membership-only basis provided those electric vehicle charging stations allow nonsubscribers or nonmembers the ability to use the electric vehicle charging station through the payment options detailed in paragraph (1).

(b) The service provider of electric vehicle service equipment at an electric vehicle charging station or its designee shall disclose to the National Renewable Energy Laboratory the electric vehicle charging station’s geographic location, a schedule of fees, accepted methods of payment, and the amount of network roaming charges for nonmembers, if any.

(c) Electric vehicle charging stations shall be labeled in accordance with Part 309 of Title 16 of the Code of Federal Regulations, and, where commercially reasonable and feasible, may be clearly marked with appropriate directional signage in the parking area or facility where they are located.

(d) If no interoperability billing standards have been adopted by a national standards organization by January 1, 2015, the state board may adopt interoperability billing standards for network roaming payment methods for electric vehicle charging stations. If the state board adopts interoperability billing standards, all electric vehicle charging stations that require payment shall meet those standards within one year. Any standards adopted by the state board shall consider other governmental or industry-developed interoperability billing standards and may adopt interoperability billing standards promulgated by an outside authoritative body.
SENATE BILL 13-126

BY SENATOR(S) Guzman, Aguilar, Carroll, Heath, Hodge, Jones, Kefalas, Kerr, Nicholson, Schwartz, Steadman, Tochtrop, Todd, Morse; also REPRESENTATIVE(S) Duran, Court, Exum, Fields, Fischer, Hamner, Hullinghorst, Labuda, Levy, Melton, Mitsch Bush, Moreno, Primavera, Rosenthal, Ryden, Salazar, Singer, Tyler, Williams.

CONCERNING THE REMOVAL OF UNREASONABLE RESTRICTIONS ON THE ABILITY OF THE OWNER OF AN ELECTRIC VEHICLE TO ACCESS CHARGING FACILITIES.

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

SECTION 1. In Colorado Revised Statutes, add 38-12-601 as follows:

38-12-601. Unreasonable restrictions on electric vehicle charging systems - definitions. (1) NOTWITHSTANDING ANY PROVISION IN THE LEASE TO THE CONTRARY, AND SUBJECT TO SUBSECTION (2) OF THIS SECTION:

(a) A TENANT MAY INSTALL, AT THE TENANT'S EXPENSE FOR THE TENANT'S OWN USE, A LEVEL 1 OR LEVEL 2 ELECTRIC VEHICLE CHARGING SYSTEM ON OR IN THE LEASED PREMISES; AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
(b) A LANDLORD SHALL NOT ASSESS OR CHARGE A TENANT ANY FEE FOR THE PLACEMENT OR USE OF AN ELECTRIC VEHICLE CHARGING SYSTEM, EXCEPT THAT:

(I) THE LANDLORD MAY REQUIRE REIMBURSEMENT FOR THE ACTUAL COST OF ELECTRICITY PROVIDED BY THE LANDLORD THAT WAS USED BY THE CHARGING SYSTEM OR, ALTERNATIVELY, MAY CHARGE A REASONABLE FEE FOR ACCESS. IF THE CHARGING SYSTEM IS PART OF A NETWORK FOR WHICH A NETWORK FEE IS CHARGED, THE LANDLORD'S REIMBURSEMENT MAY INCLUDE THE AMOUNT OF THE NETWORK FEE. NOTHING IN THIS SECTION REQUIRES A LANDLORD TO IMPOSE UPON A TENANT ANY FEE OR CHARGE OTHER THAN THE RENTAL PAYMENTS SPECIFIED IN THE LEASE.

(II) THE LANDLORD MAY REQUIRE REIMBURSEMENT FOR THE COST OF THE INSTALLATION OF THE CHARGING SYSTEM, INCLUDING ANY ADDITIONS OR UPGRADES TO EXISTING WIRING DIRECTLY ATTRIBUTABLE TO THE REQUIREMENTS OF THE CHARGING SYSTEM, IF THE LANDLORD PLACES OR CAUSES THE ELECTRIC VEHICLE CHARGING SYSTEM TO BE PLACED AT THE REQUEST OF THE TENANT; AND

(III) IF THE TENANT DESIRES TO PLACE AN ELECTRIC VEHICLE CHARGING SYSTEM IN AN AREA ACCESSIBLE TO OTHER TENANTS, THE LANDLORD MAY ASSESS OR CHARGE THE TENANT A REASONABLE FEE TO RESERVE A SPECIFIC PARKING SPOT IN WHICH TO INSTALL THE CHARGING SYSTEM.

(2) A LANDLORD MAY REQUIRE A TENANT TO COMPLY WITH:

(a) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN APPLICABLE BUILDING CODE OR RECOGNIZED SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY;

(b) A REQUIREMENT THAT THE CHARGING SYSTEM BE REGISTERED WITH THE LANDLORD WITHIN THIRTY DAYS AFTER INSTALLATION; OR

(c) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ELECTRIC VEHICLE CHARGING SYSTEM.

(3) A TENANT MAY PLACE AN ELECTRIC VEHICLE CHARGING SYSTEM
IN AN AREA ACCESSIBLE TO OTHER TENANTS IF:

(a) THE CHARGING SYSTEM IS IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION (2) OF THIS SECTION; AND

(b) THE TENANT AGREES IN WRITING TO:

(I) COMPLY WITH THE LANDLORD'S DESIGN SPECIFICATIONS FOR THE INSTALLATION OF THE CHARGING SYSTEM;

(II) ENGAGE THE SERVICES OF A DULY LICENSED AND REGISTERED ELECTRICAL CONTRACTOR FAMILIAR WITH THE INSTALLATION AND CODE REQUIREMENTS OF AN ELECTRIC VEHICLE CHARGING SYSTEM; AND

(III) (A) PROVIDE, WITHIN FOURTEEN DAYS AFTER RECEIVING THE LANDLORD'S CONSENT FOR THE INSTALLATION, A CERTIFICATE OF INSURANCE NAMING THE LANDLORD AS AN ADDITIONAL INSURED ON THE TENANT'S RENTERS' INSURANCE POLICY FOR ANY CLAIM RELATED TO THE INSTALLATION, MAINTENANCE, OR USE OF THE SYSTEM OR, AT THE LANDLORD'S OPTION, REIMBURSEMENT TO THE LANDLORD FOR THE ACTUAL COST OF ANY INCREASED INSURANCE PREMIUM AMOUNT ATTRIBUTABLE TO THE SYSTEM, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE LEASE.

(B) A CERTIFICATE OF INSURANCE UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III) MUST BE PROVIDED WITHIN FOURTEEN DAYS AFTER THE TENANT RECEIVES THE LANDLORD'S CONSENT FOR THE INSTALLATION. REIMBURSEMENT FOR AN INCREASED INSURANCE PREMIUM AMOUNT UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III) MUST BE PROVIDED WITHIN FOURTEEN DAYS AFTER THE TENANT RECEIVES THE LANDLORD'S INVOICE FOR THE AMOUNT ATTRIBUTABLE TO THE SYSTEM.

(4) IF THE LANDLORD CONSENTS TO A TENANT'S INSTALLATION OF AN ELECTRIC VEHICLE CHARGING SYSTEM ON PROPERTY ACCESSIBLE TO OTHER TENANTS, INCLUDING A PARKING SPACE, CARPORT, OR GARAGE STALL, THEN, UNLESS OTHERWISE SPECIFIED IN A WRITTEN AGREEMENT WITH THE LANDLORD:

(a) THE TENANT, AND EACH SUCCESSIVE TENANT WITH EXCLUSIVE
RIGHTS TO THE AREA WHERE THE CHARGING SYSTEM IS INSTALLED, IS RESPONSIBLE FOR ANY COSTS FOR DAMAGES TO THE CHARGING SYSTEM AND TO ANY OTHER PROPERTY OF THE LANDLORD OR OF ANOTHER TENANT THAT ARISE OR RESULT FROM THE INSTALLATION, MAINTENANCE, REPAIR, REMOVAL, OR REPLACEMENT OF THE CHARGING SYSTEM;

(b) EACH SUCCESSIVE TENANT WITH EXCLUSIVE RIGHTS TO THE AREA WHERE THE CHARGING SYSTEM IS INSTALLED SHALL ASSUME RESPONSIBILITY FOR THE REPAIR, MAINTENANCE, REMOVAL, AND REPLACEMENT OF THE CHARGING SYSTEM UNTIL THE SYSTEM HAS BEEN REMOVED;

(c) THE TENANT AND EACH SUCCESSIVE TENANT WITH EXCLUSIVE RIGHTS TO THE AREA WHERE THE SYSTEM IS INSTALLED SHALL AT ALL TIMES HAVE AND MAINTAIN AN INSURANCE POLICY COVERING THE OBLIGATIONS OF THE TENANT UNDER THIS SUBSECTION (4) AND SHALL NAME THE LANDLORD AS AN ADDITIONAL INSURED UNDER THE POLICY; AND

(d) THE TENANT AND EACH SUCCESSIVE TENANT WITH EXCLUSIVE RIGHTS TO THE AREA WHERE THE SYSTEM IS INSTALLED IS RESPONSIBLE FOR REMOVING THE SYSTEM IF REASONABLY NECESSARY OR CONVENIENT FOR THE REPAIR, MAINTENANCE, OR REPLACEMENT OF ANY PROPERTY OF THE LANDLORD, WHETHER OR NOT LEASED TO ANOTHER TENANT.

(5) A CHARGING SYSTEM INSTALLED AT THE TENANT'S COST IS PROPERTY OF THE TENANT. UPON TERMINATION OF THE LEASE, IF THE CHARGING SYSTEM IS REMOVABLE, THE TENANT MAY EITHER REMOVE IT OR SELL IT TO THE LANDLORD OR ANOTHER TENANT FOR AN AGREED PRICE. NOTHING IN THIS SUBSECTION (5) REQUIRES THE LANDLORD OR ANOTHER TENANT TO PURCHASE THE CHARGING SYSTEM.

(6) AS USED IN THIS SECTION;

(a) "ELECTRIC VEHICLE CHARGING SYSTEM" OR "CHARGING SYSTEM" MEANS A DEVICE THAT IS USED TO PROVIDE ELECTRICITY TO A PLUG-IN ELECTRIC VEHICLE OR PLUG-IN HYBRID VEHICLE, IS DESIGNED TO ENSURE THAT A SAFE CONNECTION HAS BEEN MADE BETWEEN THE ELECTRIC GRID AND THE VEHICLE, AND IS ABLE TO COMMUNICATE WITH THE VEHICLE'S CONTROL SYSTEM SO THAT ELECTRICITY FLOWS AT AN APPROPRIATE VOLTAGE AND CURRENT LEVEL. AN ELECTRIC VEHICLE CHARGING SYSTEM MAY BE WALL-MOUNTED OR PEDESTAL STYLE, AND MAY PROVIDE MULTIPLE
CORDS TO CONNECT WITH ELECTRIC VEHICLES. AN ELECTRIC VEHICLE CHARGING SYSTEM MUST BE CERTIFIED BY UNDERWRITERS LABORATORIES OR AN EQUIVALENT CERTIFICATION, AND MUST COMPLY WITH THE CURRENT VERSION OF ARTICLE 625 OF THE NATIONAL ELECTRICAL CODE.

(b) "LEVEL 1" MEANS A CHARGING SYSTEM THAT PROVIDES CHARGING THROUGH A ONE-HUNDRED-TWENTY VOLT AC PLUG WITH A CORD CONNECTOR THAT MEETS THE SAE INTERNATIONAL J1772 STANDARD OR A SUCCESSOR STANDARD.

(c) "LEVEL 2" MEANS A CHARGING SYSTEM THAT PROVIDES CHARGING THROUGH A TWO-HUNDRED-EIGHT TO TWO-HUNDRED-FOURTY VOLT AC PLUG WITH A CORD CONNECTOR THAT MEETS THE SAE INTERNATIONAL J1772 STANDARD OR A SUCCESSOR STANDARD.

(7) THIS SECTION APPLIES ONLY TO RESIDENTIAL RENTAL PROPERTIES.

SECTION 2. In Colorado Revised Statutes, add 38-33.3-106.8 as follows:

38-33.3-106.8. Unreasonable restrictions on electric vehicle charging systems - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(a) THE WIDESPREAD USE OF PLUG-IN ELECTRIC VEHICLES CAN DRAMATICALLY IMPROVE ENERGY EFFICIENCY AND AIR QUALITY FOR ALL COLORADANS, AND SHOULD BE ENCOURAGED WHEREVER POSSIBLE;

(b) MOST HOMES IN COLORADO, INCLUDING THE VAST MAJORITY OF NEW HOMES, ARE IN COMMON INTEREST COMMUNITIES;

(c) THE PRIMARY PURPOSE OF THIS SECTION IS TO ENSURE THAT COMMON INTEREST COMMUNITIES PROVIDE THEIR RESIDENTS WITH AT LEAST A MEANINGFUL OPPORTUNITY TO TAKE ADVANTAGE OF THE AVAILABILITY OF PLUG-IN ELECTRIC VEHICLES RATHER THAN CREATE ARTIFICIAL RESTRICTIONS ON THE ADOPTION OF THIS PROMISING TECHNOLOGY; AND

(d) THE GENERAL ASSEMBLY ENCOURAGES COMMON INTEREST COMMUNITIES NOT ONLY TO ALLOW ELECTRIC VEHICLE CHARGING STATIONS
IN ACCORDANCE WITH THIS SECTION, BUT ALSO TO APPLY FOR GRANTS FROM THE ELECTRIC VEHICLE GRANT FUND, CREATED IN SECTION 24-38.5-103, C.R.S., OR OTHERWISE FUND THE INSTALLATION OF CHARGING STATIONS ON COMMON PROPERTY AS AN AMENITY FOR RESIDENTS AND GUESTS.

(2) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AND EXCEPT AS PROVIDED IN SUBSECTION (3) OR (3.5) OF THIS SECTION, AN ASSOCIATION SHALL NOT:

(a) PROHIBIT A UNIT OWNER FROM USING, OR INSTALLING AT THE UNIT OWNER'S EXPENSE FOR THE UNIT OWNER'S OWN USE, A LEVEL 1 OR LEVEL 2 ELECTRIC VEHICLE CHARGING SYSTEM ON OR IN A UNIT; OR

(b) ASSESS OR CHARGE A UNIT OWNER ANY FEE FOR THE PLACEMENT OR USE OF AN ELECTRIC VEHICLE CHARGING SYSTEM ON OR IN THE UNIT OWNER'S UNIT; EXCEPT THAT THE ASSOCIATION MAY REQUIRE REIMBURSEMENT FOR THE ACTUAL COST OF ELECTRICITY PROVIDED BY THE ASSOCIATION THAT WAS USED BY THE CHARGING SYSTEM OR, ALTERNATIVELY, MAY CHARGE A REASONABLE FEE FOR ACCESS. IF THE CHARGING SYSTEM IS PART OF A NETWORK FOR WHICH A NETWORK FEE IS CHARGED, THE ASSOCIATION'S REIMBURSEMENT MAY INCLUDE THE AMOUNT OF THE NETWORK FEE. NOTHING IN THIS SECTION REQUIRES AN ASSOCIATION TO IMPOSE UPON A UNIT OWNER ANY FEE OR CHARGE OTHER THAN THE REGULAR ASSESSMENTS SPECIFIED IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION.

(3) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO:

(a) BONA FIDE SAFETY REQUIREMENTS, CONSISTENT WITH AN APPLICABLE BUILDING CODE OR RECOGNIZED SAFETY STANDARD, FOR THE PROTECTION OF PERSONS AND PROPERTY;

(b) A REQUIREMENT THAT THE CHARGING SYSTEM BE REGISTERED WITH THE ASSOCIATION WITHIN THIRTY DAYS AFTER INSTALLATION; OR

(c) REASONABLE AESTHETIC PROVISIONS THAT GOVERN THE DIMENSIONS, PLACEMENT, OR EXTERNAL APPEARANCE OF AN ELECTRIC VEHICLE CHARGING SYSTEM.
(3.5) This section does not apply to a unit, or the owner thereof, if the unit is a time share unit, as defined in section 38-33-110(7).

(4) An association shall consent to a unit owner’s placement of an electric vehicle charging system on a limited common element parking space, carport, or garage owned by the unit owner or otherwise assigned to the owner in the declaration or other recorded document if:

(a) notwithstanding any existing ban on electric vehicle charging systems, the system otherwise complies with the declaration, bylaws, and rules and regulations of the association; and

(b) the unit owner agrees in writing to:

(I) comply with the association's design specifications for the installation of the system;

(II) engage the services of a duly licensed and registered electrical contractor familiar with the installation and code requirements of an electric vehicle charging system;

(III) bear the expense of installation, including costs to restore any common elements disturbed in the process of installing the system; and

(IV) (A) provide, within the time specified in sub-subparagraph (B) of this subparagraph (IV), a certificate of insurance naming the association as an additional insured on the homeowner's insurance policy for any claim related to the installation, maintenance, or use of the system or, if the system is located on a common element, reimbursement to the association for the actual cost of any increased insurance premium amount attributable to the system, notwithstanding any provision to the contrary in the association's declaration, bylaws, or rules and regulations.

(B) A certificate of insurance under sub-subparagraph (A)
OF THIS SUBPARAGRAPH (IV) MUST BE PROVIDED WITHIN FOURTEEN DAYS AFTER THE UNIT OWNER RECEIVES THE ASSOCIATION'S CONSENT FOR THE INSTALLATION. REIMBURSEMENT FOR AN INCREASED INSURANCE PREMIUM AMOUNT UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV) MUST BE PROVIDED WITHIN FOURTEEN DAYS AFTER THE UNIT OWNER RECEIVES THE ASSOCIATION'S INVOICE FOR THE AMOUNT ATTRIBUTABLE TO THE SYSTEM.

(5) IF THE ASSOCIATION CONSENTS TO A UNIT OWNER'S INSTALLATION OF AN ELECTRIC VEHICLE CHARGING SYSTEM ON A LIMITED COMMON ELEMENT, INCLUDING A PARKING SPACE, CARPORT, OR GARAGE STALL, THEN, UNLESS OTHERWISE SPECIFIED IN A WRITTEN CONTRACT OR IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION:

(a) THE UNIT OWNER, AND EACH SUCCESSIVE UNIT OWNER WITH EXCLUSIVE RIGHTS TO THE LIMITED COMMON ELEMENT WHERE THE CHARGING SYSTEM IS INSTALLED, IS RESPONSIBLE FOR ANY COSTS FOR DAMAGES TO THE SYSTEM, ANY OTHER LIMITED COMMON ELEMENT OR GENERAL COMMON ELEMENT OF THE COMMON INTEREST COMMUNITY, AND ANY ADJACENT UNITS, GARAGE STALLS, CARPORTS, OR PARKING SPACES THAT ARISE OR RESULT FROM THE INSTALLATION, MAINTENANCE, REPAIR, REMOVAL, OR REPLACEMENT OF THE SYSTEM;

(b) EACH SUCCESSIVE UNIT OWNER WITH EXCLUSIVE RIGHTS TO THE LIMITED COMMON ELEMENT SHALL ASSUME RESPONSIBILITY FOR THE REPAIR, MAINTENANCE, REMOVAL, AND REPLACEMENT OF THE CHARGING SYSTEM UNTIL THE SYSTEM HAS BEEN REMOVED;

(c) THE UNIT OWNER AND EACH SUCCESSIVE UNIT OWNER WITH EXCLUSIVE RIGHTS TO THE LIMITED COMMON ELEMENT SHALL AT ALL TIMES HAVE AND MAINTAIN AN INSURANCE POLICY COVERING THE OBLIGATIONS OF THE UNIT OWNER UNDER THIS SUBSECTION (5), IS SUBJECT TO ALL OBLIGATIONS SPECIFIED UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, AND SHALL NAME THE ASSOCIATION AS AN ADDITIONAL INSURED UNDER THE policy; AND

(d) THE UNIT OWNER AND EACH SUCCESSIVE UNIT OWNER WITH EXCLUSIVE RIGHTS TO THE LIMITED COMMON ELEMENT IS RESPONSIBLE FOR REMOVING THE SYSTEM IF REASONABLY NECESSARY OR CONVENIENT FOR THE REPAIR, MAINTENANCE, OR REPLACEMENT OF THE LIMITED COMMON
ELEMENTS OR GENERAL COMMON ELEMENTS OF THE COMMON INTEREST COMMUNITY.

(6) A CHARGING SYSTEM INSTALLED AT THE UNIT OWNER'S COST IS PROPERTY OF THE UNIT OWNER. UPON SALE OF THE UNIT, IF THE CHARGING SYSTEM IS REMOVABLE, THE UNIT OWNER MAY EITHER REMOVE IT OR SELL IT TO THE BUYER OF THE UNIT OR TO THE ASSOCIATION FOR AN AGREED PRICE. NOTHING IN THIS SUBSECTION (6) REQUIRES THE BUYER OR THE ASSOCIATION TO PURCHASE THE CHARGING SYSTEM.

(7) AS USED IN THIS SECTION:

(a) "ELECTRIC VEHICLE CHARGING SYSTEM" OR "CHARGING SYSTEM" MEANS A DEVICE THAT IS USED TO PROVIDE ELECTRICITY TO A PLUG-IN ELECTRIC VEHICLE OR PLUG-IN HYBRID VEHICLE, IS DESIGNED TO ENSURE THAT A SAFE CONNECTION HAS BEEN MADE BETWEEN THE ELECTRIC GRID AND THE VEHICLE, AND IS ABLE TO COMMUNICATE WITH THE VEHICLE'S CONTROL SYSTEM SO THAT ELECTRICITY FLOWS AT AN APPROPRIATE VOLTAGE AND CURRENT LEVEL. AN ELECTRIC VEHICLE CHARGING SYSTEM MAY BE WALL-MOUNTED OR PEDESTAL STYLE, AND MAY PROVIDE MULTIPLE CORDS TO CONNECT WITH ELECTRIC VEHICLES. AN ELECTRIC VEHICLE CHARGING SYSTEM MUST BE CERTIFIED BY UNDERWRITERS LABORATORIES OR AN EQUIVALENT CERTIFICATION, AND MUST COMPLY WITH THE CURRENT VERSION OF ARTICLE 625 OF THE NATIONAL ELECTRICAL CODE.

(b) "LEVEL 1" MEANS A CHARGING SYSTEM THAT PROVIDES CHARGING THROUGH A ONE-HUNDRED-TWENTY VOLT AC PLUG WITH A CORD CONNECTOR THAT MEETS THE SAE INTERNATIONAL J1772 STANDARD OR A SUCCESSOR STANDARD.

(c) "LEVEL 2" MEANS A CHARGING SYSTEM THAT PROVIDES CHARGING THROUGH A TWO-HUNDRED-EIGHT TO TWO-HUNDRED-FOURTY VOLT AC PLUG WITH A CORD CONNECTOR THAT MEETS THE SAE INTERNATIONAL J1772 STANDARD OR A SUCCESSOR STANDARD.

(8) THIS SECTION APPLIES ONLY TO RESIDENTIAL UNITS.

SECTION 3. In Colorado Revised Statutes, 24-38.5-103, amend (1) as follows:

PAGE 9-SENATE BILL 13-126
24-38.5-103. Electric vehicle grant fund - creation - administration. (1) There is hereby created in the state treasury the electric vehicle grant fund, referred to in this section as the "fund". The fund shall be used to provide grants to local governments, LANDLORDS OF MULTI-FAMILY APARTMENT BUILDINGS, AND THE UNIT OWNERS' ASSOCIATIONS OF COMMON INTEREST COMMUNITIES AS DEFINED IN ARTICLE 33.3 OF TITLE 38, C.R.S., to install recharging stations for electric vehicles. The grants shall be prioritized based upon the local government's PROSPECTIVE RECIPIENTS' POTENTIAL FOR, AND commitment to, energy efficiency.

SECTION 4. Effective date - applicability. This act takes effect upon passage and applies to the installation and use of an electric vehicle charging system on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds,
AN ACT Relating to utility leadership in electric vehicle charging infrastructure build-out; adding a new section to chapter 80.28 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the transportation sector is Washington's largest contributor to greenhouse emissions and hazardous air pollutants as defined by federal national ambient air quality standards and mobile source air toxics rules. The sector's portion is considerably higher than the national average because our state relies heavily on hydropower for electricity generation, unlike other states that rely on fossil fuels such as coal, petroleum, and natural gas to generate electricity.

(2) The legislature also finds that federal clean air act regulations and complementary Washington policies supporting renewable energy generation, energy efficiency, and energy conservation are likely to result in further reduction of emissions in the electricity and in the combined residential, commercial, and industrial sectors. The legislature finds that state policy can achieve the greatest return on investment in reducing greenhouse gas emissions and improving air quality by expediting the transition to alternative fuel vehicles, including electric vehicles.
(3) The legislature finds that utilities, who are traditionally responsible for understanding and engineering the electrical grid for safety and reliability, must be fully empowered and incentivized to be engaged in electrification of our transportation system. The legislature further finds that it has given utilities other policy directives to promote energy conservation which do not make the benefits of building out electric vehicle infrastructure, as well as any subsequent increase in energy consumption, readily apparent. Therefore the legislature intends to provide a clear policy directive and financial incentive to utilities for electric vehicle infrastructure build-out.

NEW SECTION. Sec. 2. A new section is added to chapter 80.28 RCW to read as follows:

(1) In establishing rates for each electrical company regulated under this title, the commission may allow an incentive rate of return on investment on capital expenditures for electric vehicle supply equipment that is deployed for the benefit of ratepayers, provided that the capital expenditures do not increase costs to ratepayers in excess of one-quarter of one percent. The commission must consider and may adopt other policies to improve access to and promote fair competition in the provision of electric vehicle supply equipment.

(2) An incentive rate of return on investment under this section may be allowed only if the company chooses to pursue capital investment in electric vehicle supply equipment on a fully regulated basis similar to other capital investments behind a customer's meter. In the case of an incentive rate of return on investment allowed under this section, an increment of up to two percent must be added to the rate of return on common equity allowed on the company's other investments.

(3) The incentive rate of return on investment authorized in subsection (2) of this section applies only to projects which have been installed after July 1, 2015, and which are reasonably expected, at the time they are placed in the rate base, to result in real and tangible benefits for ratepayers by being installed and located where electric vehicles are most likely to be parked for intervals longer than two hours.

(4) The incentive rate of return on investment increment pursuant to this section may be earned only for a period up to the depreciable
life of the electric vehicle supply equipment as defined in the
depreciation schedules developed by the company and submitted to the
commission for review. When the capital investment has fully
depreciated, an electrical company may gift the electric vehicle
supply equipment to the owner of the property on which it is located.

(5) By December 31, 2017, the commission must report to the
appropriate committees of the legislature with regard to the use of
any incentives allowed under this section, the quantifiable impacts
of the incentives on actual electric vehicle deployment, and any
recommendations to the legislature about utility participation in the
electric vehicle market.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §313-A is enacted to read:

§313-A. Submetering by electric vehicle charging station providers

An electric vehicle charging station provider, as defined in section 3201, subsection 8-B, may install an electrical submeter and may charge a submeter user only for kilowatt hours used.

Sec. 2. 35-A MRSA §3201, sub-§5, as enacted by PL 1997, c. 316, §3, is amended to read:

5. Competitive electricity provider. "Competitive electricity provider" means a marketer, broker, aggregator or any other entity selling electricity to the public at retail, but does not include an electric vehicle charging station provider.

Sec. 3. 35-A MRSA §3201, sub-§8-B is enacted to read:

8-B. Electric vehicle charging station provider. "Electric vehicle charging station provider" means a person selling electricity for the sole purpose of transferring electric energy between a charger and the battery or other energy storage device in an electric vehicle.

SUMMARY

This bill exempts an electric vehicle charging station provider from being considered a competitive electricity provider. The bill defines what constitutes an electric vehicle charging station provider and allows a provider to install an electrical submeter and to charge a submeter user only for kilowatt hours used.
Enrolled

House Bill 2177

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Secretary of State Kate Brown)

CHAPTER ..................................................

AN ACT

Relating to elections; creating new provisions; amending ORS 246.410, 247.002, 247.012, 247.016, 247.017, 247.171, 247.292 and 247.302; repealing ORS 802.085; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 247.017 is amended to read:

247.017. [(1) The Department of Transportation shall make a voter registration card available to any person at any office of the department where licenses or renewal applications are distributed or received.]

[(2) When a person who is at least 17 years of age applies for issuance or renewal of an Oregon driver license, as defined in ORS 801.245, or issuance of a state identification card under ORS 807.400 or submits a change of address application form at a department office where driver license issuance or renewal applications, state identification card applications or change of address applications are distributed or received, department personnel shall inform the person that the person may register to vote at the department office. Department personnel shall ask the applicant whether the applicant is registered to vote at the applicant's current address and if not, whether the applicant would like to register to vote at the department office.]

[(3) Each office shall deliver in a timely manner the completed voter registration cards to the county clerk or elections officer of the county in which the office is located. The county clerk or elections officer of the county where the office is located shall forward the registration card to the county clerk or elections officer of the county in which the applicant resides. The county clerk or elections officer may reject any registration card in accordance with ORS 247.174. The Secretary of State shall determine by rule the time and manner the completed registration cards are to be delivered to the appropriate county clerk or elections officer.]

[(4) The department shall develop a driver license issuance or renewal and voter registration application procedure and a state identification card issuance and voter registration application procedure and a change of address and voter registration application procedure that allows an applicant for a license, renewal, state identification card or change of address to register to vote by providing the information required by ORS 247.171 and the information required for the issuance or renewal of a license or for issuance of a state identification card. The Secretary of State shall approve the voter registration portion of each application procedure and change of address procedure.]

[(5) The voter registration portion of an application described in subsection (4) of this section shall comply with provisions of the National Voter Registration Act of 1993 (P.L. 103-31).]

[(6) The Secretary of State shall adopt rules establishing procedures for meeting the requirements of subsection (3) of this section.]
Information relating to the failure of an applicant under this section to sign the voter registration portion of an application for issuance or renewal of a driver license, issuance of a state identification card or for a change of address may not be used for other than voter registration purposes.

(1) The Secretary of State shall by rule establish a schedule by which the Department of Transportation shall provide to the secretary electronic records containing the legal name, age, residence and citizenship information for, and the electronic signature of, each person who meets qualifications identified by the secretary by rule.

(2) Upon receiving the electronic record for, and electronic signature of, a person described in subsection (1) of this section, the Secretary of State shall provide the information to the county clerk of the county in which the person may be registered as an elector. The secretary or county clerk shall notify each person of the process to:
   (a) Decline being registered as an elector.
   (b) Adopt a political party affiliation.

(3) If a person notified under subsection (2) of this section does not decline to be registered as an elector within 21 calendar days after the Secretary of State or county clerk issues the notification, the person's electronic record and electronic signature submitted under subsection (1) of this section will constitute a completed registration card for the person for purposes of this chapter. The person shall be registered to vote if the county clerk determines that the person is qualified to vote under Article II, section 2, of the Oregon Constitution, and the person is not already registered to vote.

(4) A county clerk may not send a ballot to, or add to an elector registration list, a person who meets eligibility requirements until at least 21 calendar days after the Secretary of State or county clerk provided notification to the person as described in subsection (2) of this section.

(5) The Secretary of State shall adopt rules required to implement this section.

**SECTION 2.** ORS 247.002 is amended to read:
247.002. As used in this chapter:
   (1) “County clerk” means the county clerk or the county official in charge of elections.
   (2) “Elector” means an individual qualified to vote under section 2, Article II, section 2, of the Oregon Constitution.
   (3) “Registration card” means a state voter registration card approved by the Secretary of State under ORS 247.171, a federal voter registration application form prescribed by the Federal Election Commission pursuant to the National Voter Registration Act of 1993 (P.L. 103-31) or the voter registration portion of an application containing an individual's legal name, age, residence and citizenship information and electronic signature submitted to the Department of Transportation in the manner described in ORS 247.017.

**SECTION 3.** ORS 247.012 is amended to read:
247.012. (1) A qualified person may register to vote or update a registration to vote by:
   (a) Delivering by mail or otherwise a completed registration card to any county clerk, the Secretary of State, any office of the Department of Transportation or any designated voter registration agency as described in ORS 247.208;
   (b) Personally delivering the card to an official designated by a county clerk under subsection (7) of this section;
   (c) [Completing the voter registration portion of the application for issuance or renewal of a driver license, issuance of a state identification card under ORS 807.400 or a change of address at an office of the Department of Transportation under ORS 247.017] Submitting the person's legal name, age, residence and citizenship information and electronic signature to the Department of Transportation;
   (d) Completing a registration card using the electronic voter registration system described in ORS 247.019.

(2) If a registration card is mailed or delivered to:
(a) Any person other than a county clerk or the Secretary of State, the person shall forward the
card to a county clerk or the Secretary of State not later than the fifth day after receiving the card;
or
(b) The Secretary of State or a county clerk for a county other than the county in which the
person applying for registration resides, the Secretary of State or county clerk shall forward the
card to the county clerk for the county in which the person resides not later than the fifth day after
receiving the card.

(3) Registration of a qualified person occurs:
(a) When a legible, accurate and complete registration card is received in the office of any
county clerk, the Office of the Secretary of State, an office of the Department of Transportation, a
designated voter registration agency under ORS 247.208 or at a location designated by a county
clerk under subsection (7) of this section;
(b) On the date a registration card is postmarked if the card is received after the 21st day im-
mediately preceding an election but is postmarked not later than the 21st day immediately preceding
the election and is addressed to an office of any county clerk, the Office of the Secretary of State,
an office of the Department of Transportation or any designated voter registration agency as de-
scribed in ORS 247.208; or
(c) In the case of a registration card missing a date of birth, containing an incomplete date of
birth or containing an unintentional scrivener’s error that is supplied or corrected as described in
subsection (4) or (6) of this section, on the date that registration would have occurred if the regis-
tration card had not been missing the date of birth, contained an incomplete date of birth or con-
tained the scrivener’s error.

(4) Except as provided in ORS 247.125, if a registration card is legible, accurate and contains,
at a minimum, the registrant’s name, residence address, date of birth and signature, the county clerk
shall register the person. If this information is missing from the registration card or the date of birth
is incomplete, the county clerk shall attempt to contact the person to obtain the missing or incom-
plete information. The county clerk may supply the registrant’s date of birth from any previous
registration of the registrant.

(5) If a registration card meets the requirements of subsection (4) of this section but is missing
an indication of political party affiliation, the registrant shall be considered not affiliated with any
political party. This subsection does not apply if an elector is updating a registration.

(6) If a registration card contains an unintentional scrivener’s error, the county clerk may at-
ttempt to contact the person to correct the error.

(7) A county clerk may appoint officials to accept registration of persons at designated lo-
cations. The appointments and locations shall be in writing and filed in the office of the county
clerk. The county clerk shall be responsible for the performance of duties by those appointed.

(8) A registration card received and accepted under this section shall be considered an active
registration.

(9) A registration may be updated at any time.

SECTION 4. ORS 247.171 is amended to read:

247.171. (1) Except as provided in this subsection, the Secretary of State shall design, prepare
and distribute state voter registration cards. The Secretary of State shall also distribute federal
registration cards. Any person may apply in writing to the Secretary of State for permission to print,
copy or otherwise prepare and distribute the registration cards designed by the Secretary of State.
The secretary may revoke any permission granted under this subsection at any time. All registration
cards shall be distributed to the public without charge.

(2) The Secretary of State shall approve any voter registration application form developed for
use by [the Department of Transportation under ORS 247.017 or by any other] any agency designated
as a voter registration agency under ORS 247.208.

(3) Each voter registration card designed or approved by the Secretary of State shall describe
the penalties for knowingly supplying false information on the registration card and shall contain
space for a person to provide the following information:
(a) Full name;
(b) Residence address, mailing address or any other information necessary to locate the residence of the person offering to register to vote;
(c) The name of the political party with which the person is affiliated, if any;
(d) Date of birth;
(e) An indication that the person is a citizen of the United States; and
(f) A signature attesting to the fact that the person is qualified to be an elector.

(4) Any form containing a voter registration card may also include space for a person to provide:
(a) A telephone number where the person may be contacted; and
(b) If previously registered to vote in this state, the name then supplied by the person and the county and, if known, the address of previous registration.

(5) A person shall not supply any information under subsection (3) or (4) of this section knowing it to be false.

(6) A county clerk or other person accepting registration cards shall not request any information unless it is authorized by state or federal law.

(7) A person shall attest to the information supplied on the voter registration card by signing the completed registration card.

(8) Any completed and signed registration card described in subsection (3) of this section shall be the official registration card of the elector.

SECTION 5, ORS 247.292 is amended to read:

247.292. (1) A county clerk shall update the registration of an elector in the county upon receiving [written] evidence from:
(a) The elector indicating a residence or mailing address that is different from the residence or mailing address for the elector as contained in the records of the county clerk;
(b) The United States Postal Service indicating a residence address that is different from the residence address for the elector as contained in the records of the county clerk; or
(c) The Secretary of State as provided in ORS 247.017 or 247.295.

(2) When a county clerk updates the registration of an elector under subsection (1) of this section, the clerk shall send a new voter notification card by nonforwardable mail to the elector as provided in ORS 247.181. The clerk shall include a notice stating that if the residence address or mailing address is not correct, the elector must notify the clerk.

(3) An elector is not disqualified from voting due to any error relating to an update of registration made under this section.

SECTION 6, ORS 247.302 is amended to read:

247.302. (1) The effective date of a voter registration updated under ORS 247.292 is the date on which the county clerk receives [written] evidence of the change of residence or mailing address.

(2) The effective date of a voter registration updated under ORS 247.296 is the date on which the county clerk changes the address information on the voter registration file.

SECTION 7, ORS 246.410 is amended to read:

246.410. (1)(a) After each federal decennial census, the Secretary of State shall prepare detailed and comprehensive directives providing guidelines for fixing precinct and other electoral district boundaries based on census population figures.
(b) After the federal decennial census and before the Legislative Assembly or Secretary of State, whichever is applicable, apportions the state into congressional and legislative districts, the secretary shall deliver the directives to:
(A) Each county clerk; and
(B) Any local government, as defined in ORS 174.116, or special government body, as defined in ORS 174.117, that fixes electoral district boundaries based on census population figures.
(2)(a) In accordance with any directive distributed by the Secretary of State under this section, the county clerk, not later than the 30th day before an election, may create, combine or divide one or more precincts. The number of electors to be included in a precinct shall not exceed [5,000]
The county clerk shall fix the boundaries of the precincts and designate the precincts by numbers or names.

(b) A local government or special government body that fixes electoral district boundaries based on census population figures shall fix the electoral district boundaries in accordance with any directive distributed by the Secretary of State under this section.

SECTION 8. ORS 247.016 is amended to read:

247.016. (1) Subject to [subsection (2) of] this section, an otherwise qualified person who is at least 17 years of age may register to vote.

(2) A person who registers to vote under subsection (1) of this section may not vote in an election until the person attains the age of 18 years.

(3) If a person who registers to vote under subsection (1) of this section will be under 18 years of age on the date of the next election held on a date listed in ORS 171.185 or the next special election, the person's voter registration information, including but not limited to the person's name and any identifying information, may not be disclosed as a public record under ORS 192.410 to 192.505.

SECTION 9. For the purpose of maintaining status as a minor political party under ORS 248.008 (4)(b) for the general election to be held on November 8, 2016, the total number of registered electors in this state is deemed to be the total number of registered electors identified in the elector registration records of the Secretary of State on July 1, 2015.

SECTION 10. (1) The amendments to ORS 247.017 by section 1 of this 2015 Act apply to electronic records and electronic signatures in the possession of the Department of Transportation on or after the effective date of this 2015 Act.

(2) The Secretary of State and the Department of Transportation shall implement the amendments to ORS 247.012 and 247.017 by sections 1 and 3 of this 2015 Act no later than January 1, 2016.

SECTION 11. ORS 802.085 is repealed.

SECTION 12. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.
AN ACT concerning criminal law.

Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:

Section 5. The Criminal Code of 2012 is amended by adding  
Section 11-23.5 as follows:

(720 ILCS 5/11-23.5 new)  
Sec. 11-23.5. Non-consensual dissemination of private sexual images.  
(a) Definitions. For the purposes of this Section:  
"Computer", "computer program", and "data" have the meanings ascribed to them in Section 17-0.5 of this Code.  
"Image" includes a photograph, film, videotape, digital recording, or other depiction or portrayal of an object, including a human body.  
"Intimate parts" means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area, anus, or if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing.  
"Sexual act" means sexual penetration, masturbation, or sexual activity.  
"Sexual activity" means any:  
(1) knowing touching or fondling by the victim or
another person or animal, either directly or through clothing, of the sex organs, anus, or breast of the victim or another person or animal for the purpose of sexual gratification or arousal; or

(2) any transfer or transmission of semen upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or another; or

(3) an act of urination within a sexual context; or

(4) any bondage, fetter, or sadism masochism; or

(5) sadomasochism abuse in any sexual context.

(b) A person commits non-consensual dissemination of private sexual images when he or she:

(1) intentionally disseminates an image of another person:

(A) who is at least 18 years of age; and

(B) who is identifiable from the image itself or information displayed in connection with the image; and

(C) who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and

(2) obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and

(3) knows or should have known that the person in the image has not consented to the dissemination.
(c) The following activities are exempt from the provisions of this Section:

(1) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination is made for the purpose of a criminal investigation that is otherwise lawful.

(2) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct.

(3) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the images involve voluntary exposure in public or commercial settings.

(4) The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when the dissemination serves a lawful public purpose.

(d) Nothing in this Section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:

(1) an interactive computer service, as defined in 47 U.S.C. 230(f)(2);

(2) a provider of public mobile services or private
radio services, as defined in Section 13-214 of the Public
Utilities Act; or

(3) a telecommunications network or broadband
provider.

(e) A person convicted under this Section is subject to the
forfeiture provisions in Article 124B of the Code of Criminal
Procedure of 1963.

(f) Sentence. Non-consensual dissemination of private
sexual images is a Class 4 felony.

Section 10. The Code of Criminal Procedure of 1963 is
amended by changing Sections 124B-10 and 124B-500 as follows:

(725 ILCS 5/124B-10)
Sec. 124B-10. Applicability; offenses. This Article
applies to forfeiture of property in connection with the
following:

(1) A violation of Section 10-9 or 10A-10 of the
Criminal Code of 1961 or the Criminal Code of 2012
(involuntary servitude; involuntary servitude of a minor;
or trafficking in persons).

(2) A violation of subdivision (a)(1) of Section
11-14.4 of the Criminal Code of 1961 or the Criminal Code
of 2012 (promoting juvenile prostitution) or a violation of
Section 11-17.1 of the Criminal Code of 1961 (keeping a
place of juvenile prostitution).
(3) A violation of subdivision (a)(4) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012 (promoting juvenile prostitution) or a violation of Section 11-19.2 of the Criminal Code of 1961 (exploitation of a child).

(4) A second or subsequent violation of Section 11-20 of the Criminal Code of 1961 or the Criminal Code of 2012 (obscenity).


(6) A violation of Section 11-20.1B or 11-20.3 of the Criminal Code of 1961 (aggravated child pornography).

(6.5) A violation of Section 11-23.5 of the Criminal Code of 2012.

(7) A violation of Section 12C-65 of the Criminal Code of 2012 or Article 44 of the Criminal Code of 1961 (unlawful transfer of a telecommunications device to a minor).

(8) A violation of Section 17-50 or Section 16D-5 of the Criminal Code of 2012 or the Criminal Code of 1961 (computer fraud).

(9) A felony violation of Section 17-6.3 or Article 17B of the Criminal Code of 2012 or the Criminal Code of 1961 (WIC fraud).

(10) A felony violation of Section 48-1 of the Criminal Code of 2012 or Section 26-5 of the Criminal Code of 1961
(dog fighting).


(12) A felony violation of Section 4.01 of the Humane Care for Animals Act (animals in entertainment).

(Source: P.A. 96-712, eff. 1-1-10; 96-1551, eff. 7-1-11; 97-897, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

(725 ILCS 5/124B-500)

Sec. 124B-500. Persons and property subject to forfeiture.

A person who commits the offense of child pornography, aggravated child pornography, or non-consensual dissemination of private sexual images under Section 11-20.1, 11-20.1B, or 11-20.3, or 11-23.5 of the Criminal Code of 1961 or the Criminal Code of 2012 shall forfeit the following property to the State of Illinois:

(1) Any profits or proceeds and any property the person has acquired or maintained in violation of Section 11-20.1, 11-20.1B, or 11-20.3, or 11-23.5 of the Criminal Code of 1961 or the Criminal Code of 2012 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography, aggravated child pornography, or non-consensual dissemination of private sexual images.

(2) Any interest in, securities of, claim against, or...
property or contractual right of any kind affording a
source of influence over any enterprise that the person has
established, operated, controlled, or conducted in
violation of Section 11-20.1, 11-20.1B, or 11-20.3, or
11-23.5 of the Criminal Code of 1961 or the Criminal Code
of 2012 that the sentencing court determines, after a
forfeiture hearing under this Article, to have been
acquired or maintained as a result of child pornography, aggravated child pornography, or non-consensual
dissemination of private sexual images.

(3) Any computer that contains a depiction of child
pornography in any encoded or decoded format in violation
of Section 11-20.1, 11-20.1B, or 11-20.3 of the Criminal
Code of 1961 or the Criminal Code of 2012. For purposes of
this paragraph (3), "computer" has the meaning ascribed to
it in Section 17-0.5 of the Criminal Code of 2012.

(Source: P.A. 97-1150, eff. 1-25-13; 98-1013, eff. 1-1-15.)
HOUSE BILL 13-1325

BY REPRESENTATIVE(S) Fields and Waller, Gardner, Gerou, Kagan, Labuda, McLachlan, Murray, Pabon, Rosenthal; also SENATOR(S) King, Heath, Johnston, Lambert, Newell, Nicholson, Todd, Morse.

CONCERNING PENALTIES FOR PERSONS WHO DRIVE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 42-4-1301, amend (1) (d), (2) (b), (4), (6) (a) introductory portion, and (6) (e); repeal (1) (c); and add (6) (a) (IV), (6) (j), and (6) (k) as follows:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - definitions - penalties. (1) (c) It is a misdemeanor for any person who is an habitual user of any controlled substance defined in section 18-18-102 (5), C.R.S., to drive a motor vehicle, vehicle, or low-power scooter in this state.

(d) For the purposes of this subsection (1) AS USED IN THIS SECTION, one or more drugs shall mean all substances defined as a drug.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.
AS DEFINED in section 27-80-203 (13), C.R.S., and all controlled substances
ANY CONTROLLED SUBSTANCE, AS defined in section 18-18-102 (5), C.R.S.,
glue-sniffing, aerosol inhalation, and the inhalation of any INHALED
GLUE, AEROSOL, OR other toxic vapor or vapors, AS DEFINED IN SECTION
18-18-412, C.R.S.

(2) (b) In any prosecution for the offense of DUI per se, the
defendant shall be entitled to offer direct and circumstantial evidence to
show that there is a disparity between what the ANY tests show and other
facts so that the trier of fact could infer that the tests were in some way
defective or inaccurate. Such evidence may include testimony of nonexpert
witnesses relating to the absence of any or all of the common symptoms or
signs of intoxication for the purpose of impeachment of the accuracy of the
analysis of the person's blood or breath.

(4) No court shall accept a plea of guilty to a non-alcohol-related or
non-drug-related traffic offense or guilty to the offense of UDD from a
person charged with DUI or DUI per se; or habitual user; except that the
court may accept a plea of guilty to a non-alcohol-related or
non-drug-related traffic offense or to UDD upon a good faith representation
by the prosecuting attorney that the attorney could not establish a prima
facie case if the defendant were brought to trial on the original
alcohol-related or drug-related offense.

(6) (a) In any prosecution for DUI or DWAI, the defendant's BAC
OR DRUG CONTENT at the time of the commission of the alleged offense or
within a reasonable time thereafter gives rise to the following presumptions
or inferences:

(IV) IF AT SUCH TIME THE DRIVER'S BLOOD CONTAINED FIVE
NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER
MILLILITER IN WHOLE BLOOD, AS SHOWN BY ANALYSIS OF THE DEFENDANT'S
BLOOD, SUCH FACT GIVES RISE TO A PERMISSIBLE INFERENCE THAT THE
DEFENDANT WAS UNDER THE INFLUENCE OF ONE OR MORE DRUGS.

(e) Involuntary blood test - admissibility. Evidence acquired
through an involuntary blood test pursuant to section 42-4-1301.1 (3) shall
be admissible in any prosecution for DUI, DUI per se, DWAI, habitual user,
or UDD, and in any prosecution for criminally negligent homicide pursuant
to section 18-3-105, C.R.S., vehicular homicide pursuant to section
18-3-106 (1) (b), C.R.S., assault in the third degree pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.

(j) IN ANY TRIAL FOR A VIOLATION OF THIS SECTION, IF, AT THE TIME OF THE ALLEGED OFFENSE, THE PERSON POSSESSED A VALID MEDICAL MARIJUANA Registry IDENTIFICATION CARD, AS DEFINED IN SECTION 25-1.5-106 (2) (e), C.R.S., ISSUED TO HIMSELF OR HERSELF, THE PROSECUTION SHALL NOT USE SUCH FACT AS PART OF THE PROSECUTION'S CASE IN CHIEF.

(k) IN ANY TRAFFIC STOP, THE DRIVER'S POSSESSION OF A VALID MEDICAL MARIJUANA Registry IDENTIFICATION CARD, AS DEFINED IN SECTION 25-1.5-106 (2) (e), C.R.S., ISSUED TO HIMSELF OR HERSELF SHALL NOT, IN THE ABSENCE OF OTHER CONTRIBUTING FACTORS, CONSTITUTE PROBABLE CAUSE FOR A PEACE OFFICER TO REQUIRE THE DRIVER TO SUBMIT TO AN ANALYSIS OF HIS OR HER BLOOD.

SECTION 2. In Colorado Revised Statutes, 18-3-106, amend (1) (b) (II), (2) introductory portion, and (2) (c); and add (2) (d) as follows:

**18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a means any drug, as defined in section 27-80-203 (13), C.R.S., and all controlled substances, any controlled substance, as defined in section 18-18-102 (5), and glue-sniffing, aerosol inhalation, or the inhalation of any inhaled glue, aerosol, or other toxic vapor or vapors, as defined in section 18-18-412.

(2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following: presumptions:

(c) If there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was under the influence of alcohol.

PAGE 3-HOUSE BILL 13-1325
(d) **IF AT SUCH TIME THE DRIVER'S BLOOD CONTAINED FIVE NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER MILLILITER IN WHOLE BLOOD, AS SHOWN BY ANALYSIS OF THE DEFENDANT'S BLOOD, SUCH FACT GIVES RISE TO A PERMISSIBLE INFERENCE THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF ONE OR MORE DRUGS.**

**SECTION 3.** In Colorado Revised Statutes, 18-3-205, **amend** (1) (b) (II), (2) introductory portion, and (2) (c); and **add** (2) (d) as follows:

**18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a MEANS ANY drug, as defined in section 27-80-203 (13), C.R.S., and all controlled substances ANY CONTROLLED SUBSTANCE, as defined in section 18-18-102 (5), and glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE, AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

(2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following: presumptions:

(c) If there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant was under the influence of alcohol.

(d) **IF AT SUCH TIME THE DRIVER'S BLOOD CONTAINED FIVE NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER MILLILITER IN WHOLE BLOOD, AS SHOWN BY ANALYSIS OF THE DEFENDANT'S BLOOD, SUCH FACT GIVES RISE TO A PERMISSIBLE INFERENCE THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF ONE OR MORE DRUGS.**

**SECTION 4.** In Colorado Revised Statutes, 42-1-102, **repeal** (41.7) as follows:

**42-1-102. Definitions.** As used in articles 1 to 4 of this title, unless the context otherwise requires:
"Habitual user" shall incorporate by reference the offense described in section 42-4-1301 (1) (c).

SECTION 5. In Colorado Revised Statutes, 42-2-121, amend (2) (b) and (5) (a) (III) as follows:

42-2-121. Records to be kept by department - admission of records in court. (2) (b) The department shall also keep a separate file of all abstracts of court records of dismissals of DUI, DUI per se, DWAI, habitual user, and UDD charges and all abstracts of records in cases where the original charges were for DUI, DUI per se, DWAI, habitual user, and UDD and the convictions were for nonalcohol- or nondrug-related traffic offenses. This file shall be made available only to criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

(5) (a) Upon application by a person, the department shall expunge all records concerning a conviction of a person for UDD with a BAC of at least 0.02 but not more than 0.05 and any records concerning an administrative determination resulting in a revocation under section 42-2-126 (3) (b) or (3) (e) if:

(III) The person has not been convicted for any other DUI, DUI per se, DWAI, habitual user, or UDD offense that was committed while such person was under twenty-one years of age and is not subject to any other administrative determination resulting in a revocation under section 42-2-126 for any other occurrence while such person was under twenty-one years of age;

SECTION 6. In Colorado Revised Statutes, amend 42-2-129 as follows:

42-2-129. Mandatory surrender of license or permit for driving under the influence or with excessive alcoholic content. Upon a plea of guilty or nolo contendere, or a verdict of guilty by the court or a jury, to DUI, or DUl per se, or habitual user, or, for a person under twenty-one years of age, to DUI, DUI per se, DWAI, habitual user, or UDD, the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict, on the form prescribed by the department, together with the offender's
license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender the license or permit to the court, except for good cause shown, commits a class 2 misdemeanor traffic offense.

**SECTION 7.** In Colorado Revised Statutes, 42-2-125, **amend** (1) (b), (1) (g), and (1) (i) as follows:

**42-2-125. Mandatory revocation of license and permit.** (1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(b) Been convicted of driving a motor vehicle while under the influence of a controlled substance, as defined in section 18-18-102 (5), C.R.S.; or while an habitual user of such a controlled substance;

(g) (I) Been twice convicted of any combination of DUI, DUI per se, OR DWAI or habitual user for acts committed within a period of five years;

(II) In the case of a minor driver, been convicted of DUI, DUI per se, OR DWAI or habitual user committed while such driver was under twenty-one years of age;

(i) Been convicted of DUI, DUI per se, OR DWAI or habitual user and has two previous convictions of any of such offenses. The license of any driver shall be revoked for an indefinite period and shall only be reissued upon proof to the department that said driver has completed a level II alcohol and drug education and treatment program certified by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, pursuant to section 42-4-1301.3 and that said driver has demonstrated knowledge of the laws and driving ability through the regular motor vehicle testing process. In no event shall such license be reissued in less than two years.

**SECTION 8.** In Colorado Revised Statutes, 42-2-127, **amend** (1) (a) and (6) (b); and **repeal** (5) (b) (II) as follows:

**42-2-127. Authority to suspend license - to deny license - type of**
conviction - points. (1) (a) Except as provided in paragraph (b) of subsection (8) of this section, the department has the authority to suspend the license of any driver who, in accordance with the schedule of points set forth in this section, has been convicted of traffic violations resulting in the accumulation of twelve points or more within any twelve consecutive months or eighteen points or more within any twenty-four consecutive months, or, in the case of a minor driver eighteen years of age or older, who has accumulated nine points or more within any twelve consecutive months, or twelve points or more within any twenty-four consecutive months, or fourteen points or more for violations occurring after reaching the age of eighteen years, or, in the case of a minor driver under the age of eighteen years, who has accumulated more than five points within any twelve consecutive months or more than six points for violations occurring prior to reaching the age of eighteen years; except that the accumulation of points causing the subjection to suspension of the license of a chauffeur who, in the course of employment, has as a principal duty the operation of a motor vehicle shall be sixteen points in one year, twenty-four points in two years, or twenty-eight points in four years, if all the points are accumulated while said chauffeur is in the course of employment. Any provision of this section to the contrary notwithstanding, the license of a chauffeur who is convicted of DUI, DUI per se, DWAI, habitual user, UDD, or leaving the scene of an accident shall be suspended in the same manner as if the offense occurred outside the course of employment. Whenever a minor driver under the age of eighteen years receives a summons for a traffic violation, the minor's parent or legal guardian or, if the minor is without parents or guardian, the person who signed the minor driver's application for a license shall immediately be notified by the court from which the summons was issued.

(5) Point system schedule:

<table>
<thead>
<tr>
<th>Type of conviction</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Habitual user</td>
<td>12</td>
</tr>
</tbody>
</table>

(6) (b) For the purposes of this article, a plea of no contest accepted by the court or the forfeiture of any bail or collateral deposited to secure a defendant's appearance in court or the failure to appear in court by a defendant charged with DUI, DUI per se, habitual user, or UDD who has been issued a summons and notice to appear pursuant to section 42-4-1707 as evidenced by records forwarded to the department in accordance with the
provisions of section 42-2-124 shall be considered as a conviction.

SECTION 9. In Colorado Revised Statutes, 42-2-132, amend (2) (a) (III) and (2) (a) (IV) as follows:

42-2-132. Period of suspension or revocation. (2) (a) (III) In the case of a minor driver whose license has been revoked as a result of one conviction for DUI, DUI per se, DWAI, habitual user, or UDD, the minor driver, unless otherwise required after an evaluation made pursuant to section 42-4-1301.3, must complete a level I alcohol and drug education program certified by the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse.

(IV) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked under section 42-2-125 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to a DUI, DUI per se, or DWAI or habitual user conviction shall be required to present an affidavit stating that the person has obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device, as defined in section 42-2-132.5 (9) (a), in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the interlock-restricted license.

SECTION 10. In Colorado Revised Statutes, 42-2-132.5, amend (1) (a), (1) (c), and (4) (c) as follows:

42-2-132.5. Mandatory and voluntary restricted licenses following alcohol convictions - rules. (1) Persons required to hold an interlock-restricted license. The following persons shall be required to hold an interlock-restricted license pursuant to this section for at least one year following reinstatement prior to being eligible to obtain any other driver's license issued under this article:

(a) A person whose privilege to drive was revoked for multiple convictions for any combination of a DUI, DUI per se, or DWAI or habitual user pursuant to section 42-2-125 (1) (g) (I) or (1) (i);

(c) A person whose privilege to drive was revoked as an habitual...
offender under section 42-2-203 in which the revocation was due in part to a DUI, DUI per se, or DWAI or habitual user conviction; or

(4) Persons who may acquire an interlock-restricted license prior to serving a full-term revocation. (c) In order to be eligible for early reinstatement pursuant to this subsection (4), a person who has been designated an habitual offender under the provisions of section 42-2-202 must have at least one conviction for DUI, DUI per se, or DWAI or habitual user under section 42-4-1301, and no contributing violations other than violations for driving under restraint under section 42-2-138 or reckless driving under section 42-4-1401.

SECTION 11. In Colorado Revised Statutes, 42-2-138, amend (1) (a) and (1) (d) as follows:

42-2-138. Driving under restraint - penalty. (1) (a) Any person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that the person's license or privilege to drive, either as a resident or a nonresident, is under restraint for any reason other than conviction of DUI, DWAI, habitual user, or UDD is guilty of a misdemeanor. A court may sentence a person convicted of this misdemeanor to imprisonment in the county jail for a period of not more than six months and may impose a fine of not more than five hundred dollars.

(d) (I) A person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that the person's license or privilege to drive, either as a resident or nonresident, is restrained under section 42-2-126 (3), is restrained solely or partially because of a conviction of DUI, DWAI, habitual user, or UDD, or is restrained in another state solely or partially because of an alcohol-related driving offense is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second or subsequent conviction, the person shall be punished by imprisonment in the county jail for not less than ninety days nor more than two years and, in the discretion of the court, by a fine of not less than five hundred dollars nor more than three thousand dollars. The minimum county jail sentence imposed by this subparagraph (I) shall be mandatory, and the
court shall not grant probation or a suspended sentence thereof; but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this subparagraph (I) because of an emergency, the mandatory jail sentence, if any, shall not apply, and, for a first conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than one year and, in the discretion of the court, a fine of not more than one thousand dollars, and, for a second or subsequent conviction, the court may impose a sentence of imprisonment in the county jail for a period of not more than two years and, in the discretion of the court, a fine of not more than three thousand dollars.

(II) In any trial for a violation of subparagraph (I) of this paragraph (d), a duly authenticated copy of the record of the defendant's former convictions and judgments for DUI, DUI per se, DWAI, habitual user, or UDD or an alcohol-related offense committed in another state from any court of record or a certified copy of the record of any denial or revocation of the defendant's driving privilege under section 42-2-126 (3) from the department shall be prima facie evidence of the convictions, judgments, denials, or revocations and may be used in evidence against the defendant. Identification photographs and fingerprints that are part of the record of the former convictions, judgments, denials, or revocations and the defendant's incarceration after sentencing for any of the former convictions, judgments, denials, or revocations shall be prima facie evidence of the identity of the defendant and may be used in evidence against the defendant.

SECTION 12. In Colorado Revised Statutes, 42-2-202, amend (2) (a) (I) as follows:

42-2-202. Habitual offenders - frequency and type of violations. (2) (a) An habitual offender is a person having three or more convictions of any of the following separate and distinct offenses arising out of separate acts committed within a period of seven years:

(I) DUI, DUI per se, or DWAI; or habitual user;

SECTION 13. In Colorado Revised Statutes, 42-2-405, amend (3) (a) as follows:

42-2-405. Driver's license disciplinary actions - grounds for
denial - suspension - revocation - disqualification. (3) For purposes of the imposition of restraints and sanctions against commercial driving privileges:

(a) A conviction for DUI, DUI per se, or DWAI, or habitual user, or a substantially similar law of any other state pertaining to drinking and driving, or an administrative determination of a violation of section 42-2-126 (3) (a) or (3) (b) shall be deemed driving under the influence; and

SECTION 14. In Colorado Revised Statutes, 42-4-1301.1, amend (2) (a) (I) and (2) (b) (I) as follows:

42-4-1301.1. Expressed consent for the taking of blood, breath, urine, or saliva sample - testing. (2) (a) (I) A person who drives a motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against DUI, DUI per se, DWAI, habitual user, or UDD. Except as otherwise provided in this section, if a person who is twenty-one years of age or older requests that the test be a blood test, then the test shall be of his or her blood; but, if the person requests that a specimen of his or her blood not be drawn, then a specimen of the person's breath shall be obtained and tested. A person who is under twenty-one years of age shall be entitled to request a blood test unless the alleged violation is UDD, in which case a specimen of the person's breath shall be obtained and tested, except as provided in subparagraph (II) of this paragraph (a).

(b) (I) Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to submit to and to complete, and to cooperate in the completing of, a test or tests of such person's blood, saliva, and urine for the purpose of determining the drug content within the person's system when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against DUI, or DWAI, or habitual user, and when it is reasonable to require such testing of blood, saliva, and urine to determine whether such person was under the influence of, or impaired by, one or more drugs, or one or more

PAGE 11-HOUSE BILL 13-1325
controlled substances, or a combination of both alcohol and one or more drugs, or a combination of both alcohol and one or more controlled substances.

**SECTION 15.** In Colorado Revised Statutes, 42-4-1307, amend (3) (a) introductory portion, (5) (a) introductory portion, (5) (b) introductory portion, (6) (a) introductory portion, (9) (a), (10) (a), (10) (b), (10) (c), (10) (d) (I), (12), and (13) as follows:

42-4-1307. Penalties for traffic offenses involving alcohol and drugs - repeal. (3) First offenses - DUI and DUI per se. (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DUI OR DUI per se or habitual user shall be punished by:

(5) Second offenses. (a) Except as otherwise provided in subsection (6) of this section, a person who is convicted of DUI, DUI per se, or DWAI or habitual user who, at the time of sentencing, has a prior conviction of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), shall be punished by:

(b) If a person is convicted of DUI, DUI per se, or DWAI or habitual user and the violation occurred less than five years after the date of a previous violation for which the person was convicted of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), the court shall not have discretion to employ any sentencing alternatives described in section 18-1.3-106, C.R.S., during the minimum period of imprisonment described in subparagraph (I) of paragraph (a) of this subsection (5); except that a court may allow the person to participate in a program pursuant to section 18-1.3-106 (1) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:
6. **Third and subsequent offenses.** (a) A person who is convicted of DUI, DUI per se, or DWAI or habitual user who, at the time of sentencing, has two or more prior convictions of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d) shall be punished by:

9. **Previous convictions.** (a) For the purposes of subsections (5) and (6) of this section, a person shall be deemed to have a previous conviction for DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), if the person has been convicted under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of an act that, if committed within this state, would constitute the offense of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d).

10. **Additional costs and surcharges.** In addition to the penalties prescribed in this section:

    (a) Persons convicted of DUI, DUI per se, DWAI, habitual user, and UDD are subject to the costs imposed by section 24-4.1-119 (1) (c), C.R.S., relating to the crime victim compensation fund;

    (b) Persons convicted of DUI, DUI per se, and DWAI and habitual user are subject to a surcharge of at least one hundred dollars but no more than five hundred dollars to fund programs to reduce the number of persistent drunk drivers. The surcharge shall be mandatory, and the court shall not have discretion to suspend or waive the surcharge; except that the court may suspend or waive the surcharge if the court determines that a
person is indigent. Moneys collected for the surcharge shall be transmitted to the state treasurer, who shall credit the amount collected to the persistent drunk driver cash fund created in section 42-3-303.

(c) Persons convicted of DUI, DUI per se, DWAI, habitual user, and UDD are subject to a surcharge of twenty dollars to be transmitted to the state treasurer who shall deposit moneys collected for the surcharge in the Colorado traumatic brain injury trust fund created pursuant to section 26-1-309, C.R.S.;

(d) (I) Persons convicted of DUI, DUI per se, AND DWAI and habitual user are subject to a surcharge of at least one dollar but no more than ten dollars for programs to fund efforts to address alcohol and substance abuse problems among persons in rural areas. The surcharge shall be mandatory, and the court shall not have discretion to suspend or waive the surcharge; except that the court may suspend or waive the surcharge if the court determines that a person is indigent. Any moneys collected for the surcharge shall be transmitted to the state treasurer, who shall credit the same to the rural alcohol and substance abuse cash fund created in section 27-80-117 (3), C.R.S.

(12) Victim impact panels. In addition to any other penalty provided by law, the court may sentence a person convicted of DUI, DUI per se, DWAI, habitual user, or UDD to attend and pay for one appearance at a victim impact panel approved by the court, for which the fee assessed to the person shall not exceed twenty-five dollars.

(13) Alcohol and drug evaluation and supervision costs. In addition to any fines, fees, or costs levied against a person convicted of DUI, DUI per se, DWAI, habitual user, or UDD, the judge shall assess each such person for the cost of the presentence or postsentence alcohol and drug evaluation and supervision services.

SECTION 16. In Colorado Revised Statutes, 42-4-1702, amend (1) as follows:

42-4-1702. Alcohol- or drug-related traffic offenses - collateral attack. (1) Except as otherwise provided in paragraph (b) of this subsection (1), No person against whom a judgment has been entered for DUI, DUI per se, DWAI, habitual user, or UDD shall collaterally attack the validity of that
judgment unless such attack is commenced within six months after the date of entry of the judgment.

SECTION 17. In Colorado Revised Statutes, 42-4-1705, amend (1) (c) as follows:

42-4-1705. Person arrested to be taken before the proper court. (1) Whenever a person is arrested for any violation of this article punishable as a misdemeanor, the arrested person shall be taken without unnecessary delay before a county judge who has jurisdiction of such offense as provided by law, in any of the following cases:

(c) When the person is arrested and charged with DUI, DUI per se, habitual user, or UDD;

SECTION 18. In Colorado Revised Statutes, 42-4-1715, amend (1) (b) (II) and (4) (a) (II) as follows:

42-4-1715. Convictions, judgments, and charges recorded - public inspection. (1) (b) (II) Upon receiving a request for expungement, the court may delay consideration of such request until sufficient time has elapsed to ensure that the person is not convicted for any additional offense of DUI, DUI per se, DWAI, habitual user, or UDD committed while the person was under twenty-one years of age.

(4) (a) Every court of record shall also forward a like report to the department:

(II) Upon the dismissal of a charge for DUI, DUI per se, DWAI, habitual user, or UDD or if the original charge was for DUI, DUI per se, DWAI, habitual user, or UDD and the conviction was for a nonalcohol- or nondrug-related traffic offense.

SECTION 19. In Colorado Revised Statutes, 42-7-408, amend (1) (c) (I) as follows:

42-7-408. Proof of financial responsibility - methods of giving proof - duration - exception. (1) (c) Notwithstanding the three-year requirement in paragraph (b) of this subsection (1):
If an insured has been found guilty of DUI, DUI per se, OR DWAI or habitual user or if the insured's license has been revoked pursuant to section 42-2-126, other than a revocation under section 42-2-126 (3) (b) or (3) (e), only one time and no accident was involved in such offense, proof of financial responsibility for the future shall be required to be maintained only for as long as the insured's driving privilege is ordered to be under restraint, up to a maximum of three years. The time period for maintaining the future proof of liability insurance shall begin at the time the driver reinstates his or her driving privilege.

SECTION 20. In Colorado Revised Statutes, 40-10.1-110, amend (3) (c) (I) as follows:

40-10.1-110. Criminal history record check. (3) An individual whose criminal history record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in subsection (1) of this section if the criminal history record check reflects that:

(c) Within the two years immediately preceding the date the criminal history record check is completed, the individual was:

(I) Convicted in this state of driving under the influence, as defined in section 42-4-1301 (1) (f), C.R.S.; driving with excessive alcoholic content, as described in section 42-4-1301 (2) (a), C.R.S.; OR driving while ability impaired, as defined in section 42-4-1301 (1) (g), C.R.S.; or driving while a habitual user of a controlled substance, as described in section 42-4-1301 (1) (c), C.R.S.; or

SECTION 21. In Colorado Revised Statutes, add 17-18-110 as follows:

17-18-110. Appropriation to comply with section 2-2-703 - HB 13-1325 - repeal. (1) Pursuant to section 2-2-703, C.R.S., the following statutory appropriations, or so much thereof as may be necessary, are made in order to implement House Bill 13-1325, enacted in 2013:

(a) For the fiscal year beginning July 1, 2014, in addition to any other appropriation, there is hereby appropriated to the

PAGE 16-HOUSE BILL 13-1325
DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF TWENTY THOUSAND EIGHT HUNDRED SIXTEEN DOLLARS ($20,816).

(b) FOR THE FISCAL YEAR BEGINNING JULY 1, 2015, IN ADDITION TO ANY OTHER APPROPRIATION, THERE IS HEREBY APPROPRIATED TO THE DEPARTMENT, OUT OF ANY MONEYS IN THE GENERAL FUND NOT OTHERWISE APPROPRIATED, THE SUM OF FIVE THOUSAND FIVE HUNDRED FIFTY-ONE DOLLARS ($5,551).

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016.

SECTION 22. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2013, the sum of $12,000, or so much thereof as may be necessary, for allocation to the office of the state public defender for mandated costs related to the implementation of this act.

SECTION 23. Safety clause. The general assembly hereby finds,
AN ACT

RELATING TO FORFEITURE; PROVIDING THAT FORFEITURE PURSUANT TO THE FORFEITURE ACT SHALL FOLLOW A CRIMINAL CONVICTION; REVISING SEIZURE AND FORFEITURE PROCEDURES; REQUIRING LAW ENFORCEMENT AGENCIES TO SUBMIT ANNUAL REPORTS RELATING TO FORFEITURE; PROVIDING FOR THE TRANSFER OF SEIZED PROPERTY; EXCLUDING CONTRABAND FROM THE FORFEITURE ACT; REQUIRING FORFEITURE PROCEEDINGS TO FOLLOW A RELATED CRIMINAL PROCEEDING; PROVIDING FOR PROCEEDS FROM THE SALE OF FORFEITED AND ABANDONED PROPERTY AND FORFEITED CURRENCY TO BE DEPOSITED IN THE GENERAL FUND; PROVIDING FOR AN INNOCENT OWNER TO ASSERT AN INTEREST IN SEIZED PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-27-1 NMSA 1978 (being Laws 2002, Chapter 4, Section 1) is amended to read:

"31-27-1. SHORT TITLE.--Chapter 31, Article 27 NMSA 1978 may be cited as the "Forfeiture Act"."

SECTION 2. Section 31-27-2 NMSA 1978 (being Laws 2002, Chapter 4, Section 2) is amended to read:

"31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL REMEDIES.--

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and procedures for the seizure and forfeiture of property subject
to forfeiture;

(2) protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture;

(3) deter criminal activity by reducing its economic incentives;

(4) increase the pecuniary loss from criminal activity;

(5) protect against the wrongful forfeiture of property; and

(6) ensure that only criminal forfeiture is allowed in this state.

B. The Forfeiture Act:

(1) applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the Forfeiture Act; and

(2) does not apply to contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the Forfeiture Act."

SECTION 3. Section 31-27-3 NMSA 1978 (being Laws 2002, Chapter 4, Section 3) is amended to read:

"31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

A. "abandoned property":

(1) means personal property the rights to
which and the control of which an owner has intentionally relinquished; and

(2) does not mean real property;

B. "actual knowledge" means a direct and clear awareness of information, a fact or a condition;

C. "contraband" means goods that may not be lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act and that are possessed without a valid prescription;

D. "conveyance" means a device used for transportation and:

(1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but

(2) does not include property that is stolen or taken in violation of a law;

E. "conviction" or "convicted" means that a person has been found guilty of a crime in a trial court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is deferred or suspended;

F. "crime" means a violation of a criminal statute for which property of the offender is subject to seizure and forfeiture;

G. "instrumentality" means all property that is
otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and includes land, a building, a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;

H. "law enforcement agency" means the employer of a law enforcement officer that is authorized to seize or has seized property pursuant to the Forfeiture Act;

I. "law enforcement officer" means:

(1) a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes; but

(2) does not mean a correctional officer;

J. "owner" means a person who has a legal or equitable ownership interest in property;

K. "property" means tangible or intangible personal property or real property;

L. "property subject to forfeiture" means property or an instrumentality described and declared to be subject to forfeiture by the Forfeiture Act or a state law outside of the Forfeiture Act; and

M. "secured party" means a person with a security
or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party."

SECTION 4. Section 31-27-4 NMSA 1978 (being Laws 2002, Chapter 4, Section 4) is amended to read:

"31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

A. A person's property is subject to forfeiture if:

(1) the person was arrested for an offense to which forfeiture applies;

(2) the person is convicted by a criminal court of the offense; and

(3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

B. Following a person's conviction for an offense to which forfeiture applies, a court may order the person to forfeit:

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense; and
(3) any instrumentality the person used in the commission of the offense.

C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding.

D. Subject to the provisions of Section 31-27-5 NMSA 1978, at any time, at the request of the state, a court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to the Forfeiture Act and other applicable state laws. Before issuing an order pursuant to this subsection, the court shall make a determination that:

(1) there is a substantial probability that:

(a) the property is subject to forfeiture;

(b) the state will prevail on the issue of forfeiture; and

(c) failure to enter the order will result in the property being destroyed, removed from the state or otherwise made unavailable for forfeiture; and

(2) the need to preserve the availability of the property through the entry of the requested order.
outweighs the hardship to the owner and other parties known to be claiming interests in the property.

E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

(1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property;

(2) the property subject to seizure is the subject of a previous judgment in favor of the state; or

(3) the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure."

SECTION 5. A new Section 31-27-4.1 NMSA 1978 is enacted to read:

"31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN HEARING.--

A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide an itemized receipt to the person possessing the property or, in
the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

B. Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may, at any time before sixty days prior to a related criminal trial, claim an interest in seized property by a motion to the court to issue a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's alleged interest in the property.

C. A person who makes a timely motion pursuant to this section shall have a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within thirty days of the date on which the motion is filed.

D. At least ten days before a hearing on a motion filed pursuant to this section, the state shall file an answer or responsive motion that shows probable cause for the seizure.

E. A court shall grant a claimant's motion if the court finds that:

(1) it is likely that the final judgment will require the state to return the property to the claimant;
(2) the property is not reasonably required to be held for investigatory reasons; or
(3) the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding.

F. In its discretion, the court may order the return of funds or property sufficient to obtain legal counsel but less than the total amount seized, and it may require an accounting.

G. In lieu of ordering the issuance of the writ of replevin, a court may order:

(1) the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or
(2) any other relief the court deems to be just."

SECTION 6. Section 31-27-5 NMSA 1978 (being Laws 2002, Chapter 4, Section 5) is amended to read:

"31-27-5. COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

A. Within thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized. A complaint of ancillary forfeiture
proceedings shall include:

(1) a description of the property seized;

(2) the date and place of seizure of the property;

(3) the name and address of the law enforcement agency making the seizure;

(4) the specific statutory and factual grounds for the seizure;

(5) whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and

(6) in the complaint caption and in the complaint, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest.

B. The complaint shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the state to claim an interest in the property. A copy of the complaint shall also be published at least three times in a newspaper of general circulation in the district of the court having jurisdiction or on the sunshine portal until the forfeiture proceeding is resolved."
SECTION 7. Section 31-27-6 NMSA 1978 (being Laws 2002, Chapter 4, Section 6) is amended to read:

"31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

A. A person who claims an interest in seized property shall file an answer to the complaint of forfeiture within thirty days of the date of service of the complaint. The answer shall include facts to support the claimant's alleged interest in the property.

B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the seized property.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.

D. Discovery conducted in an ancillary forfeiture
proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars ($20,000) shall be held before a judge only.

F. If the state fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:

(1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless the owner's possession of the property is illegal; and

(2) the owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

G. The court shall enter a judgment of forfeiture and the seized property shall be forfeited to the state if the state proves by clear and convincing evidence that:

(1) the property is subject to forfeiture;

(2) the criminal prosecution of the owner of the seized property resulted in a conviction; and

(3) the value of the property to be forfeited does not unreasonably exceed:

(a) the pecuniary gain derived or sought to be derived by the crime;

(b) the pecuniary loss caused or sought to be caused by the crime; or
(c) the value of the convicted owner's interest in the property.

H. A court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. A person is not jointly and severally liable for orders for forfeiture of another person's property. When ownership of property is unclear, a court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. At any time following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was
unconstitutionally excessive pursuant to the state or federal constitution.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including:

(1) the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;

(2) the extent to which the defendant participated in the offense;

(3) the extent to which the property was used in committing the offense;

(4) the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and

(5) whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the:
(1) fair market value of the property;
(2) value of the property to the defendant, including hardship that the defendant will suffer if the forfeiture is realized; and
(3) hardship from the loss of a primary residence, motor vehicle or other property to the defendant's family members or others if the property is forfeited.

O. The court shall not consider the value of the property to the state when it determines whether the forfeiture of property is constitutionally excessive.

P. A party to a forfeiture proceeding may appeal a district court's decision regarding the seizure, forfeiture and distribution of property pursuant to the Forfeiture Act."

SECTION 8. Section 31-27-7 NMSA 1978 (being Laws 2002, Chapter 4, Section 7) is amended to read:

"31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF FORFEITED PROPERTY AND PROCEEDS.--

A. The state acquires provisional title to seized property at the time the property was used or acquired in connection with an offense that subjects the property to forfeiture. Provisional title authorizes the state to hold and protect the property. Title to the property shall vest with the state when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the state acquired provisional title; provided that the title is subject
to claims by third parties that are adjudicated pursuant to the Forfeiture Act.

B. Unless possession of the property is illegal or a different disposition is specifically provided for by law and except as provided in this section, forfeited property that is not currency shall be delivered along with any abandoned property to the state treasurer for disposition at a public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned property shall be deposited in the general fund.

C. Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.

D. A property interest forfeited to the state pursuant to the Forfeiture Act is subject to the interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property."

SECTION 9. A new Section 31-27-7.1 NMSA 1978 is enacted to read:

"31-27-7.1. INNOCENT OWNERS.--

A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has
the burden of production to show that the person:

(1) holds a legal right, title or interest in the property seized; and

(2) held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The state shall immediately return property to an established innocent owner who has an interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars ($10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to state law or that is subject to a lease or rental agreement, unless the secured party or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that the person is an innocent owner pursuant to Subsection B of Section 31-27-7.1 NMSA 1978 and the state pursues a forfeiture proceeding with respect to that person's property, other than property described in Subsection D of Section 31-27-7 NMSA 1978, to successfully forfeit the property, the state shall prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in
property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner has the burden of production to show that the person has legal right, title or interest in the property seized under this section.

F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the state pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the state shall prove by clear and convincing evidence that at the time the person acquired the property, the person:

(1) had actual knowledge that the property was subject to forfeiture; or

(2) was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property."

SECTION 10. Section 31-27-8 NMSA 1978 (being Laws 2002, Chapter 4, Section 8) is amended to read:

"31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING DISPOSITION--SELLING OR RETAINING SEIZED PROPERTY
PROHIBITED.--

A. Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the district court in an interest-bearing account.

B. Seized property other than currency or real property, not required by federal or state law to be destroyed, shall be:

(1) placed under seal; and
(2) removed to a place designated by the district court; or
(3) held in the custody of a law enforcement agency.

C. Seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the district court, insured against those risks.

D. A law enforcement agency shall not retain forfeited or abandoned property."

SECTION 11. A new section of the Forfeiture Act is enacted to read:

"REPORTING.--

A. Every law enforcement agency shall prepare an annual report of the agency's seizures and forfeitures conducted pursuant to the Forfeiture Act, and seizures and forfeitures conducted pursuant to federal forfeiture law, and the report shall include:
(1) the total number of seizures of currency and the total amount of currency seized in each seizure;

(2) the total number of seizures of property and the number and types of items seized in each seizure;

(3) the market value of each item of property seized; and

(4) the total number of occurrences of each class of crime that resulted in the agency's seizure of property.

B. A law enforcement agency shall submit its annual reports to the department of public safety and to the district attorney's office in the agency's district. An agency that did not engage in seizure or forfeiture pursuant to the Forfeiture Act or federal forfeiture law, or both, shall report that fact in its annual report.

C. The department of public safety shall compile the reports submitted by each law enforcement agency and issue an aggregate report of all forfeitures in the state.

D. By April 1 of each year, the department of public safety shall publish on its web site the department's aggregate report and individual law enforcement agency reports submitted for the previous year.

SECTION 12. A new section of the Forfeiture Act is enacted to read:

"RETURN OF PROPERTY--DAMAGES--COSTS.--"
A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:

(1) a court finds that a person had a bona fide security interest in the property;

(2) a court finds that the owner was an innocent owner;

(3) the acquittal of or dismissal of related criminal charges against the owner of the property; or

(4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section.

SECTION 13. A new section of the Forfeiture Act is enacted to read:

"TRANSFER OF FORFEITABLE PROPERTY TO THE FEDERAL GOVERNMENT.--

A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:

(1) the value of the seized property exceeds fifty thousand dollars ($50,000), excluding the potential
value of the sale of contraband; and

(2) the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or

(3) the seized property may only be forfeited under federal law.

B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property."

SECTION 14. Section 18-6-11 NMSA 1978 (being Laws 1977, Chapter 75, Section 1, as amended) is amended to read:

"18-6-11. PERMIT REQUIRED FOR EXCAVATION OF ARCHAEOLOGICAL SITES--PENALTY.--

A. It is unlawful for a person or the person's agent or employee to excavate with the use of mechanical earthmoving equipment an archaeological site for the purpose of collecting or removing objects of antiquity if the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, "archaeological site" means a location where there exists material evidence of the past life and culture of
human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer if the applicant:

(1) submits written authorization for the excavation from the owner of the land;

(2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;

(3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and

(4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the
property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on the owner's own land; provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section; and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. A person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) and, in accordance with the provisions of the Forfeiture Act, shall forfeit to the state all equipment used in committing the violation for which the person is convicted."

SECTION 15. Section 18-6-11.2 NMSA 1978 (being Laws 1989, Chapter 267, Section 1) is amended to read:

"18-6-11.2. PERMIT REQUIRED FOR EXCAVATION OF UNMARKED BURIALS--PENALTY.--

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.
B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars ($5,000) or by imprisonment for a definite term of eighteen months or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. The provisions of the Forfeiture Act shall apply to a forfeiture provided for in this section. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial of any human being that is not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials
and includes any funerary object, material object or artifact associated with the burial; and

(2) "human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;
(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial, consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated
with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section."

SECTION 16. Section 30-16B-8 NMSA 1978 (being Laws 1991, Chapter 112, Section 8) is amended to read:

"30-16B-8. FORFEITURES--PROPERTY SUBJECT.--Pursuant to the provisions of the Forfeiture Act, the following are subject to forfeiture:

A. all equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of the Unauthorized Recording Act;
B. all devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in and in violation of the Unauthorized Recording Act;

C. all books, business records, materials and other data that are used or intended for use in violation of Section 30-16B-3, 30-16B-4 or 30-16B-5 NMSA 1978; and

D. money or negotiable instruments that are the fruit or instrumentality of the crime."

SECTION 17. Section 30-31-34 NMSA 1978 (being Laws 1972, Chapter 84, Section 33, as amended) is amended to read:

"30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture pursuant to the provisions of the Forfeiture Act:

A. all raw materials, products and equipment of any kind, including firearms that are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section;

C. all conveyances, including aircraft, vehicles
or vessels that are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A of this section;

D. all books, records and research products and materials, including formulas, microfilm, tapes and data that are used or intended for use in violation of the Controlled Substances Act;

E. narcotics paraphernalia or money that is a fruit or instrumentality of the crime;

F. notwithstanding Subsection C of this section and the provisions of the Forfeiture Act:

(1) a conveyance used by a person as a common carrier in the transaction of business as a common carrier shall not be subject to forfeiture pursuant to this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

(2) a conveyance shall not be subject to forfeiture pursuant to this section by reason of an act or omission established for the owner to have been committed or omitted without the owner's knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered
by a bona fide security interest shall be subject to the
interest of a secured party if the secured party neither had
knowledge of nor consented to the act or omission; and

G. all drug paraphernalia as defined by Subsection V of Section 30-31-2 NMSA 1978."

SECTION 18. Section 30-31-35 NMSA 1978 (being Laws 1972, Chapter 84, Section 34, as amended) is amended to read:

"30-31-35. FORFEITURE—PROCEDURE.—The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal pursuant to the Controlled Substances Act."

SECTION 19. Section 30-31A-9 NMSA 1978 (being Laws 1983, Chapter 148, Section 9) is amended to read:

"30-31A-9. FORFEITURES—PROPERTY SUBJECT.—The following are subject to forfeiture:

A. all raw materials, products and equipment of any kind that are used in the manufacturing, compounding or processing of any imitation controlled substance in violation of the Imitation Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section; and

C. all books, records and research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of the Imitation
Controlled Substances Act."

SECTION 20. Section 30-42-4 NMSA 1978 (being Laws 1980, Chapter 40, Section 4, as amended) is amended to read:

"30-42-4. PROHIBITED ACTIVITIES--PENALTIES.--

A. It is unlawful for a person who has received proceeds derived, directly or indirectly, from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use in the acquisition of an interest in, or the establishment or operation of, an enterprise. Whoever violates this subsection is guilty of a second degree felony.

B. It is unlawful for a person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, an interest in or control of an enterprise. Whoever violates this subsection is guilty of a second degree felony.

C. It is unlawful for a person employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

D. It is unlawful for a person to conspire to violate the provisions of Subsections A through C of this
section. Whoever violates this subsection is guilty of a third degree felony.

E. Whoever is convicted of a violation of Subsection A, B, C or D of this section in addition to the prescribed penalties shall forfeit to the state of New Mexico:

(1) any interest acquired or maintained in violation of the Racketeering Act; and

(2) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over an enterprise that the person has established, operated, controlled, conducted or participated in the conduct of in violation of the Racketeering Act.

F. The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property described in Subsection E of this section."

SECTION 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR BOSTON, MASSACHUSETTS JULY 6 - JULY 12, 2013

WITH PREFATORY NOTE AND COMMENTS

COPYRIGHT © 2013 By NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

February 25, 2014
ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 122nd year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.

- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.

- ULC keeps state law up-to-date by addressing important and timely legal issues.

- ULC’s efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.

- ULC’s work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.

- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.

- ULC’s deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.
DRAFTING COMMITTEE ON UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, Chair
ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, Vice-Chair
STEPHEN Y. CHOW, 125 Summer St., Boston, MA 02110-1624
SUE ANN DERR, Oklahoma House of Representatives, State Capitol Bldg., 2300 N. Lincoln Blvd., Room 109, Oklahoma City, OK 73105
NORMAN L. GREENE, 551 5th Ave., 14th Floor, New York, NY 10176
H. LANE KNEEDLER, 900 E. Main St., Richmond, VA 23219
ESSON McKENZIE MILLER, JR., 1503 Confederate Ave., Richmond, VA 23227
MARIA DEL MAR ORTIZ-RIVERA, 2306 Calle Laurel, San Juan, PR 00913-4619
ROBERT J. TENNESSEN, 2522 Thomas Ave. S., Minneapolis, MN 55405
NORA WINKELMAN, Office of Chief Counsel, Pennsylvania House of Representatives, Room 620, Main Capitol Bldg., Harrisburg, PA 17120
SUSAN DELLER ROSS, Georgetown University Law Center, 600 New Jersey Ave. NW, Washington, DC 20001, Reporter
JOSEPH A. COLQUITT, University of Alabama School of Law, P.O. Box 870382, Tuscaloosa, AL 35487-0382, Associate Reporter

EX OFFICIO
MICHAEL HOUGHTON, 1201 N. Market St., 18th Floor, Wilmington, DE 19899, President
STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, Division Chair

AMERICAN BAR ASSOCIATION ADVISOR
MARKUS FUNK, 1900 16th St., Suite 1400, Denver, CO 80202-5255, ABA Advisor

EXECUTIVE DIRECTOR
JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, Executive Director

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

Primary support of the Uniform Law Commission Drafting Committee on the Uniform Act on Prevention of and Remedies for Human Trafficking has been provided by a generous grant from LexisNexis. The positions taken in the draft are those of the ULC drafting committee and do not necessarily reflect the views of LexisNexis.
# Uniform Act on Prevention of and Remedies for Human Trafficking

## Table of Contents

### General Provisions

- Prefatory Note
- Section 1. Short Title
- Section 2. Definitions

### Offenses and Penalties

- Section 3. Trafficking an Individual
- Section 4. Forced Labor
- Section 5. Sexual Servitude
- Section 6. Patronizing a Victim of Sexual Servitude
- Section 7. Patronizing a Minor for Commercial Sexual Activity
- Section 8. Business Entity Liability
- Section 9. Aggravating Circumstance
- Section 10. Restitution
- Section 11. Forfeiture

### Victim Protections

- Section 12. Statute of Limitations
- Section 13. Victim Confidentiality
- Section 14. Past Sexual Behavior of Victim
- Section 15. Immunity of Minor
- Section 16. Affirmative Defense of Victim
- Section 17. Motion to Vacate and Expunge Conviction
- Section 18. Civil Action

### Services to Victims

- Section 19. Council on Human Trafficking
- Section 20. Display of Public-Awareness Sign; Penalty for Failure to Display
- Section 21. Eligibility for Benefit or Service
- Section 22. Law-Enforcement Protocol
- Section 23. Grant to or Contract with Service Provider

### Miscellaneous Provisions

- Section 24. Uniformity of Application and Construction
- Section 25. Severability
- Section 26. Effective Date
UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

PREFATORY NOTE

I. History and Background of Drafting Project

The Uniform Act on Prevention of and Remedies for Human Trafficking (UAPRHT) will help ensure effective action by the fifty states, District of Columbia, Puerto Rico, and the U.S. Virgin Islands, against those who force human beings into labor or sexual servitude against their will. States have an increasingly important role to play in what is now a worldwide movement to end this modern-day slavery and will benefit in that effort from harmonized legislation that encourages coordination both within a state and across state lines.

Human trafficking is a “process crime;” as such, it encompasses each of the steps criminals take to exploit others through force or coercion into prostitution, commercial sexual activities, labor, or services. The U.S. State Department’s 2012 Trafficking in Persons Report (TIP Report) described the phenomena of trafficking in the United States:

The United States is a source, transit, and destination country for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking. Trafficking in persons can occur in many licit and illicit industries or markets, including in brothels, massage parlors, street prostitution, hotel services, hospitality, agriculture, manufacturing, janitorial services, construction, health and elder care, and domestic service, among others.

U.S. Department of State, Trafficking in Persons Report 359 (2012)

Millions are subjected to human trafficking every year. In 2012, the International Labour Organization (ILO) issued a comprehensive and sophisticated statistical analysis, finding 20.9 million people in forced labor worldwide, with 98% of sex trafficking victims and 55% of forced labor victims being women and girls (International Labour Organization, ILO Global Estimate of Forced Labour 13-14 (2012)). Fortunately, public awareness of this global problem is on the rise.

In 2010, the American Bar Association Center for Human Rights, LexisNexis, and Reed Elsevier proposed to the Uniform Law Commission (ULC) that a project be undertaken to create uniform state anti-human trafficking legislation. In the autumn of 2010, a committee was appointed to begin drafting a new uniform act dealing with prevention of and remedies for human trafficking. Over the next two years, the Committee worked with victim advocates, prosecutors, government officials, and others to draft a comprehensive act. The Act drew upon work already undertaken by many state legislatures, seeking to build on and refine that work through the addition of new up-to-date strategies, procedures, and programs. In the summer of 2013, the ULC, at its annual conference in Boston, approved the Act overwhelmingly; and just 32 days later the American Bar Association’s House of Delegates recommended the Act unanimously.
II. Divergence in Existing State Laws and the Benefits of Uniformity

The United States is a global leader of the anti-trafficking movement, starting with enactment of the federal Trafficking Victims Protection Act (TVPA) in 2000 and ratification of the International Trafficking Protocol in 2005. Dating from the enactment of the TVPA in 2000, states started to enact anti-trafficking legislation. All states have some form of human-trafficking criminal provisions. The scope of activity included within the definitions of “human trafficking” varies widely, but usually includes the core elements of coercion, deprivation of liberty, compelled conduct, and gain to the perpetrators. All states and numerous jurisdictions have trafficking laws, but more is needed to make these laws comprehensive so that perpetrators can be brought to justice, victims freed, and future victimization prevented.

Current state laws on human trafficking range from very narrow anti-prostitution statutes to much more comprehensive anti-trafficking statutes, which include provisions to deal with victim assistance, mandatory restitution awards, private civil causes of action, business liability, law enforcement training, and public education and prevention efforts. While it is encouraging that all states have recognized the need for anti-trafficking legislation, it is imperative we now assure those laws provide comprehensive tools for prosecution, prevention, coordination, and victim’s assistance.

Uniform prohibitions, enforcement approaches, and public policies enhance the overall effort to control and decrease human trafficking activity in all states. This is another strong policy reason for streamlining anti-trafficking laws and harmonizing the corresponding inter-state enforcement efforts. In this regard, the 2012 TIP Report noted:

[although state prosecutions continued to increase, protocols, policies, and training for relevant law enforcement officials and assigned dedicated personnel within state prosecutors’ offices were slow to be put in place. Existing state trafficking in person laws continued to be underutilized due to . . . inconsistent understanding of the nature of the crime, and greater familiarity with prosecuting other related crimes.]


Against this backdrop, a uniform act on human trafficking will: (i) allow states and state governments to improve coordination of enforcement, services, and policy decisions; (ii) permit states to update their laws to provide victims with greater access to remedies and legal protections; and (iii) offer states an opportunity to update their existing laws to keep pace with emerging trends in approach to prosecution, prevention and inter- and intra-state coordination efforts to eradicate human trafficking.

A uniform act on human trafficking also can unify and coordinate efforts within a state to combat human trafficking by facilitating data and information sharing among law enforcement, social service agencies, policy makers, and other interested parties. Coordination helps maximize resource allocation effectiveness and reduces inefficiencies that the current patchwork of diverging state practices creates.
III. Overview of Proposed Uniform Act

Without a concerted multi-faceted approach, no end is in sight for the destabilizing moral, legal, and economic threat that traffickers pose. This Act seeks to accomplish three main goals: provide prosecutors with a toolkit of uniform and comprehensive criminal offenses; offer remedies, protections, and services to victims so they may rebuild their lives and assist law enforcement in investigations and prosecutions; and coordinate human-trafficking activities so as to conserve scarce resources and raise public awareness.

The Act’s three distinct components provide a comprehensive roadmap for legislatively addressing the growing scourge of human trafficking. Part I establishes the substantive offenses, corresponding penalties, and a right to restitution. Part II focuses on victim protection and remedies, including civil remedies for victims. Part III sets forth an approach for states to coordinate cost-effectively their prevention and educational efforts.

A. A Clear and Complete Set of Criminal Proscriptions (Part I)

The Act’s human-trafficking offenses cover the range of core activities: trafficking an individual (Section 3); forced labor (Section 4); sexual servitude (Section 5); and patronizing a victim of sexual servitude (Section 6), while also specifically acknowledging the offenses of patronizing a minor for commercial sexual activity (Section 7) and criminal liability for business entities that knowingly engage in trafficking (Section 8). It also provides for additional penalties for certain aggravating circumstances (Section 9).

B. Essential Victim Remedies and Protections (Part II)

The Act provides states with a comprehensive set of reactive and proactive provisions addressing remedies and protections for victims. Mandatory restitution after a human-trafficking conviction is a key remedy for victims of human trafficking (Section 10), as is the victim’s right to bring a civil action for damages (Section 18). The Act also provides for forfeiture (Section 11) and a long statute of limitations appropriate to the nature of the crime (Section 12).

In response to perpetrators’ efforts to silence victims through intimidation, the Act requires that the confidentiality of victim-identifying information be maintained (Section 13). Similarly, a victim’s past sexual history may not be used as evidence against the victim in a prosecution for human trafficking or in a civil action for damages arising from human-trafficking activities (Section 14).

The Act recognizes that trafficking victims may seek relief in the form of an affirmative defense from charges of prostitution and a limited class of non-violent offenses if the conduct arose as a direct result of their status as a victim (Section 16). In addition, to begin the process of allowing victims to rebuild their lives, the Act permits victims to file a motion to vacate convictions for prostitution or other nonviolent offenses which arose as a direct result of being a human-trafficking victim (Section 17). Minors are offered immunity from prosecution for the same crimes if committed as the direct result of being a human-trafficking victim (Section 15). The immunity section protects children who commit prostitution as a result of being a human-
trafficking victim from being criminally liable and ensures they receive the services needed under existing state child protection statutes (Section 15).

C. State Coordination (Part III)

The Human Trafficking Council (Section 19) is responsible for building public awareness, coordinating activities among stakeholders (such as law enforcement, service providers, and state government), and ensuring victims are provided needed services. Members are appointed from among state and local agencies, NGOs, and other experts in the field who work with victims.

The Council is tasked with developing a coordinated and comprehensive plan for providing victims with services (Sections 19(c)(1), 21, and 23). In addition, the Council will develop the planning, training, and public education needed to have an effective action plan (Sections 19(c)(3)-(5) and 20). It will collect and evaluate data on human trafficking within the state and submit an annual report to the Governor and legislature (Section 19(c)(2)). To minimize fiscal impact, it is envisioned that the Council will be established within an existing state department and the state agencies represented on the Council will provide necessary staffing (Section 19(b)).

Victims need access to existing governmental service for their own wellbeing and to ensure effective prosecution and conviction of criminals. The federal TVPA is in place to provide funding for foreign victims who cooperate with law enforcement officials in investigating and prosecuting crimes. These individuals are able to receive visas and are eligible for federal benefits. In order to ensure both the federal benefits and victim cooperation, the Act sets up a protocol for law enforcement officials to fill out the simple law enforcement officer form posted by the United States Citizenship and Immigration Services on its Internet website if the officials think the individuals are trafficking victims who meet the relevant criteria (Section 22).

IV. Conclusion

Each year, millions of adults and children around the world fall victim to human traffickers, suffering terrible subjugation and maltreatment. This growing, increasingly-organized epidemic of human trafficking demands a coordinated, comprehensive response.
UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR
HUMAN TRAFFICKING

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Act on Prevention of and Remedies for Human Trafficking.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Adult” means an individual 18 years of age or older.

(2) “Coercion” means:

    (A) the use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;

    (B) the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;

    (C) the abuse or threatened abuse of law or legal process;

    (D) controlling or threatening to control an individual’s access to a controlled substance as defined in [insert the appropriate state code sections defining controlled substances];

    (E) the destruction or taking of or the threatened destruction or taking of an individual’s identification document or other property;

    (F) the use of debt bondage;

    (G) the use of an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function;

or

    (H) the commission of civil or criminal fraud.
(3) “Commercial sexual activity” means sexual activity for which anything of value is given to, promised to, or received, by a person.

(4) “Debt bondage” means inducing an individual to provide:

(A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) labor or services in payment toward or satisfaction of a real or purported debt if:

(i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) “Human trafficking” means the commission of an offense created by Sections 3 through 7.

(6) “Identification document” means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

(7) “Labor or services” means activity having economic value.

(8) “Minor” means an individual less than 18 years of age.

(9) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency, or instrumentality.

(10) “Serious harm” means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable
individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.


(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(13) “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this [act] been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

Legislative Note: For Section 2(2)(D), an enacting state should ensure that all controlled substances statutes or schedules are cited in the space indicated by brackets. The term “controlled substances” should include any drug that has been declared by state or federal law to be illegal for sale, use, or possession unless lawfully dispensed under a prescription. Thus, threatening to control a victim’s access to either prescription drugs (such as benzodiazepines or gabapentin) or unlawful drugs (such as heroin or methamphetamine) should constitute coercion. Some criminal controlled substances statutes or schedules may not address prescription drugs, so enacting states should ensure that all appropriate statutes are cited.

For Section 2(11), a state either may cite its state laws on prostitution and similar crimes or name specific sex acts, such as sexual intercourse, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another’s body, and the stimulation by hand or an object of another individual’s genitals or breasts for the purpose of arousing or gratifying the sexual desire of any individual.

Section 2 does not define “knowingly” or “knows,” both of which are used in this Act. See Sections 3 through 6 and 8. An enacting state may rely on an existing statutory definition in the general criminal code or a definition drawn from case law as the circumstances dictate. Alternatively, the state could insert a statutory definition in Section 2. An example of such a definition is: “Knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard of an element, fact, or circumstance.
Comment


2. “Coercion.” All states with anti-trafficking laws include some of the elements of Section 2(2)’s definition of ‘coercion.’ These laws vary widely: some offer a limited list of means of coercion while others provide more comprehensive definitions. The Act draws upon state definitions that identify means of coercion specifically linked to human trafficking (such as those of Alabama, Oklahoma, and Vermont) and from the TVPA in order to capture the broad range of techniques used by traffickers to coerce their victims. See, e.g., Ala. Code § 13A-6-151(1); Vt. Stat. Ann. tit. 13 §§ 2652(a)(5), 2651(7), 2651(2); 18 U.S.C. §§ 1589(a)(1), 1591(a), 1591(e)(2) (2006).

The most frequent forms of coercion found in existing statutes are set forth in Section 2(2)(A) and (B). They focus on the use of force, abduction, restraint, and the threat of serious harm, and are widely covered by many states and the TVPA. See, e.g., Wyo. Stat. Ann. § 6-2-701(a)(ii)(A) (“Coercion” means any one (1) or more of the following: (A) The use or threat of force, abduction, serious harm to or physical restraint against any individual”), Fla. Stat. § 787.06(2)(a)(1)-(2) (force and restraint); and N.Y. Penal Law §§ 135.35(4) and 230.34(5)(a) (same). See 18 U.S.C. § 1589(a), 1591(a)(2).

Coercion through the abuse of the law or legal process (Section 2(2)(C)), coercion through drug addiction (Section 2(2)(D)) or the destruction or taking of identification documents (Section 2(2)(E)), and the use of fraud (Section 2(2)(H)) are forms of coercion included in numerous state statutes, while states such as Alabama, Oklahoma, and Vermont include the use of debt bondage (Section 2(2)(F)). The Act also defines coercion to include abuse of an individual’s physical or mental impairment (Section 2(2)(G)). This is a form of coercion recently identified as a method used by human traffickers.

3. “Debt bondage.” Section 2(4) defines the term “debt bondage” identified in Section 2(2)(F) as one form of coercion. Section 2(4)(A) defines a specific form of debt bondage: requiring victims to engage in commercial sexual activity, including prostitution, as the way to pay off a real or purported debt. See N.Y. Penal Law § 230.34(4). Section 2(4)(B) defines another form of debt bondage: inducing a person to perform labor or services when someone is forced to work off a debt and the debt effectively can never be paid off because the work is so undervalued. See Ala. Code § 13A-6-151(2)(b) and N.Y. Penal Law § 135.35(2). Inflated debts are also a means of keeping workers in debt bondage. By 2013, at least twenty-eight states and one U.S. territory had prohibited debt bondage through their trafficking statutes. The federal law
equivalent is the prohibition of peonage in 18 U.S.C. § 1581(a).

4. “Serious harm.” The concept of “serious harm” is used in the definition of “coercion” in Sections 2(2)(A) and (B), and so is defined in Section 2(10). The definition in many state laws mirrors that of the TVPA. 18 U.S.C. §§ 1589(c)(2), 1591(e)(4).

5. “Minor.” Section 2(8) makes clear all children under 18 are considered minors for the purpose of the protections under the Act.

6. “Person.” The standard ULC definition is used in Section 2(9).

7. “Sexual activity.” Many traffickers make money from using children in, or forcing adults into, commercial sexual activity. It is necessary to define the sex acts in question, which Sections 2(3) (“commercial sexual activity”) and 2(11) (“sexual activity”) are designed to do.

SECTION 3. TRAFFICKING AN INDIVIDUAL.

(a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

(1) forced labor in violation of Section 4; or

(2) sexual servitude in violation of Section 5.

(b) Trafficking an individual who is an adult is a [class c felony].

(c) Trafficking an individual who is a minor is a [class b felony].

Legislative Note: A state should ensure that the offense classifications [class b through d] in this act are modified to correspond with the existing grading and punishment ranges of the state. The three classes of felonies in the act are not intended to restrict legislative discretion in the classification of offenses.

Comment

Section 3 identifies the various elements which make up the act of trafficking. The trafficking of individuals is a multi-step process during which different criminal actors may take different steps to subjugate victims into commercial sexual activity or forced labor. Thus, Section 3 defines the offense of trafficking to enable prosecutors to pursue any of the criminal actors in the sequence. More than forty states have sex-trafficking crimes and labor-trafficking crimes that address the process of trafficking by the ways victims are recruited, moved, and received into forced labor or sex work; however, significant disparity exists among these state laws as many do not criminalize the full range of actions as Section 3 does.
SECTION 4. FORCED LABOR.

(a) A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when such conduct is permissible under federal law or law of this state other than this [act].

(b) Forced labor of an individual who is an adult is a [class c felony].

(c) Forced labor of an individual who is a minor is a [class b felony].

Comment

Section 4 criminalizes the use of coercion to compel people to work against their will. At least thirty states have specific criminal provisions for forced labor or servitude as part of their human-trafficking statutes. The District of Columbia and Wyoming provide examples of state laws with comparable language. See D.C. Code § 22-1832: “Forced labor. (a) It is unlawful for an individual or a business knowingly to use coercion to cause a person to provide labor or services.”; Wyo. Stat. Ann. § 6-2-704: “Forced labor or servitude; penalty (a) A person is guilty of forced labor or servitude when the person intentionally, knowingly or recklessly uses coercion, deception or fraud to compel an individual to provide forced services.” The TVPA also makes forced labor a crime. See 18 U.S.C. § 1589(a) (2006). Subsection 4(a) also clarifies that both parents and employers may engage in legally permitted activities to control behavior and exert discipline.

SECTION 5. SEXUAL SERVITUDE.

(a) A person commits the offense of sexual servitude if the person knowingly:

(1) maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

(2) uses coercion or deception to compel an adult to engage in commercial sexual activity.

(b) It is not a defense in a prosecution under subsection (a)(1) that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(c) Sexual servitude under subsection (a)(1) is a [class b felony].

(d) Sexual servitude under subsection (a)(2) is a [class c felony].
Section 5 addresses sexual servitude directed at two classes of victims: minors and adults. For minors, who are protected by subsection (a)(1), no coercion or deception is required for prosecution; simply providing a child under 18 to others for the purpose of commercial sexual activity is the crime. Minors are deemed to be legally incapable of consenting to participating in commercial sexual activity, which is the same concept that underlies statutory rape laws. For adults, who are protected by subsection (a)(2), the criminal actor uses coercion or deception to compel the adult to engage in the commercial sexual activity.

Several states make sexual servitude of a minor a separate offense, in addition to the offense of trafficking a minor for sexual servitude. Delaware provides an example: “A person is guilty of sexual servitude of a minor when the person knowingly . . . [c]auses a minor to engage in commercial sexual activity or a sexually explicit performance. . . .” Del. Code Ann. tit. 11, § 787(b)(2)(b). Alaska, Georgia, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, North Carolina, Oregon, Tennessee, and Wyoming have similar provisions.

At least fifteen states explicitly criminalize sexual servitude of adults separately from the provisions making the trafficking of adults for the purpose of sexual servitude a crime. Alabama provides an example: “(a) A person commits the crime of human trafficking in the first degree if: (1) He or she knowingly subjects another person to . . . sexual servitude through use of coercion or deception.” Ala. Code § 13A-6-152(a).

SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.

(a) A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

(b) Patronizing a victim of sexual servitude who is an adult is a [class d felony].

(c) Patronizing a victim of sexual servitude who is a minor is a [class c felony].

Comment

Section 6 makes knowingly patronizing a victim of sexual servitude a separate offense from mere patronizing, thereby helping to reduce the demand that leads traffickers to bring children into commercial sexual activity and to coerce adults into it. If the patron knows the individual is a victim of sexual servitude, patronizing for commercial sexual activity is a class c felony when the victim is a minor, but a class d felony when the victim is an adult.

Vermont provides an example of such a provision: “(a) No person shall knowingly

[SECTION 7. PATRONIZING A MINOR FOR COMMERCIAL SEXUAL ACTIVITY.

(a) A person commits the offense of patronizing a minor for commercial sexual activity if:

(1) with the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

(2) the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

(b) Patronizing a minor for commercial sexual activity under subsection (a)(1) is a [class b felony].

(c) Patronizing a minor for commercial sexual activity under subsection (a)(2) is a [class c felony].]

Legislative Note: A majority of states already have statutes addressing the offense of commercial sexual abuse of a minor or patronizing a minor. If a state has a provision comparable to Section 7, the state may elect to keep its existing provision. If the existing provision is codified elsewhere, the state may insert a note following Section 6 which states that the offense of patronizing a minor is provided for in [cite relevant state law]. For those states that do not have an existing statute addressing this offense, the language in bracketed Section 7 should be used.

Comment

Section 7 is directed toward reducing demand among patrons for commercial sexual activity with minors by raising the penalty level in existing state statutes to reflect the gravity of the offense. Subsection (a)(1) is a specific intent crime and therefore carries a higher range of punishment than subsection (a)(2), which is a strict liability offense. Subsection 7(a)(1) focuses
on the worst predators, those who intentionally seek out children as their sexual objects; accordingly, it is a class b felony for these perpetrators. Minnesota has a similar law for patrons who intentionally hire minors to engage in prostitution. See Minn. Stat. Ann. § 609.324(subdiv. 1).

Subsection 7(a)(2), in contrast, focuses on those without this specific mens rea, but who pay for commercial sexual activity with minors; accordingly, it is a class c felony for them. Subsection 7(a)(2) is similar to a Washington state law aimed at “commercial sexual abuse of a minor.” Wash. Rev. Code § 9.68A.100(1).

SECTION 8. BUSINESS ENTITY LIABILITY.

(a) A person that is a business entity may be prosecuted for an offense under Sections 3 through 7 only if:

(1) the entity knowingly engages in conduct that constitutes human trafficking; or

(2) an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this [act] for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

(b) When a person that is a business entity is prosecuted for an offense under Sections 3 through 7, the court may consider the severity of the entity’s conduct and order penalties in addition to those otherwise provided for the offense, including:

(1) a fine of not more than $[1,000,000] per offense;

(2) disgorgement of profit from activity in violation of this [act]; and

(3) debarment from state and local government contracts.

Comment

Many states have provisions within their general human-trafficking offense statutes specifically establishing business liability for criminal trafficking offenses. These laws fall into three categories: (1) describing the specific criteria for when a business entity may be found liable (as distinguished from individual criminal liability); (2) imposing additional penalties for businesses convicted of human trafficking; and, (3) specifying that both individuals and businesses can commit these offenses. Section 8 draws on all three categories by establishing the
standard to be used in deciding whether a business entity is liable, listing additional penalties for business entities found criminally liable, and specifying that businesses can be held criminally liable. This Section also establishes that businesses are liable only for the acts of agents or employees under the specific and limited circumstances when the company knows of an ongoing pattern of illegal activity and does not take steps to stop the human trafficking conduct from which it is benefitting.

It is generally accepted that criminal statutes applying to the actions of a “person” reach business entities. Several states (the District of Columbia, Hawaii, Rhode Island, and South Carolina) specifically include businesses as subject to criminal liability within their trafficking offenses. For example, the District of Columbia specifies that forced labor, debt bondage, labor or sex trafficking, and sex trafficking of children are “unlawful for an individual or a business.” D.C. Code §§ 22-1832-1836.

Section 8 draws upon the laws of four states (Alabama, Georgia, Mississippi, and Tennessee) that specify the liability standard for businesses. See, e.g., Ga. Code Ann. § 16-5-46(j). Nine states (Arkansas, Hawaii, Massachusetts, Minnesota, Mississippi, Missouri, South Carolina, Vermont, and Wisconsin) provide that in addition to the sanctions provided within the trafficking offenses themselves, other sanctions may be imposed on businesses convicted of violating human trafficking criminal laws. See, e.g., Minn. Stat. Ann. § 609.284 (permitting dissolution, revocation of a state license, or surrender of a state charter). Massachusetts permits a fine of up to $1,000,000 for both sex and labor trafficking. Mass. Gen. Laws. ch. 265, §§ 50(c), 51(c).

[SECTION 9. AGGRAVATING CIRCUMSTANCE.

(a) An aggravating circumstance during the commission of an offense under Section 3, 4, or 5 occurs when [:

(1)] the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless[; or

(2) [insert any additional aggravating factor]].

(b) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under Section 3, 4, or 5, the defendant may be imprisoned for up to [five] years in addition to the period of imprisonment prescribed for the offense.]

Legislative Note: A state should examine its existing aggravating circumstances provisions to ensure that they cover the human-trafficking offenses created by this act. If the state has no
general statutory provision covering aggravating circumstances, bracketed Section 9 provides a model. The circumstance set forth in Section 9(a)(1) is specific to human trafficking. The state also should include other pertinent aggravating circumstances not otherwise provided for by state law.

**SECTION 10. RESTITUTION.**

(a) The court shall order a person convicted of an offense under Section 3, 4, or 5 to pay restitution to the victim of the offense for:

1. expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney’s fees and costs; and

2. an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
   
   A) the gross income to the defendant for, or the value to the defendant of, the victim’s labor or services or sexual activity;
   
   B) the amount the defendant contracted to pay the victim; or
   
   C) the value of the victim’s labor or services or sexual activity, calculated under the minimum-wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.[, as amended,] or [cite state minimum-wage and overtime provisions], whichever is higher, even if the provisions do not apply to the victim’s labor or services or sexual activity.

(b) The court shall order restitution under subsection (a) even if the victim is unavailable to accept payment of restitution.

(c) If the victim does not claim restitution ordered under subsection (a) for five years after entry of the order, the restitution must be paid to the [[Council on Human Trafficking created under Section 19] [[insert applicable state-crime-victims compensation fund] to help victims].
**Legislative Note:** A state should choose whether the restitution money available after [five] years under subsection (c) should be paid to the Council on Human Trafficking, if one exists, or to the state-crime-victims compensation fund and delete the bracket not chosen.

A state will omit the bracketed language “[. as amended.]” if the state constitution or judicial decisions prohibit incorporating future changes to federal law as an impermissible delegation of state authority.

**Comment**

Section 10 mandates that defendants convicted of trafficking an individual, forced labor, or sexual servitude offenses pay restitution to their victims. Trafficking victims suffer losses ranging from immediate medical, housing, and other survival needs once they are rescued from the trafficking situation to the lost opportunity to work in lawful and non-coerced employment. The section envisions a comprehensive assessment of the victim’s financial losses and requires restitution for expenses incurred once they are no longer in the situation of forced labor or sexual servitude. These expenses include such costs as medical care, therapy and psychological counseling, temporary housing, transportation, childcare, physical and occupational therapy or rehabilitation, funeral and burial services, and reasonable attorney’s fees and court costs. These expenses include both those incurred at the time of defendant’s criminal conviction and for those reasonably certain to be incurred in the future.

In addition, subsection 10(a)(2) provides three ways to value the lost opportunity to earn employee wages suffered by victims and requires the court to award the greatest of the amounts. First, a court may order the perpetrator to pay to the victim the gross income or value to the defendant of the victim’s labor or activity, or second, the amount the defendant promised to pay the victim. Third, if neither of these two measures can be adequately calculated, or an alternative formula yields a higher amount, the alternative formula values the time a victim worked at the highest level set by the state or federal minimum wage and overtime pay requirements. The use of the minimum wage as a means for calculating restitution is not meant to value the hardship victims have suffered, it merely serves as a basis for calculating a victim’s lost opportunity to work when no other adequate way to measure this form of restitution exists or the alternatives provide a lower amount.

At least twenty-one states (Alabama, Arizona, Delaware, Hawaii, Idaho, Illinois, Indiana, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Wyoming) mandate restitution to the victim of human trafficking. The TVPA also mandates restitution to the victim to cover the full amount of the victim’s losses plus “the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.” 18 U.S.C. § 1593(b)(1) (2006).
SECTION 11. FORFEITURE.

(a) On motion, the court shall order a person convicted of an offense under Section 3, 4, or 5 to forfeit any interest in real or personal property that:

(1) was used or intended to be used to commit or facilitate the commission of the offense; or

(2) constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(b) In a proceeding against real or personal property under this section, the person convicted of the offense may assert a defense that the forfeiture is manifestly disproportional to the seriousness of the offense. The person has the burden to establish the defense by a preponderance of the evidence.

(c) Proceeds from the public sale or auction of property forfeited under subsection (a) must be distributed in the manner provided for the distribution of the proceeds of [criminal forfeitures] [judicial sales].

Legislative Note: A state should examine its existing forfeiture provisions to ensure that they cover the human-trafficking offenses created by this act. States with such provisions should: (1) follow the procedures outlined in those provisions to proceed against real and personal property used as an instrumentality in committing the offense and real and personal property derived from the proceeds of the offense; (2) rely on existing procedures and judicial discretion to determine whether the seizure of assets is proportional to the criminal activity at issue; and (3) ensure that proceeds from the public sale or auction of property forfeited are distributed first to a victim who has been awarded restitution or obtained a judgment in a civil action for a human-trafficking offense, such as the action authorized by Section 18. If a state has no general forfeiture statute, the bracketed section provides a model for inclusion in this act.

Comment

States use post-conviction asset forfeiture to help assure victims receive court-ordered restitution and damages to make traffickers pay for the cost of services for victims, and to deter people from engaging in human trafficking through the threat of an additional financial penalty. At least thirty-two states provide for forfeiture upon conviction of a human-trafficking offense: of these, at least thirteen states, including Alabama, California, Illinois, Massachusetts,
Minnesota, New Hampshire, Tennessee, and South Carolina, have innovative provisions insuring that the assets be used to pay restitution and damages to the victims or to victim-service providers or to both. See, e.g., Ala. Code § 13A-6-156; N.H. Rev. Stat. Ann. § 633:8; Tenn. Code Ann. § 39-13-312.

Section 11 further provides a specific defense against the disproportionate seizure of property. This is in addition to other existing defenses, such as the innocent owner defense.

[SECTION 12. STATUTE OF LIMITATIONS. A prosecution for an offense under this [act] must be commenced not later than 20 years after commission of the offense.]

Legislative Note: Many states already have statutes of limitations for criminal offenses. An enacting state should ensure that its statute of limitations includes the offenses created by this act. For a state that does not already have an applicable statute of limitation, the language in Section 12 should be used.

Comment

Citation to more than one statute of limitation may be necessary because a state’s existing laws may establish different time limits for diverse offenses and ranges of punishment, such as subsection 5(c) (sexual servitude of a minor, a class b felony) and subsection 6(b) (patronizing a victim of sexual servitude who is an adult, a class d felony).

SECTION 13. VICTIM CONFIDENTIALITY. In an investigation of or a prosecution for an offense under this [act], [law-enforcement officers and prosecuting agencies] shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

(1) necessary for the purpose of investigation or prosecution;

(2) required by law or court order; or

(3) necessary to ensure provision of services or benefits for the victim or the victim’s family.

Comment

Law enforcement officials are to keep the identity and pictures of victims and their families confidential both to protect them from traffickers and to lessen the impact of the adverse publicity. Several states and other jurisdictions already mandate this protection, including Massachusetts, Mississippi, Missouri, Oklahoma, South Carolina, and Wyoming. See, e.g., Okla. Stat. tit. 21, § 748.2(A)(6)(b) (protecting the victim’s safety by “ensuring that the names
and identifying information of trafficked persons and their family members are not disclosed to
the public.”); Wyo. Stat. Ann. § 6-2-709(e) (“police and prosecuting agencies shall keep the
identity of the victim and the victim's family confidential”).

**SECTION 14. PAST SEXUAL BEHAVIOR OF VICTIM.** In a prosecution for an
offense under this [act] or a civil action under Section 18, evidence of a specific instance of the
alleged victim’s past sexual behavior or reputation or opinion evidence of past sexual behavior of
the alleged victim is not admissible unless the evidence is:

1. admitted in accordance with [cite state’s rape-shield evidence rule or statute]; or
2. offered by the prosecution to prove a pattern of human trafficking by the defendant.

*Legislative Note:* A state should ensure that the state’s rape-shield evidence rule or statute,
including the relevant procedures, apply to both civil and criminal proceedings and contain no
provision that conflicts with the purpose of this section.

*Comment*

Under Section 14, courts would apply their state’s rape shield laws in both criminal
prosecutions and civil actions for damages under this act. Many states have such provisions in
their human-trafficking laws, including Alabama, the District of Columbia, Georgia,
Massachusetts, Mississippi, New Hampshire, New Jersey, South Carolina, Vermont, Virginia,
and Wisconsin. See, e.g., D.C. Code § 22-1839 (rejecting use of “reputation or opinion evidence
of the past sexual behavior of the alleged victim” in human-trafficking cases and rejecting
evidence of victim’s “past sexual behavior” unless admitted in accordance with rape shield law).
Under Alabama law, a person charged with human trafficking may not introduce evidence of the
victim’s past sexual history or commercial sexual activity as a defense. See Ala. Code § 13A-6-
154.

**SECTION 15. IMMUNITY OF MINOR.**

(a) An individual is not criminally liable or subject to a [juvenile-delinquency
proceeding] for [prostitution] or [insert other nonviolent offenses] if the individual was a minor
at the time of the offense and committed the offense as a direct result of being a victim.

(b) An individual who has engaged in commercial sexual activity is not criminally liable
or subject to a [juvenile-delinquency proceeding] for [prostitution] if the individual was a minor
at the time of the offense.
(c) A minor who under subsection (a) or (b) is not subject to criminal liability or a
[juvenile-delinquency proceeding] is presumed to be a [child in need of services] under [cite
child-protection statutes].

(d) This section does not apply in a prosecution or a [juvenile-delinquency proceeding]
for [patronizing a prostitute].

Legislative Note: A state should determine the other nonviolent offenses to be immunized by
subsection (a). Examples of nonviolent offenses might include forgery, possession of stolen
property, shoplifting, or issuing worthless checks. The offenses selected by the enacting state
should be added to the provision in place of the third bracket. In a state where a term is used
other than “prostitution” or “patronizing a prostitute,” the term should be substituted in the
second bracket in subsections (a), (b), and (d).

Any state that does not adopt this Section must ensure affected minors are referred to an
appropriate state-sponsored diversion program whereby a criminal conviction may be dismissed
and expunged when a minor has undertaken certain counseling and educational programs.

Comment

Section 15 ensures all children under age 18 who engage in acts of child prostitution or
similar offenses are treated as victims of commercial sexual exploitation rather than as juvenile
delinquents or criminals. This policy recognizes these children were lured or coerced into these
activities by persons who took advantage of their immaturity and special vulnerability. In
addition, the safe harbor laws seek to ensure these children receive essential services, such as
housing, medical care, and counseling, to recover from the exploitation and abuse they suffered.

Subsections (a) and (b) achieve these goals by immunizing minor victims of human
trafficking and commercial sexual exploitation for certain nonviolent offenses specified by a
state. Immunity is provided because minor victims of human trafficking should not be viewed as
legally capable of consenting to their own commercial sexual exploitation. Immunity in such
cases recognizes the facts that: (a) the real culpability for the offenses of the minor resides with
the coercing or exploiting party; and (b) the minor is a child in need of counseling, treatment,
and support rather than prosecution. Subsection (c) is directed toward the child’s needs by
requiring that the child receive the needed services under the state’s child-protection statutes.

As of 2013, more than a dozen states had passed such laws, including Colorado,
Connecticut, Florida, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New
Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Wyoming. See, e.g., 720 Ill.
Comp. Stat. Ann. § 5/11-14(d) (child under 18 “immune from prosecution for a prostitution
are victims of trafficking may be treated as persons in need of care or supervision, as subsection
For those states that have not yet established immunity for minors, an alternate approach has been successfully implemented in a number of states. In those states a minor is diverted by the court into an appropriate program and designated as a child in need of protective services in lieu of criminal prosecution or juvenile delinquency proceedings. Massachusetts, Ohio, and Washington are states that have enacted diversion provisions as an alternative to an immunity provision. See, e.g., Mass. Gen. Laws ch. 119 § 39L; Ohio Rev. Code Ann. § 2152.021(F)(1)(b); and Wash. Rev. Code Ann. § 13.40.213. In Ohio, diversion is available if the minor first completes “diversion actions” (e.g., treatment) established by a court. In such a case, the court will dismiss and expunge the underlying criminal charge. In Massachusetts, a child who engages in prostitution-related acts is recognized under the law as a “sexually exploited child” eligible to participate in certain diversion programs and entitled to access to an advocate. Once the minor completes certain court-ordered programs, the criminal charges will be dismissed.

SECTION 16. AFFIRMATIVE DEFENSE OF VICTIM. An individual charged with [prostitution] or [insert other nonviolent offenses] committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

Legislative Note: In a state where a term is used other than “prostitution,” the term should be substituted in the first bracket. A state should determine the other nonviolent offenses to be subject to the affirmative defense established in this section. Those offenses should be added to the provision in place of the second bracket.

Comment

Section 16 provides an affirmative defense for those charged with prostitution and other nonviolent offenses when the acts were committed as a direct result of being a human-trafficking victim. States including Alabama, Arkansas, Connecticut, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, and Wyoming have enacted similar statutes. See, e.g., Ala. Code § 13A-6-159 (being a “victim of human trafficking” is “an affirmative defense” to “prosecution for prostitution, or a sexually explicit performance” for acts “performed as a result of labor servitude or sexual servitude”); Wyo. Stat. Ann. § 6–2–708(a).

SECTION 17. MOTION TO VACATE AND EXPunge CONVICTION.

(a) An individual convicted of [prostitution] or [insert other nonviolent offenses] committed as a direct result of being a victim may apply by motion to [insert name of appropriate court] to vacate the conviction and expunge the record of conviction. The court may grant the motion on a finding that the individual’s participation in the offense was a direct result
of being a victim.

(b) No official determination or documentation is required to grant a motion by an individual under subsection (a), but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual’s participation was a direct result of being a victim.

(c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted are governed by [insert the appropriate state code section governing post-conviction-relief procedures].

Legislative Note: A state should determine the other nonviolent offenses to be subject to post-conviction review under subsection (a). Those offenses should be added to the provision in place of the second bracket. In a state where a term is used other than “prostitution,” that term should be substituted in the first bracket.

Because some states specify the sentencing court as the proper court to hear post-conviction motions, a state also should identify the appropriate court to hear a motion to vacate a conviction under this section by inserting the appropriate court in place of the third bracket. A state should cite the appropriate statute or rule governing post-conviction-relief procedures in place of the bracket in subsection (c).

Comment

Section 17 provides those forced to commit prostitution and other nonviolent offenses as a direct result of being a victim the opportunity to “clear their records and start anew” once they are free from their traffickers. Victims may move the appropriate court to vacate the conviction. Several states permit this option, including Connecticut, Hawaii, Illinois, Maryland, Nevada, New Jersey, New York, Vermont, Washington, and Wyoming. See, e.g., N.Y. Crim. Proc. Law § 440.10. Arkansas and Colorado have similar provisions authorizing the sealing of the conviction. See Ark. Code Ann. § 16-90-123.

SECTION 18. CIVIL ACTION.

(a) A victim may bring a civil action against a person that commits an offense against the victim under Section 3, 4, or 5 for [actual] [compensatory] damages, punitive damages, injunctive relief, and any other appropriate relief.

(b) If a victim prevails in an action under this section, the court shall award the victim
reasonable attorney’s fees and costs.

(c) An action under this section must be commenced not later than [10] years after the later of the date on which the victim:

(1) no longer was subject to human trafficking; or

(2) attained 18 years of age.

(d) Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to Section 10 for the same item.

(e) This section does not preclude any other remedy available to a victim under federal law or law of this state other than this [act].

Legislative Note: The question of whether the civil action survives the victim’s death should be addressed by the state’s survival statute.

Comment

Twenty-six states and other jurisdictions explicitly provide victims with a private right of action to sue the trafficker, as does the TVPA. See Tenn. Code Ann. § 39-13-314(b), 18 U.S.C. § 1595. The state and federal statutes make attorney’s fees and costs available to prevailing plaintiffs. The states include Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin. Civil actions are an important tool for victims to recover damages for the abuse they have suffered and may help provide the resources needed during the recovery process. They also enable victims to obtain relief even when state prosecutors are unable to bring a criminal prosecution.

Subsection (c) suggests a longer, 10-year statute of limitations for bringing an action than some general state limitations statutes provide because a victim’s trauma may preclude seeking assistance from law enforcement or others for an extended period of time.

[SECTION 19. [COUNCIL] ON HUMAN TRAFFICKING.

(a) The [Council] on Human Trafficking is created in [designate state department]. The [Governor] shall appoint the chair and members of the [council]. Members must include representatives of:
(1) [state, local, or tribal agencies] that have contact with victims or perpetrators;

(2) nongovernmental organizations that represent, advocate for, or provide services to victims; and

(3) other organizations and individuals, including victims, whose expertise would benefit the [council].

(b) The [state agencies] represented on the [council] created under this section shall provide staff to the [council].

(c) The [council] created under this section shall meet on a regular basis and:

(1) develop a coordinated and comprehensive plan to provide victims with services;

(2) collect and evaluate data on human trafficking in this state and submit an annual report to the [Governor] [and Legislature];

(3) promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

(4) create a public-awareness sign that contains the [[state][,] [local][,] and] National Human Trafficking Resource Center hotline information;

(5) coordinate training on human-trafficking prevention and victim services for state [and local] employees who may have recurring contact with victims or perpetrators; and

(6) conduct other appropriate activities.]

**Legislative Note:** States will determine the proper authority for appointing members of the Council on Human Trafficking. The appointing authority need not be exclusively the executive branch.

The appropriate state agency or agencies should be inserted to replace the bracketed term “state agency” or “state agencies” in subsections (a) and (b).

In states where a state or local hotline operates and is comparable to the national hotline
operated by the National Human Trafficking Resource Center, the appropriate language in the brackets in subsection (c)(4) should be added.

Comment

States can more efficiently and effectively work to prevent trafficking if there is a central coordinating body in place. Different governmental and nongovernmental entities are involved in trafficking prevention, law enforcement, and victims’ advocacy – each has special areas of competence, authority, jurisdiction, and expertise.

Section 19 authorizes the Governor or other state entity to appoint members of a human-trafficking council. To reduce the fiscal impact of the council, it is placed within an existing state department or agency, and the state agencies on the council provide staffing.

Many states have already created such entities, including Connecticut, Louisiana, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, North Carolina, Rhode Island, South Carolina, and Washington. See, e.g., Conn. Gen. Stat. Ann. § 46a-170; N.C. Gen. Stat. Ann. § 15.3A; S.C. Code Ann. § 16-3-2050. Task forces generally include representatives from state and local law enforcement, state prosecutors, labor and agricultural regulators, state health and human services agencies, education and transportation departments, non-governmental victim service providers, medical professionals, human trafficking experts, and victims themselves.

Subsection (c) sets out the duties needed for effective coordination of services, prevention, public-awareness measures, and prosecution, which include plans for victim services, data collection and analysis, public awareness, a hotline number, and state and local employee training.

Paragraph (4) references the National Human Trafficking Resource Center hotline. This is a federally-supported program run by the Polaris Project. The Polaris Project is a leading research organization on anti-trafficking law and policy and has developed specific recommendations for the creation and use of these signs.

Paragraph (5) calls for the human trafficking council to coordinate the training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.

[SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO DISPLAY.

(a) The [state transportation department] shall display a public-awareness sign that contains the [[state][,] [local][,] and] National Human Trafficking Resource Center hotline information in every transportation station, rest area, and welcome center in the state which is
(b) An employer shall display the public-awareness sign described in subsection (a) in a place that is clearly conspicuous and visible to employees and the public at each of the following locations in this state at which the employer has employees:

(1) a strip club or other sexually-oriented business;

(2) a business entity found to be a nuisance for prostitution under [cite state nuisance law];

(3) a job-recruitment center;

(4) a hospital; or

(5) an emergency-care provider.

(c) The [state labor department] shall impose a [fine] of $[300] per violation on an employer that knowingly fails to comply with subsection (b). The [fine] is the exclusive remedy for failure to comply.

Legislative Note: In states where a state or local hotline operates and is comparable to the national hotline operated by the National Human Trafficking Resource Center, the appropriate language in the brackets in subsection (a) should be added.

Comment

Section 20 is a key instrument for educating the public about human trafficking: the display of the public-awareness sign. The section requires display of the sign at locations such as transportation centers, state welcome areas, and hospitals, as well as in sexually-oriented businesses.

To ensure that employers display the sign, subsection (c) requires imposing a fine for knowing failure to display the sign. The amount of the fine should be similar to the state fines imposed for similar workplace rules, and should ordinarily be not less than $300.

Several states have such laws, including Alabama, Arkansas, California, Louisiana, Maryland, Nebraska, Ohio, Tennessee, Vermont, Virginia, and Washington. See, e.g., Md. Code Ann., Bus. Reg. §§ 15-207, 19-103 (requiring the state to design an informational sign and also permitting a state, county, or municipal law enforcement agency to issue a civil citation to any lodging establishment where there are arrests for sex trafficking to post the sign in each of its
guest rooms, subject to a $1,000 fine for non-compliance); Wash. Rev. Code Ann. § 47.38.080 (development of trafficking informational posters for placement in bathroom stalls).

SECTION 21. ELIGIBILITY FOR BENEFIT OR SERVICE.

(a) A victim is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], including compensation under the [applicable state-crime-victims compensation fund], regardless of immigration status.

(b) A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], regardless of immigration status.

(c) As soon as practicable after a first encounter with an individual who reasonably appears to [the appropriate state or local agency] to be a victim or a minor who has engaged in commercial sexual activity, the [agency] shall notify the [appropriate state or local agency] [identified in the comprehensive plan developed under Section 19(c)(1)] that the individual may be eligible for a benefit or service under the law of this state.

Comment

At least six states (California, Florida, Missouri, New Mexico, New York, and North Carolina) have statutes specifically ensuring victims of human trafficking access to state-provided benefits and services. See, e.g., N.Y. Soc. Serv. Law § 483-cc(a); Mo. Rev. Stat. § 566.223(4).

SECTION 22. LAW-ENFORCEMENT PROTOCOL.

(a) On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T)[, as amended.] or 8 U.S.C. Section 1101(a)(15)(U)[, as amended], or for continued presence under 22 U.S.C. Section 7105(c)(3)[, as amended], the [law-enforcement
officer], as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal [law-enforcement officer] to request continued presence.

(b) If the [law-enforcement agency] determines that an individual does not meet the requirements for the [agency] to comply with subsection (a), the [agency] shall inform the individual of the reason and that the individual may make another request under subsection (a) and submit additional evidence satisfying the requirements.

Legislative Note: A state will omit the bracketed language “[as amended]” if the state constitution or judicial decisions prohibit incorporating future changes to federal law as an impermissible delegation of state authority.

Comment

Section 22 makes it possible for human-trafficking victims who are from other countries to receive designated federal benefits. Human-trafficking victims who are aliens may receive nonimmigrant T or U Visas or be granted “continued presence.” See 8 C.F.R. §§ 214.11 (T Visa), 214.14 (U Visa), and 28 C.F.R. § 1100.35 (continued presence). In order for the victims to receive the T or U Visa, and the federal benefits, state or local law enforcement officials must fill out simple on-line forms available from the United States Citizenship and Immigration Services [USCIS] (Form I-914 Supplement B for the T Visa) or (Form I-918 Supplement B for the U Visa). To receive continued presence, the state or local official would ask a federal official to make this request.

Once victims receive a T Visa, a U Visa, or are permitted continued presence, they are entitled to remain in the country to aid in the identification and prosecution of traffickers. They are entitled to receive the same federal benefits refugees receive, thus reducing the fiscal impact on states of providing them with services. Nine states already have such a provision, including California, Illinois, Indiana, Iowa, New Jersey, New Mexico, New York, Vermont, and Wyoming. See, e.g., Cal. Pen. Code § 236.5; Vt. Stat. Ann. tit. 13, § 2663.

[SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER.]

(a) [To the extent that funds are appropriated for this purpose, the] [The] [appropriate state agency] may make a grant to or contract with a unit of state or local government [, Indian tribe,] or nongovernmental victims service organization to develop or expand service programs
for victims.

(b) A recipient of a grant or contract under subsection (a) shall report annually to [the [council] created by Section 19] [insert appropriate authority] the number and demographic information of all victims receiving services under the grant or contract.]

Legislative Note: States that must have explicit authority to authorize a state entity to make grants to or contract with units of local government or non-governmental organizations to provide or expand services to victims should consider enacting this section.

Comment

Indian tribes are bracketed so that a state may define which Indian tribes, whether they are federally-recognized or meet a broader definition, should be eligible for grants. At least two states (California and Texas) authorize grants to service providers for subsets of human-trafficking victims. This section uses language modified from both Cal. Pen. Code § 13837 and Tex. Gov’t Code Ann. § 531.383.

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[SECTION 25. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 26. EFFECTIVE DATE. This [act] takes effect….

Legislative Note: States may need to consider amending or repealing existing law.
No. 181. An act relating to the Uniform Collateral Consequences of Conviction Act.

(H.413)

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

Sec. 1. 13 V.S.A. chapter 231 is added to read:

CHAPTER 231. UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

This act may be cited as the Uniform Collateral Consequences of Conviction Act.

§ 8002. DEFINITIONS

As used in this chapter:

(1) “Collateral consequence” means a mandatory sanction or a discretionary disqualification.

(2) “Conviction” includes an adjudication for delinquency for purposes of this chapter only, unless otherwise specified. “Convicted” has a corresponding meaning.

(3) “Court” means the Criminal Division of the Superior Court.

(4) “Decision-maker” means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.
(5) “Discretionary disqualification” means a penalty, disability, or disadvantage that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual’s conviction of an offense. Discretionary disqualifications do not encompass charging decisions, such as the imposition of pre-charge diversion or intervention programs.

(6) “Mandatory sanction” means a penalty, disability, or disadvantage imposed on an individual as a result of the individual’s conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(7) “Offense” means a felony, misdemeanor, or delinquent act under the laws of this State, another state, or the United States.

(8) “Incarceration” means confinement in jail or prison.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 8003. LIMITATION ON SCOPE

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages;
(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this chapter; or

(4) seeking relief from a collateral consequence imposed by another state or the United States or a subdivision, agency, or instrumentality thereof, unless the law of such jurisdiction provides for such relief.

(b) This chapter shall not affect:

(1) the duty an individual’s attorney owes to the individual;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy under law other than this chapter available to an individual convicted of an offense.

§ 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES

(a)(1) The Attorney General shall:

(A) identify or cause to be identified any provision in this State’s Constitution, statutes, and administrative rules which imposes a mandatory sanction or authorizes the imposition of a discretionary disqualification and any provision of law that may afford relief from a collateral consequence;

(B) prepare or compile from available sources a collection of citations to, and the text or short descriptions of, the provisions identified under subdivision (a)(1)(A) of this section not later than January 1, 2016; and

(C) update the collection provided under subdivision (B) of this subdivision (1) annually by January 1.
(2) In complying with subdivision (a)(1) of this section, the Attorney General may rely on or incorporate the summary of this State’s mandatory sanctions, discretionary disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. No. 110-177, § 510, 121 Stat. 2534 (2008) as it exists and as it may be amended.

(b) The Attorney General shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a) of this section:

(1) This collection has not been enacted into law and does not have the force of law.

(2) An error or omission in this collection or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a mandatory sanction or authorizing a discretionary disqualification.

(3) The laws of other jurisdictions that impose additional mandatory sanctions and authorize additional discretionary disqualifications are not included in this collection.

(4) This collection does not include any law or other provision regarding the imposition of or relief from a mandatory sanction or a discretionary disqualification enacted or adopted after [insert date the collection was prepared or last updated].
(c) The Attorney General shall publish or cause to be published the
collection prepared and updated as required by subsection (a) of this section.

(d) The Attorney General shall publish or cause to be published as part of
the collection the title and Internet address, if available, of the most recent
collection of:

(1) the collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral
consequence.

(e) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which
implicates collateral consequences to a conviction shall forward a copy of the
rule to the Attorney General.

§ 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL
PROCEEDING

(a) When an individual receives formal notice that the individual is charged
with an offense, the Court shall provide either oral or written notice
substantially similar to the following to be communicated to the individual:

(1) If you plead guilty or are convicted of an offense, you may suffer
additional legal consequences beyond jail or prison, home confinement,
probation, and fines. These consequences may include:

(A) being unable to get or keep some licenses, permits, or jobs;

(B) being unable to get or keep benefits such as public housing or
education;
(C) receiving a harsher sentence if you are convicted of another offense in the future;

(D) having the government take your property;

(E) being unable to serve in the military or on a jury;

(F) being unable to possess a firearm; and

(G) being unable to exercise your right to vote if you move to another state.

(2) If you are not a United States citizen, a guilty plea or conviction may also result in your deportation, removal, exclusion from admission to the United States, or denial of citizenship.

(3) The law may provide ways to obtain some relief from these consequences.

(4) Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under this chapter].

(b) Before the Court accepts a plea of guilty or nolo contendere from an individual, the Court shall:

(1) confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction; and
(2) provide written notice, as part of a written plea agreement or through another form, of the following:

(A) that collateral consequences may apply because of the conviction;

(B) the Internet address of the collection of laws published under this chapter;

(C) that there may be ways to obtain relief from collateral consequences;

(D) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

(E) that conviction of a crime in this State does not prohibit an individual from voting in this State.

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES UPON RELEASE

(a) Prior to the completion of a sentence, an individual in the custody of the Commissioner of Corrections shall be given written notice of the following:

(1) that collateral consequences may apply because of the conviction;

(2) the Internet address of the collection of laws published under this chapter;

(3) that there may be ways to obtain relief from collateral consequences:
(4) contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

(5) that conviction of a crime in this State does not prohibit an individual from voting in this State.

(b) For persons sentenced to incarceration, the notice shall be provided not more than 30 days and at least 10 days before completion of the sentence. If the sentence is for a term of less than 30 days then notice shall be provided when the sentence is completed.

(c) For persons receiving a sentence involving community supervision, such as probation, furlough, home confinement, conditional reentry, or parole, the notice shall be provided by the Department of Corrections in keeping with its mission of ensuring rehabilitation and public safety.

§ 8007. AUTHORIZATION REQUIRED FOR MANDATORY SANCTION; AMBIGUITY

(a) A mandatory sanction may be imposed only by statute or ordinance or by a rule adopted in the manner provided in 3 V.S.A. §§ 836–844. A law or rule shall impose unambiguously a collateral consequence in order for a court to impose a collateral consequence.

(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an automatic mandatory sanction or whether it authorizes a
decision-maker to disqualify a person based upon his or her conviction shall be
construed as authorizing a discretionary disqualification.

§ 8008. DECISION TO DISQUALIFY

In deciding whether to impose a discretionary disqualification, a
decision-maker shall undertake an individualized assessment to determine
whether the benefit or opportunity at issue should be denied the individual. In
making that decision, the decision-maker may consider, if substantially related
to the benefit or opportunity at issue, the particular facts and circumstances
involved in the offense and the essential elements of the offense. A conviction
itself may not be considered except as having established the elements of the
offense. The decision-maker shall also consider other relevant information,
including the effect on third parties of granting the benefit or opportunity and
whether the individual has been granted relief such as an order of limited relief
or a certificate of restoration of rights.

§ 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE
UNITED STATES; RELIEVED OR PARDONED CONVICTION

(a) For purposes of authorizing or imposing a collateral consequence in this
State, a conviction of an offense in a court of another state or the United States
is deemed a conviction of the offense in this state with the same elements. If
there is no offense in this State with the same elements, the conviction is
deemed a conviction of the most serious offense in this State which is
established by the elements of the offense. A misdemeanor in the jurisdiction
of conviction may not be deemed a felony in this State, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a conviction of a felony or misdemeanor in this State.

(b) For purposes of authorizing or imposing a collateral consequence in this State, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this State, but may be deemed a juvenile adjudication for the delinquent act in this State with the same elements. If there is no delinquent act in this State with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this State which is established by the elements of the offense.

(c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent jurisdiction of this State, another state, or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this State.

(d) A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing, and relieving a collateral consequence in this State as it has in the issuing jurisdiction.

(e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same
effect for purposes of authorizing or imposing collateral consequences in this State as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this State for which relief could not be granted under section 8012 of this title or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 8010 or 8011 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 8012 of this title, and the Court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on successful participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this State. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.
§ 8010. ORDER OF LIMITED RELIEF

(a) An individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking an order of relief shall provide the prosecutor’s office with notice of his or her petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.

(b) Except as otherwise provided in section 8012 of this title, the Court may issue an order of limited relief relieving one or more of the mandatory sanctions described in this chapter if, after reviewing the petition, the individual’s criminal history record, any filing by a victim under section 8014 of this title, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and
(3) granting the petition would not pose an unreasonable risk to the
safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the mandatory sanction from which relief is granted; and

(2) any restriction imposed pursuant to subsections 8013(a) and (b) of
this title.

(d) An order of limited relief relieves a mandatory sanction to the extent
provided in the order.

(e) If a mandatory sanction has been relieved pursuant to this section, a
decision-maker may consider the conduct underlying a conviction as provided
in subsection 8008 of this title.

§ 8011. CERTIFICATE OF RESTORATION OF RIGHTS

(a) An individual convicted of an offense may petition the Court for a
certificate of restoration of rights relieving mandatory sanctions not sooner
than five years after the individual’s most recent conviction of a felony or
misdemeanor in any jurisdiction, or not sooner than five years after the
individual’s release from incarceration pursuant to a criminal sentence in any
jurisdiction, whichever is later. The individual seeking restoration of rights
shall provide the prosecutor’s office with notice of his or her petition.

(b) Except as otherwise provided in section 8012 of this title, the Court
may issue a certificate of restoration of rights if, after reviewing the petition,
the individual’s criminal history, any filing by a victim under section 8015 of
this title or a prosecuting attorney, and any other relevant evidence, it finds the 
individual has established by a preponderance of the evidence that:

(1) the individual is engaged in or seeking to engage in a lawful 
occupation or activity, including employment, training, education, or 
rehabilitative programs, or the individual otherwise has a lawful source of 
support;

(2) the individual is not in violation of the terms of any criminal 
sentence or that any failure to comply is justified, excused, involuntary, or 
insubstantial;

(3) a criminal charge is not pending against the individual; and

(4) granting the petition would not pose an unreasonable risk to the 
safety or welfare of the public or to any individual.

(c) A certificate of restoration of rights must specify any restriction 
imposed and mandatory sanction from which relief has not been granted under 
section 8013 of this title.

(d) A certificate of restoration of rights relieves all mandatory sanctions, 
except those listed in section 8012 of this title and any others specifically 
excluded in the certificate.

(e) If a mandatory sanction has been relieved pursuant to this section, a 
decision-maker may consider the conduct underlying a conviction as provided 
in section 8008 of this title.
§ 8012. DISCRETIONARY DISQUALIFICATIONS AND MANDATORY SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS

(a) An order of limited relief or certificate of restoration of rights may not be issued to relieve the following mandatory sanctions:

(1) requirements imposed by chapter 167, subchapter 3 of this title (sex offender registration; law enforcement notification);

(2) a motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available; or

(3) ineligibility for employment by law enforcement agencies, including the Office of the Attorney General, State’s Attorney, police departments, sheriff’s departments, State Police, or the Department of Corrections.

(b) An order of limited relief or certificate of restoration of rights may not be issued to relieve a discretionary disqualification or mandatory sanction imposed due to:

(1) a conviction of a listed crime as defined in section 5301 of this title; or

(2) a conviction of trafficking of regulated drugs pursuant to 18 V.S.A. chapter 84.
§ 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF RIGHTS

(a) When a petition is filed under section 8010 or 8011 of this title, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the Court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this State, the Attorney General. The Court may issue an order or certificate subject to restriction or condition.

(b) The Court may restrict an order of limited relief or certificate of restoration of rights if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a related felony in this State or of an offense in another jurisdiction that is deemed a felony in this State. An order of restriction may be issued:

(1) on motion of the Court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter; and

(3) after a hearing if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(c) The Court shall order any test, report, investigation, or disclosure by the
individual it reasonably believes necessary to its decision to issue or modify an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.

(d) A criminal history record as defined in 20 V.S.A. § 2056a and a criminal conviction record as defined in 20 V.S.A. § 2056c shall include issuance and modification of orders and certificates.

(e) The Court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights.

(f) If the Court grants in part or denies a petition under section 8010 or 8011 of this title, the Court may order that the person not petition for relief for that particular offense under either section for a period not to exceed five years.

§ 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person’s due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business.
or engaging in activity with the individual to whom the order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

§ 8015. VICTIM’S RIGHTS

A victim of an offense may participate in a proceeding for issuance of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to section 5321 of this title to the extent permitted by rules adopted by the court.

§ 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 8017. SAVINGS AND TRANSITIONAL PROVISIONS

(a) This chapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this chapter does not apply.

(b) This chapter does not invalidate the imposition of a mandatory sanction on an individual before July 1, 2014, but a mandatory sanction validly imposed before July 1, 2014 may be the subject of relief under this chapter.
Sec. 2. 2009 Acts and Resolves No. 58, Sec. 14, as amended by 2010 Acts and Resolves No. 66, Sec. 3, is further amended to read:

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender’s name and any known aliases;

(2) the offender’s date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender’s town of residence;

(6) the date and nature of the offender’s conviction;

(7) except as provided in subsection (l) of this section, the offender’s address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high risk by the Department of Corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender’s arrest;
(D) the offender is subject to the Registry for a conviction of a sex offense against a child under 13 years of age; or

(E) the offender’s name has been electronically posted for an offense committed in another jurisdiction which required the person’s address to be electronically posted in that jurisdiction;

(8) if the offender is under the supervision of the Department of Corrections, the name and telephone number of the local Department of Corrections office in charge of monitoring the sex offender;

(9) whether the offender complied with treatment recommended by the Department of Corrections;

(10) a statement that there is an outstanding warrant for the offender’s arrest, if applicable;

(11) the reason for which the offender information is accessible under this section;

(12) whether the offender has been designated high risk by the Department of Corrections pursuant to section 5411b of this title; and

(13) if the offender has not been subject to a risk assessment, a statement that the offender has not been so assessed and that such a person is presumed to be high risk, provided that the Department of Corrections shall permit a person subject to this subdivision to obtain a risk assessment at the person’s own expense.

* * *
(d) An offender’s street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

* * *

Sec. 3. EFFECTIVE DATES

This act shall take effect on passage except for Sec. 1 (collateral consequences of conviction) which shall take effect on January 1, 2016.

Date Governor signed bill: June 10, 2014
FORCIBLE ENTRY AMENDMENTS
2015 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart
House Sponsor: Bradley G. Last

LONG TITLE

General Description:
This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry when serving a search warrant or making an arrest.

Highlighted Provisions:
This bill:
- amends existing law regarding the use of forcible entry by a law enforcement officer when executing a warrant;
- requires that the Utah Peace Officer Standards and Training Council recommend guidelines and procedures regarding use of force in executing a warrant;
- requires a law enforcement officer to wear a badge, label, or clothing that identifies that person as a peace officer;
- provides that if the deploying law enforcement agency owns and operates body camera devices, the officer who executes a warrant shall be equipped with a body camera that actively records through the duration of the execution of the warrant;
- provides that a search or administrative warrant may not be issued by a justice court judge;
- provides that a warrant authorizing forcible entry may not be issued solely for the purpose of an alleged controlled substance or for drug paraphernalia; and
- provides that any evidence obtained in violation of these provisions is not admissible in any civil, criminal, or administrative proceeding.

Money Appropriated in this Bill:
None
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 77-7-8 is amended to read:

77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.

(1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly enter the building in which the person to be arrested is located, or in which there is probable cause for believing [him] the person to be.

(b) Before making the forcible entry, the officer shall:

(i) identify himself or herself as a law enforcement officer; [and]

(ii) demand admission;

(iii) wait a reasonable period of time for an occupant to admit access; and

(iv) explain the purpose for which admission is desired.

(c) (i) The officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in Section 77-7-6 or where there is probable cause to believe evidence will be easily or quickly [secreted or] destroyed.

(ii) The officer shall identify himself or herself and state the purpose [of] for entering the premises as soon as practicable after entering the premises.

(d) The officer may use only that force which is reasonable and necessary to effectuate forcible entry under this section.

(2) If the building to be entered under Subsection (1) appears to be a private residence or the officer knows the building is a private residence, and if there is no consent to enter or
there are no exigent circumstances, the officer shall, before entering the building:

(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or

(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

(3) Notwithstanding any other provision of this chapter, forcible entry under this section may not be made solely for the alleged:

(a) possession or use of a controlled substance under Section 58-37-8; or

(b) the possession of drug paraphernalia as defined in Section 58-37a-3.

Section 2. Section 77-23-210 is amended to read:

77-23-210. Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

(1) (a) No later than July 1, 2015, any law enforcement agency that seeks a warrant under this section shall comply with guidelines and procedures which are, at a minimum, in accordance with state law and model guidelines and procedures recommended by the Utah Peace Officer Standards and Training Council created in Section 53-6-106.

(b) Written policies adopted pursuant to this section, shall be subject to public disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Access and Management Act.

(2) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may enter:

(a) if, after giving notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or

(b) without notice of the officer's authority and purpose as provided in Subsection (3).

(3) The officer executing the warrant under Subsection (1) may use only that force which is reasonable and necessary to execute the warrant.

(3) (a) The officer shall identify himself or herself and state the purpose of entering
The officer may enter without notice only if:

(i) there is reasonable suspicion to believe that the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly secreted or destroyed; or

(iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly secreted or destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under Rule 40; or

(iv) the officer physically observes and documents a previously unknown event or circumstance at the time the warrant is being executed which creates probable cause to believe the object of the search is being destroyed, or creates reasonable suspicion to believe that physical harm may result to any person if notice were given.

(b) The officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering.

(4) An officer executing a warrant under this section may use only that force which is reasonable and necessary to execute the warrant.

(5) An officer executing a warrant under this section shall wear readily identifiable markings, including a badge and vest or clothing with a distinguishing label or other writing which indicates that he or she is a law enforcement officer.

(6) (a) An officer executing a warrant under this section shall comply with the officer's employing agency's body worn camera policy when the officer is equipped with a body worn camera.

(b) The employing agency's policy regarding the use of body worn cameras shall include a provision that an officer executing a warrant under this section shall wear a body worn camera when a camera is available, except in exigent circumstances where it is not
practicable to do so.

(4) (7) (a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person.

(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

(8) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry without prior announcement may not be issued under this section, solely for:

(a) the alleged possession or use of a controlled substance; or

(b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.
AN ACT ESTABLISHING STANDARDS AND LIMITS FOR LOCAL LAW ENFORCEMENT ACQUISITION AND USE OF CERTAIN EQUIPMENT; AND REQUIRING A LOCAL LAW ENFORCEMENT AGENCY TO PROVIDE PUBLIC NOTIFICATION.

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

Section 1. Limitations on excess property provided to local law enforcement -- definitions. (1) A law enforcement agency may not receive the following property from a military equipment surplus program operated by the federal government:

(a) drones that are armored, weaponized, or both;
(b) aircraft that are combat configured or combat coded;
(c) grenades or similar explosives and grenade launchers;
(d) silencers; or
(e) militarized armored vehicles.

(2) If a law enforcement agency purchases property from a military equipment surplus program operated by the federal government, the law enforcement agency may only use state or local funds for the purchase. Funds obtained from the federal government may not be used to purchase property from a military equipment surplus program.

(3) For purposes of this section, "law enforcement agency" means a law enforcement service provided by a local government as authorized in Title 7, chapter 32.

Section 2. Public notification. If a law enforcement agency requests property from a military equipment surplus program, the law enforcement agency shall publish a notice of the request on a publicly accessible website within 14 days after the request.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part
sections 1 and 2 - C.40A:5-30.1 and 40A:5-30.2

P.L. 2015, CHAPTER 23, approved March 16, 2015
Senate, No. 2364 (First Reprint)

AN ACT concerning the use of surplus federal property transferred to local law enforcement agencies and supplementing chapter 5 of Title 40A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that:
   a. Federal law permits the Secretary of the United States Department of Defense to transfer to federal and State agencies personal property of the Department of Defense that the secretary determines is suitable for use by agencies in law enforcement activities, including counterdrug and counterterrorism activities and is excess to the needs of the Department of Defense.
   b. Informally known as the “1033 Program,” this initiative allows local law enforcement agencies to obtain, at little or no cost and without the approval of the governing body of the local unit, surplus federal property, including aircraft, armored vehicles, automatic weapons, and night vision equipment originally intended for use by the United States Armed Forces.
   c. According to the New Jersey Department of Law and Public Safety, the Office of Emergency Management has assisted with the transfer of over $30 million in excess Department of Defense property to participating law enforcement agencies since the beginning of federal fiscal year 2014.
   d. In this era of fiscal constraint, participation in the 1033 program allows local units to obtain equipment that they might not otherwise be able to afford, and to prepare for, respond to, and recover from incidents of terrorism and natural disasters, such as hurricanes and severe floods.
   e. Although equipment is provided through the 1033 program at no cost to county and municipal law enforcement agencies, these entities are responsible for costs associated with the maintenance, fueling and upkeep of this equipment, and for specialized training for its operation.
   f. Recent events in Ferguson, Missouri, regarding the use of military equipment to respond to civil protest, have brought increased public scrutiny to the 1033 program and questions

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.
Matter enclosed in superscript numerals has been adopted as follows:
§Senate S.L.P. committee amendments adopted December 11, 2014.
regarding those situations in which equipment obtained through the 1033 program is utilized.

g. Taxpayers are the primary consumers and financiers of services provided by county and municipal law enforcement agencies and have the \textit{right} to be assured that their money is \textit{spent in an efficient and effective manner} and the \textit{right} to know the purposes for which public funds are utilized.

h. It is not the Legislature’s intent to deny county and municipal law enforcement agencies access to equipment vital to public safety and counterterrorism efforts, but elected civilian officials, such as mayors, municipal council members, county executives, and county freeholders, are ultimately responsible for the supervision, policies, and budgetary decisions governing these entities.

i. Civilian officials are also responsible for the acquisition of equipment necessary for local law enforcement agencies to carry out their responsibilities, yet current law does not require that they formally approve such acquisitions through the 1033 program.

j. It is therefore appropriate to establish a system of local oversight for county and municipal law enforcement agencies that participate in and acquire equipment through the 1033 program and guidelines for the use of this equipment by those entities.

2. a. An application for the enrollment of a county or municipal law enforcement agency in any program established by the United States Department of Defense pursuant to 10 U.S.C. s.2576a shall be approved by a resolution adopted by a majority of the full membership of the governing body of a local unit prior to the transmittal of any such application to the State Coordinator of any such program.

b. The acquisition of any property by a county or municipal law enforcement agency enrolled in any program established by the United States Department of Defense pursuant to 10 U.S.C. s.2576a shall by approved by a resolution adopted by a majority of the full membership of the governing body of a local unit.

c. As used in this section, “county or municipal law enforcement agency” means and includes, but is not limited to, a county or municipal police department or force, a county corrections department, and a county sheriff’s office.

3. This act shall take effect immediately.

Requires local unit approval of applications for participation in federal 1033 program.
An Act to amend and reenact §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia, relating to establishing Achieving a Better Life Experience (ABLE) savings trust accounts to be administered by the Virginia College Savings Plan to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities.

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia are amended and reenacted as follows:

§ 23-38.75. Definitions.
As used in this chapter, unless the context requires a different meaning:
“ABLE savings trust account” means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Board" means the Board of the Virginia College Savings Plan.

"College savings trust account" means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the Commonwealth to which the qualified beneficiary is admitted.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board, who is the beneficiary of a prepaid tuition contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a prepaid tuition contract purchased by a resident of the Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an account established by a contributor pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law. ABLE savings trust account or a college savings trust account.

"Savings trust agreement" means the agreement entered into by the Board and a contributor establishing a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the Commonwealth and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

§ 23-38.76. Virginia College Savings Plan established; governing board; terms.
A. To enhance the accessibility and affordability of higher education for all citizens of the Commonwealth, there is hereby established as a body politic and corporate and an independent agency of the Commonwealth, the Virginia College Savings Plan (the Plan). Certain moneys of the Plan shall be held in the state treasury in a special nonreverting fund (the Fund), which shall consist of...
that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.

All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts or contributions to savings trust accounts made pursuant to this chapter, bequests, endowments or, grants from the United States government, or its agencies and or instrumentalities, and any other available sources of funds, public or private, shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys then shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Benefits related to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

B. The Plan shall be administered by an 11-member Board, as follows: the Director of the State Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community College System or his designee; the State Treasurer or his designee; the State Comptroller or his designee; and seven nonlegislative citizen members, four to be appointed by the Governor, one to be appointed by the Senate Committee on Rules and two to be appointed by the Speaker of the House of Delegates, with significant experience in finance, accounting, law, or investment management.

Appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for or during more than two successive four-year terms, but after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Ex officio members of the Board shall serve terms coincident with their terms of office.

C. Members of the Board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties. The Board shall elect from its membership a chairman and a vice-chairman annually. A majority of the members of the Board shall constitute a quorum.

§ 23-38.77. Powers and duties of Board.

The Board shall administer the Plan established by this chapter and shall develop and implement programs for (i) the prepayment of undergraduate tuition, as defined in § 23-38.75, at a fixed, guaranteed level for application at a two-year or four-year public institution of higher education in the Commonwealth and: (ii) contributions to college savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law. In addition, the Board shall have the power and duty to:

1. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed appropriate by the Board;

2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings trust accounts, including, but not limited to, residency and other eligibility requirements; the number of participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition contract or savings trust account; time limitations for the use of tuition benefits or savings trust account distributions; and payment schedules;

3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services and contracts with other states to provide savings trust accounts for residents of contracting states;

4. Procure insurance against any loss in connection with the Plan's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member;

5. Make arrangements with two-year and four-year public institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts and to apply college savings trust account distributions, including, but not limited to, payment from the Plan of the then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary of a prepaid tuition contract to the institution in which the beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition and towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529.
or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion;

6. Develop and implement scholarship and/or matching grant programs, as the Board may deem appropriate, to further its goal of making higher education more affordable and accessible to all citizens of the Commonwealth;

7. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

8. Promulgate regulations and procedures and to perform any act or function consistent with the purposes of this chapter; and

9. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties which alleges a violation of state or federal securities laws. The Board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the Board.

§ 23-38.80. Standard of care; investment and administration of Plan.
A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Plan, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial soundness of the Plan, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other action the Board deems appropriate.

B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard prescribed in subsection A of this section, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges; (iii) not less than all of the stock or 100 percent ownership of a corporation or other entity organized by the Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, including such investment companies or investment trusts which, in turn, invest in the securities of such investment companies or investment trusts, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Plan, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

All provisions of this subsection shall apply to the portion of the Plan assets attributable to savings trust account contributions and the earnings thereon.

C. The selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, recordkeeping, recordkeeping, or consulting services, shall be governed by the foregoing standard and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

D. No Board member nor any person, investment manager, or committee to whom the Board delegates any of its investment authority who acts within the standard of care set forth in subsection A shall be held personally liable for losses suffered by the Plan on investments made pursuant to this chapter.

E. To the extent necessary to lawfully administer the Plan and in order to comply with federal, state, and local tax reporting requirements, the Plan may obtain all necessary social security account or tax identification numbers and such other data as the Plan deems necessary for such purposes, whether from a contributor or purchaser or from another state agency.

§ 23-38.81. Prepaid tuition contracts and college and ABLE savings trust agreements; terms; termination; etc.
A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:
1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;
2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;
3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;
4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;
5. Terms and conditions for a substitution for the qualified beneficiary originally named;
6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract;
7. The time period during which the qualified beneficiary must claim benefits from the Plan;
8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;
9. All other rights and obligations of the purchaser and the trust; and
10. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended, which specifies the requirements for qualified state tuition programs.

B. Each college savings trust agreement made pursuant to this chapter shall include the following terms and provisions:
1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. Each ABLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:
1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions that the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

D. In addition to the provisions required by subsection A of this section, each prepaid tuition contract shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit, independent institutions of higher education located in Virginia, including actual interest and income earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located in Virginia may not exceed the projected highest payment made for tuition at a public institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board. Payments authorized for public and for accredited, nonprofit, independent institutions of higher education located in other states may not exceed the projected average payment made for tuition at a public
institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board.

E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after a specified period of time the contract or savings trust agreement has not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to § 55-210.12.

F. Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor or beneficiary, provided, however, that the state of residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the event of the death of the beneficiary.

G. No contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

H. The Board's decision on any dispute, claim, or action arising out of or related to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits thereunder shall be considered a case decision as defined in § 2.2-4001 and all proceedings related thereto shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be exclusively provided pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;

5 through 8. [Repealed.]

9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code; and

10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.
4b. For taxable years beginning on or after January 1, 2001, up to $20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7, 8. [Repealed.]

9. [Expired.]

10. Any amount included therein less than $600 from a prize awarded by the Virginia Lottery.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or $3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed $1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. [Expired.]

15, 16. [Repealed.]

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. [Repealed.]

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, $15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds $15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds $30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first $15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is $15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.
27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29. 30. [Repealed.]

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than $3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2015. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

36. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.
Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or
   b. Three thousand dollars for single individuals and $6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of $900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and $930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.
   b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of $800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional $1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born on or before January 1, 1939.
   b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by $1 for every $1 that the taxpayer's adjusted federal adjusted gross income exceeds $50,000 for single taxpayers or $75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by $1 for every $1 the total combined adjusted federal adjusted gross income of both spouses exceeds $75,000.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
year shall be limited to $4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds $4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed $4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed $4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed $500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced...
oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. For taxable years beginning on or after January 1, 2007, the lesser of $5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or older with earned income of at least $20,000 for the year and federal adjusted gross income not in excess of $30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. "Earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).
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.
State of Arkansas  
89th General Assembly  
Regular Session, 2013

By: Representative Mayberry

For An Act To Be Entitled

AN ACT TO ESTABLISH THE COLLEGE AND CAREER COACHES PROGRAM; TO ASSURE THAT ALL STUDENTS HAVE ACCESS TO A COLLEGE AND CAREER COACH FOR THE PURPOSE OF RECEIVING ASSISTANCE IN PREPARING FOR EDUCATION, TRAINING, AND CAREERS AFTER HIGH SCHOOL; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE COLLEGE AND CAREER COACHES PROGRAM; AND TO ASSURE ACCESS TO A COLLEGE AND CAREER COACH FOR ALL STUDENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY.

The General Assembly finds that:

(1) Many students leave high school:

(A) Without a plan for their education, training, or career after high school;

(B) Unaware or lacking understanding of the process or preparation required for success after high school graduation; and

(C) Failing to recognize the value of secondary education, leading to high dropout rates; and

(2) The state has a responsibility to assist the citizens of Arkansas to advance and to prosper by providing access to the College and Career Coaches Program that will assist students by:

(A) Intervening at the middle school and high school
level;

(B) Assisting students with developing and maintaining
dynamic career plans;

(C) Exposing students to various opportunities for careers
and education after high school; and

(D) Educating students about the process for pursuing
postsecondary education and financial assistance.

SECTION 2. Arkansas Code Title 6, Chapter 1, is amended to add an
additional subchapter to read as follows:

Subchapter 6 - College and Career Coaches Program

6-1-601. Findings.

The General Assembly finds that:

(1) Highly skilled and educated people who can handle demanding
jobs and generate new ideas are necessary for Arkansas to prosper in a global
economy; and

(2) With only eighteen percent (18%) of Arkansans twenty-five
(25) years of age and older holding a baccalaureate degree, Arkansas is
ranked forty-ninth in the nation for adults who hold a baccalaureate degree,
creating a impediment to the success of the state.

6-1-602. Creation - Program participation.

(a)(1) The College and Career Coaches Program is established to assist
students in preparing for postsecondary education or careers.

(2) Coaches shall be accessible to students who attend middle
schools and high schools located in Tier 3 and Tier 4 counties.

(b)(1) School districts located in Tier 3 and Tier 4 counties shall
receive priority to participate in the College and Career Coaches Program.

(2) School districts located outside of Tier 3 and Tier 4
counties who do not have access to a College and Career Coaches Program may
apply jointly with an institution of higher education, an education service
cooperative, or a non-profit organization to the Department of Career
Education for participation in the College and Career Coaches Program.

(c) A school district participating in the College and Career Coaches
Program is eligible for administrative support and supplemental grants if
funding is available.
(d) A school district may use national school lunch state categorical funds to support the school district’s participation in the College and Career Coaches Program.

(e) Participation in the College and Career Coaches Program is contingent on the availability of funding.

6-1-603. Program administration.

(a) The Department of Career Education, in partnership with the Department of Education and the Department of Higher Education, shall develop and administer the College and Career Coaches Program.

(b) The Department of Career Education, the division manager for Arkansas Works, an administrative analyst and at least two (2) managers, shall manage the College and Career Coaches Program and:

(1) Provide guidelines and procedures for implementing the College and Career Coaches Program;

(2) Develop, coordinate, and offer training opportunities for college and career coaches;

(3) Monitor implementation of the College and Career Coaches Program by on-site technical assistance visits at least one (1) time every five (5) years;

(4) Develop guidelines and procedures for the application process;

(5) Accept or reject the annual application of a College and Career Coaches Program after:

(A) Reviewing and evaluating evidence of the performance and success of a College and Career Coaches Program; and

(B) Prioritizing approval and supplemental grant funding to College and Career Coaches Programs in Tier 3 and Tier 4 counties that are operated in partnership between a school district, an institution of higher education, an education service cooperative, or a non-profit organization; and

(6) Prepare annual reports that may be shared with members of the:

(A) Governor’s Workforce Cabinet;

(B) General Assembly; and

(C) Governor’s office.
6-1-604. College and career coaches - Duties - Supervision.

(a) A college and career coach shall:

(1) Hold a baccalaureate degree; and

(2) Complete the required career development facilitator
training within one (1) year of hiring.

(b) The college and career coaches shall be stationed at an
institution of higher education, an education service cooperative, or a non-
profit organization and shall provide services and support to students in
middle schools and high schools located in Tier 3 and Tier 4 counties,
including without limitation:

(1) Assisting the career orientation instructor with the
development of college and career plans for students, beginning in grade
seven (7);

(2) Assisting the school counselor with college and career
planning resources and revising college and career plans for each student
annually, beginning in grade nine (9);

(3) Offering high school students college and career planning
services and activities that combine counseling on career options and
experiential learning with academic planning to assist students with their
college and career plans;

(4) Encouraging parental participation by scheduling annual
parent sessions, beginning with students in grade seven (7), to assist
parents and students in understanding the college and career planning
process;

(5) Providing parents and high school students with information
about career and technology education program opportunities available in
Arkansas and the level of education and skill required to be successful in
various career fields;

(6) Preparing high school students with information and
preparation for financing a postsecondary education;

(7) Assisting schools in promoting quality career development
for students in grades seven through twelve (7-12);

(8) Supporting students in middle school and high school in the
exploration of career clusters and the selection of an area of academic focus
with a cluster of study;
(9) Improving and promoting career development and college planning opportunities within school districts and communities;

(10) Attending continuing education programs on the certified career development facilitator curriculum sponsored by the state;

(11) Coordinating with school counselors and school administrators on career day events, career classes, career programming, college planning, and financial aid activities;

(12) Coordinating community resources and citizens representing diverse occupations to provide career development activities for parents and students; and

(13) Assisting with online-based career guidance and college planning systems.

(c)(1) An institution of higher education, an education service cooperative, or a non-profit organization participating in the College and Career Coaches Program shall assign an on-site supervisor who shall:

(A) Supervise the College and Career Coaches Program locally; and

(B) Be a liaison between the institution of higher education, education service cooperative, or non-profit organization and the Department of Career Education.

(2) The Department of Career Education, through the division manager for Arkansas Works, and the on-site supervisor shall evaluate the performance of each college and career coach.

6-1-605. Program effectiveness and measurement.

(a)(1) The effectiveness of the College and Career Coaches Program shall be evaluated based on measurable benefits to students, including increases in:

(A) High school graduation rates;

(B) Completion of the Smart Core curriculum;

(C) College attendance rates;

(D) Remediation rates; and

(E) Applications for financial aid.

(2)(A) The Department of Education and the Department of Higher Education shall collect and report performance data to determine the effectiveness of the program.
(B) The data shall be collected for each county and school district served by the College and Career Coaches Program and shall be shared with the Department of Career Education on January 1 and August 1 each year.

(b) Annually, each college and career coach shall submit a report to the division manager for Arkansas Works describing his or her student contacts and the programs and services provided.

/s/ Mayberry

APPROVED: 04/16/2013
AN ACT

To amend and reenact R.S. 17:183.1(A) and (C)(2), 183.2, 183.3(A)(2), (B), (C), and (D), and 2925 and to enact R.S. 17:183.1(D), relative to the high school career option program; to provide relative to requirements for a career major and related course work; to provide that a career diploma be considered and recognized by all public postsecondary education institutions and given the same status as a regular diploma for purposes of the school and district accountability system; to provide relative to conditions to be met by a student pursuing a career major curriculum; to delete the requirement for parental consent for a student to pursue such curriculum; to delete certain requirements relative to pupil progression plans; to provide relative to requirements for Individual Graduation Plans for students; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:183.1(A) and (C)(2), 183.2, 183.3(A)(2), (B), (C), and (D), and 2925 are hereby amended and reenacted and R.S. 17:183.1(D) is hereby enacted to read as follows:

§183.1. Purpose

A. The purpose of this Subpart is to create a career option in Louisiana’s high schools which shall consist of an academic major comprised of college preparatory
courses and a career major comprised of challenging academic courses and modern vocational career and technical studies.

* * *

C.

* * *

(2) A career diploma earned through a career major program and issued by the State Board of Elementary and Secondary Education shall be considered a regular standard diploma and shall be recognized by all Louisiana public postsecondary education institutions under the management and supervision of the Board of Supervisors of Community and Technical Colleges.

D. Except as provided in R.S. 17:183.3(B)(3), a career diploma issued to a student pursuant to this Subpart shall be given the same status and recognition for purposes of calculations made pursuant to the school and district accountability system required by R.S. 17:10.1, as is given a regular standard diploma issued by the State Board of Elementary and Secondary Education. A school or school system shall not be penalized in any manner for students who are issued a career diploma.

§183.2. Career option description

A. To prepare students for choosing a career option at the high school level, in grades six through eight, teachers shall incorporate activities which expose students to career and technical and academic fields of study. Such activities may include field trips, guest speakers, community services, and other activities such as word processing, desktop production, computer-assisted drafting and graphics, and other uses of technology designed to introduce students to occupations in demand in Louisiana. At least six activities shall be conducted at each grade level during each school year. Each teacher of grades six through eight shall maintain records of such activities.

B.(1) By the end of the eighth grade, each student shall develop, with the input of his family, a Five Year Individual Graduation Plan. Such a plan shall include a sequence of courses which is consistent with the student’s stated goals for one year after graduation. Each student’s Five Year Individual Graduation Plan shall
be reviewed annually thereafter by the student, parents, and school advisor and revised as needed:

(2) School guidance counselors or others designated by the school principal or both shall be responsible for the completion of the Five-Year Individual Graduation Plan of each eighth grade student. The guidance counselors and others shall counsel each student with regard to high school graduation requirements and shall assist the student in developing his plan. The guidance counselors and others shall forward such plans to the appropriate high schools where such students shall attend.

C-B. Throughout high school, each student shall pursue the rigorous curriculum required for his chosen major by his school as approved by the State Board of Elementary and Secondary Education.

D-C. Students shall be able to change from one major to the other at the end of any school year.

§183.3. Career major; description; curriculum and graduation requirements

A.

* * *

(2)(a) Each city, parish, and other local public school system shall develop and offer one or more career major programs aligned to state and regional workforce demands, pursuant to policies adopted subject to approval by the State Board of Elementary and Secondary Education. However, any such school system may be granted a waiver from this requirement by the State Board of Elementary and Secondary Education for good cause.

(b) Schools, in partnership with local business and industry leaders, local economic development agencies, and postsecondary education leaders, shall review majors offered each year and expand offerings as appropriate, including courses offered through articulation, dual enrollment, correspondence, industry training programs, and technological methods such as distance learning through the Internet and compressed video digital learning opportunities.
B.(1) Students in a career major program shall complete an academic core of courses and a career and technical sequence of courses or approved training programs that lead to an approved industry-based credential.

(2) The course requirements for the career major shall consist of the following:

(a) At least four English credits, including English I, English II, and two additional courses from among the following: English III, English IV, AP or IB English courses, Business English, Technical Writing, or comparable Louisiana Technical College comparable or identical to English courses offered by the Louisiana Technical College: Jump Start regional teams as approved by the State Board of Elementary and Secondary Education.

(b) At least four mathematics credits, including Algebra I, Algebra I Part One; and Algebra I Part Two, or an applied or hybrid Algebra course, and three additional applied or hybrid mathematics courses from among the following: Geometry, Math Essentials, Financial Literacy, Business Math, Algebra II, Algebra III, Advanced Math - Functions and Statistics, Advanced Math - Pre-Calculus, Pre-Calculus, or comparable Louisiana Technical College comparable or identical to courses offered by the Louisiana Technical College as needed to fulfill the mathematics course requirements Jump Start regional teams as approved by the State Board of Elementary and Secondary Education. Integrated Mathematics I, II, and III may be substituted for Algebra I, Geometry, and Algebra II, and shall equal three mathematics credits.

(c) At least three science credits, including one unit credit of Biology and two additional courses one additional course selected from a list of science courses related to the student's chosen career major as approved by the State Board of Elementary and Secondary Education among the following: Chemistry I, Earth Science, Environmental Science, Physical Science, Agriscience I and Agriscience II (one credit combined), or AP or IB Science courses.

(d) At least three social studies credits, including one credit from among the following: U.S. History, AP U.S. History, or IB U.S. History; one-half credit
from among the following: Government, AP U.S. Government and Politics; Comparative, or AP U.S. Government and Politics: United States; and one-half credit from among the following: Economics, AP Macroeconomics, or AP Microeconomics. One credit of Civics may be substituted for any two of the one-half credit courses specified in this Subparagraph unit of American History and one additional course selected from a list of social studies courses approved by the State Board of Elementary and Secondary Education. Each student shall successfully complete coursework in Civics and Free Enterprise, as provided in R.S. 17:274.1.

(e) At least two credits in Health and Physical Education, including one credit of Physical Education I, one-half credit from among the following: Physical Education II, Marching Band, Extracurricular Sports, Cheerleading, or Dance Teams; and one-half credit of Health Education.

(f) At least seven nine credits in career and technical education courses with end-of-course testing as appropriate and approved by the State Board of Elementary and Secondary Education, including at least one-half credit in a career readiness course and one credit in a computer applications course. Courses shall be selected to prepare a student for postsecondary education or a career. Jump Start course sequences, workplace experiences, and credentials. A student shall complete a regionally designed series of Career and Technical Education Jump Start coursework and workplace-based learning experiences leading to a statewide or regional Jump Start credential. This shall include courses and workplace experiences specific to the credential, courses related to foundational career skills requirements in Jump Start, and other courses, including career electives, that the Jump Start regional team determines are appropriate for the career major.

(g) Additional electives or career and technical education courses required by the city, parish, or other local public school board as approved by the State Board of Elementary and Secondary Education.

(3) The questions included in any end of course examination administered to students pursuing a career major program and curriculum as provided in this Section, the passage of which is required for high school graduation, shall be
constructed in a manner that reflects course design and content and the method of
instruction employed for the course:

(3) A student pursuing a career diploma shall take the American College
Test and may choose to take the WorkKeys test. The State Board of Elementary and
Secondary Education shall develop a system of equivalent scores for the American
College Test and the WorkKeys test and shall use a student's highest score achieved
on such test or tests for purposes of the school and district accountability system
required by R.S. 17:10.1.

C. Each city, parish, and other local public school board seeking to establish
a career major shall submit a proposed curriculum to the State Board of Elementary
and Secondary Education for approval. Such curriculum shall comply with the
provisions of Subsection B of this Section and the provisions of R.S. 17:261 through
280.

D.(†) A student who seeks to pursue a career major curriculum must shall
meet one of the following conditions:

(†)(1) The student has fulfilled all of the requirements established by the
State Board of Elementary and Secondary Education and the city, parish, or other
local public school board where the student is enrolled for promotion to the ninth
grade high school.

(b)(i) The student is at least fifteen years of age, or will attain the age of
fifteen during the next school year, scored at least at the approaching basic level on
either the English/Language Arts or Mathematics component of the eighth grade
Louisiana Educational Assessment Program test, and meets the objective criteria
established by the pupil progression plan of the city, parish, or other local public
school system where the student is enrolled to enter the ninth grade for the purpose
of pursuing a career major curriculum.

(ii) Prior to entering the ninth grade, such student must complete a summer
remediation program in the subject area of any component of the eighth grade
Louisiana Educational Assessment Program test on which the student scored at the
unsatisfactory level, as established by the State Board of Elementary and Secondary
Page 6 of 9

CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
Education. Any such student who fails to satisfactorily complete a summer remediation program shall be required to complete any approved developmental course or courses, for credit, as may be deemed necessary to ensure that the student is prepared to undertake the coursework required for his chosen career major.

(iii) The State Board of Elementary and Secondary Education shall certify that the pupil progression plan established by each city, parish, or other local public school system that promotes a student to the ninth grade pursuant to this Subparagraph contains the following requirements:

(aa) Such student, at a minimum, must have achieved a cumulative grade point average of at least 1.5 on a 4.0 scale for coursework required for completion of the eighth grade.

(bb) Such student must have demonstrated acceptable attendance and behavior standards as determined by the State Board of Elementary and Secondary Education.

(cc) Such student must participate, during his first year in high school, in a dropout prevention and mentoring program developed in consultation with school guidance personnel, as approved by the State Board of Elementary and Secondary Education.

(2) Every student who seeks to pursue a career major must have the written permission of his parent or other legal guardian, after consultation with the school guidance counselor or other school administrator and a determination that participation in a career major curriculum and pursuit of a career diploma issued by the State Board of Elementary and Secondary Education is appropriate and in the best interest of the student.

(2) Has fulfilled or is determined to be on track to fulfill the course requirements set forth in Paragraph (B)(2) of this Section.

(3) Meets the entry or admissions requirements set forth in the chosen career major program.

* * *

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
§2925. Individual graduation plans

A.(1) In accordance with the provisions of R.S. 17:183.2, by the end of the eighth grade, every student, with the assistance of his parent or other legal guardian and school guidance personnel, shall begin to develop an individual graduation plan to guide the next academic year's course work and to assist the student in exploring educational and career possibilities and in making appropriate secondary and postsecondary education decisions as part of an overall career plan. The plan shall be based on the student's talents and interests and shall consider high school graduation requirements relevant to the student's chosen major and postsecondary entrance requirements:

(2) By the end of the eighth grade, each student's Individual Graduation Plan shall list the required core courses to be taken through the tenth grade and shall identify the courses to be taken in the first year of high school. Students who fail to meet the standard for promotion to the ninth grade, pursuant to policies adopted by the State Board of Elementary and Secondary Education, shall have any necessary remedial courses included in their Individual Graduation Plan. The plan shall be reviewed annually and updated as necessary to identify the courses to be taken each year until all required core courses are completed.

(3) By the end of the tenth grade, each student's Individual Graduation Plan, based on the student's academic record, talents and interests, shall outline high school graduation requirements relevant to the student's chosen postsecondary goals. Each student, with the assistance of his parent or other legal guardian and school guidance personnel, shall be allowed to choose the high school curriculum framework and related graduation requirements that best meets his postsecondary goals. Each student's Individual Graduation Plan shall include the recommended sequence of courses for successful completion of a standard diploma that aligns with postsecondary education, training, and the workforce and shall be reviewed annually and updated or revised as needed.
(4) The Individual Graduation Plan shall be sufficiently flexible to allow the student to change his program of study, yet be sufficiently structured to ensure that the student will meet the high school graduation requirements for his chosen major and be qualified for admission to a postsecondary education institution or to enter the workforce.

(5) Each student's Individual Graduation Plan shall be signed by the student, his parent or other legal guardian, custodian, and the school counselor.

B. To provide a foundation for the development of the Individual Graduation Plan, schools shall provide career awareness and exploration activities to all students in grades six through eight that create linkages between what a student does in school and what he wants to achieve in life. Such activities shall include career interest inventories and information to assist them in the career decisionmaking process and may include job shadowing, job mentoring, and job internships.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ___________________

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
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

(4) The public postsecondary institution shall accept as full payment the
tuition set forth in subsection (f) of this section.

(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
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 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. 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: ((4)) (a) The basic
education skills identified in RCW 28A.150.210; ((2)) (b) the
graduation requirements under RCW 28A.230.090; ((3)) (c) the courses
required to meet the minimum college entrance requirements under RCW
28A.230.130; and ((4)) (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 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.
(b) 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.

(4)(a)(i) 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>General education 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>5-6</td>
<td>27.00</td>
</tr>
<tr>
<td>7-8</td>
<td>28.53</td>
</tr>
<tr>
<td>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>Laboratory science average class size</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 (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>

p. 15
(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 Description</th>
<th>Staff per 1,000 K-12 students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health and social services:</td>
<td></td>
</tr>
<tr>
<td>School nurses</td>
<td>0.076</td>
</tr>
<tr>
<td>Social workers</td>
<td>0.042</td>
</tr>
<tr>
<td>Psychologists</td>
<td>0.017</td>
</tr>
<tr>
<td>Guidance counselors, a function that includes parent outreach and graduation advising</td>
<td>0.493</td>
</tr>
<tr>
<td>Teaching assistance, including any aspect of educational instructional services provided by classified employees</td>
<td>0.936</td>
</tr>
<tr>
<td>Office support and other noninstructional aides</td>
<td>2.012</td>
</tr>
<tr>
<td>Custodians</td>
<td>1.657</td>
</tr>
<tr>
<td>Classified staff providing student and staff safety</td>
<td>0.079</td>
</tr>
<tr>
<td>Parent involvement coordinators</td>
<td>0.00</td>
</tr>
</tbody>
</table>

(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:
13 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:

(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:

(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:

Per annual average full-time equivalent student in grades K-12

Technology ......................................................... $54.43
Utilities and insurance ........................................... $147.90
Curriculum and textbooks ...................................... $58.44
Other supplies and library materials ........................ $124.07
Instructional professional development for certificated and classified staff ............................................. $9.04
Facilities maintenance .......................................... $73.27
Security and central office administration .................. $50.76

Per annual average full-time equivalent student in grades K-12

Technology .......................................................... $113.80
Utilities and insurance .......................................... $309.21
Curriculum and textbooks ...................................... $122.17
Other supplies and library materials ........................ $259.39
Instructional professional development for certificated and classified staff ............................................. $18.89
Facilities maintenance .......................................... $153.18
Security and central office administration .................. $106.12

(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:

Per annual average full-time equivalent student
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;

(c)) Preparatory career and technical education courses for
students in grades nine through twelve offered in a high school; and

(d)) 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
Sec. 4. Minnesota Statutes 2012, section 120B.023, is amended to read:

120B.023 BENCHMARKS.

Subdivision 1. **Benchmarks implement, supplement statewide academic standards.** (a) The commissioner must supplement required state academic standards with grade-level benchmarks. High school career and college ready benchmarks may cover more than one grade. **The benchmarks must implement statewide academic standards by specifying the academic knowledge and skills that schools must offer and students must achieve all benchmarks for an academic standard to satisfactorily complete a that state standard. The commissioner must publish benchmarks to inform and guide parents, teachers, school districts, and other interested persons and to use in developing tests consistent with the benchmarks.**

(b) The commissioner shall publish benchmarks in the State Register and transmit the benchmarks in any other manner that informs and guides parents, teachers, school districts, and other interested persons and makes them accessible to the general public. The commissioner must use benchmarks in developing career and college readiness assessments under section 120B.30. The commissioner may charge a reasonable fee for publications.

(c) Once established, the commissioner may change the benchmarks only with specific legislative authorization and after completing a review under subdivision 2.

(d) The commissioner must develop and implement a system for reviewing each of the required academic standards and related benchmarks and elective standards on a periodic cycle, consistent with subdivision 2.

(e) (d) The benchmarks are not subject to chapter 14 and section 14.386 does not apply.

Subd. 2. **Revisions and reviews required.** (a) The commissioner of education must revise and appropriately embed technology and information literacy standards consistent with recommendations from school media specialists into the state's academic standards and graduation requirements and implement a review ten-year cycle for to review and revise state academic standards and related benchmarks, consistent with this subdivision. During each ten-year review and revision cycle, the commissioner also must examine the alignment of each required academic standard and related benchmark with the knowledge and skills students need for career and college readiness and advanced work in the particular subject area. The commissioner must include the contributions of Minnesota American Indian tribes and communities as related to the academic standards during the review and revision of the required academic standards.

(b) The commissioner in the 2006-2007 school year must revise and align the state's academic standards and high school graduation requirements in mathematics to require that students satisfactorily complete the revised mathematics standards, beginning in the 2010-2011 school year. Under the revised standards:

(1) students must satisfactorily complete an algebra I credit by the end of eighth grade; and

(2) students scheduled to graduate in the 2014-2015 school year or later must satisfactorily complete an algebra II credit or its equivalent.

(b) The commissioner also must ensure that the statewide mathematics assessments administered to students in grades 3 through 8 and 11 are aligned with the state academic standards in mathematics, consistent with section 120B.30, subdivision 1, paragraph (b). The commissioner must implement a review of the academic standards and related benchmarks in mathematics beginning in the 2015-2016 school year.

(c) The commissioner in the 2007-2008 school year must revise and align the state's academic standards and high school graduation requirements in the arts to require that students satisfactorily complete the revised arts standards beginning in the 2010-2011 school year. The commissioner must implement a review of the academic standards and related benchmarks in arts beginning in the 2016-2017 school year.
(d) The commissioner in the 2008-2009 school year must revise and align the state's academic standards and high school graduation requirements in science to require that students satisfactorily complete the revised science standards, beginning in the 2011-2012 school year. Under the revised standards, students scheduled to graduate in the 2014-2015 school year or later must satisfactorily complete a chemistry or physics credit or a career and technical education credit that meets standards underlying the chemistry, physics, or biology credit or a combination of those standards approved by the district. The commissioner must implement a review of the academic standards and related benchmarks in science beginning in the 2017-2018 school year.

(e) The commissioner in the 2009-2010 school year must revise and align the state's academic standards and high school graduation requirements in language arts to require that students satisfactorily complete the revised language arts standards beginning in the 2012-2013 school year. The commissioner must implement a review of the academic standards and related benchmarks in language arts beginning in the 2018-2019 school year.

(f) The commissioner in the 2010-2011 school year must revise and align the state's academic standards and high school graduation requirements in social studies to require that students satisfactorily complete the revised social studies standards beginning in the 2013-2014 school year. The commissioner must implement a review of the academic standards and related benchmarks in social studies beginning in the 2019-2020 school year.

(g) School districts and charter schools must revise and align local academic standards and high school graduation requirements in health, world languages, and career and technical education to require students to complete the revised standards beginning in a school year determined by the school district or charter school. School districts and charter schools must formally establish a periodic review cycle for the academic standards and related benchmarks in health, world languages, and career and technical education.

Sec. 5. Minnesota Statutes 2012, section 120B.024, is amended to read:

120B.024 GRADUATION REQUIREMENTS; COURSE CREDITS.

Subdivision 1. Graduation requirements. (a) Students beginning 9th grade in the 2011-2012 school year and later must successfully complete the following high school level course credits for graduation:

(1) four credits of language arts sufficient to satisfy all of the academic standards in English language arts;

(2) three credits of mathematics, encompassing at least algebra, geometry, statistics, and probability including an algebra II credit or its equivalent, sufficient to satisfy all of the academic standard standards in mathematics;

(3) an algebra I credit by the end of 8th grade sufficient to satisfy all of the 8th grade standards in mathematics;

(3) (4) three credits of science, including at least: (i) one credit in biology; and (ii) one chemistry or physics credit or a career and technical education credit that meets standards underlying the chemistry, physics, or biology credit or a combination of those standards approved by the district, but meeting biology standards under this item does not meet the biology requirement under item (i), one credit of chemistry or physics, and one elective credit of science. The combination of credits under this clause must be sufficient to satisfy (i) all of the academic standards in either chemistry or physics and (ii) all other academic standards in science;

(4) (5) three and one-half credits of social studies, encompassing at least United States history, geography, government and citizenship, world history, and economics or three credits of social studies encompassing at least United States history, geography, government and citizenship, and world history,
and one-half credit of economics taught in a school's social studies, agriculture education, or business department sufficient to satisfy all of the academic standards in social studies;

(5) (6) one credit in of the arts sufficient to satisfy all of the state or local academic standards in the arts; and

(6) (7) a minimum of seven elective course credits.

A course credit is equivalent to a student successfully completing an academic year of study or a student mastering the applicable subject matter, as determined by the local school district.

Subd. 2. Credit equivalencies. (a) A one-half credit of economics taught in a school's agriculture education or business department may fulfill a one-half credit in social studies under subdivision 1, clause (5), if the credit is sufficient to satisfy all of the academic standards in economics.

(b) An agriculture science course or career and technical education credit may fulfill the elective science credit requirement other than the specified science credit in biology under paragraph (a), clause (3); subdivision 1, clause (4), if the course meets academic standards in science as approved by the district. An agriculture science or career and technical education credit may fulfill the credit in chemistry or physics or the elective science credit required under subdivision 1, clause (4), if (1) the credit meets the chemistry, physics, or biology academic standards or a combination of these academic standards as approved by the district and (2) the student satisfies either all of the chemistry academic standards, all of the physics academic standards, or all of the applicable elective science standards prior to graduation. An agriculture science or career and technical education credit may not fulfill the required biology credit under subdivision 1, clause (4).

(c) A career and technical education course credit may fulfill a mathematics or arts credit requirement or a science credit requirement other than the specified science credit in biology under paragraph (a) subdivision 1, clause (2)-(3); or (5) (6).

(d) An agriculture education teacher is not required to meet the requirements of Minnesota Rules, part 3505.1150, subpart 1, item B, to meet the credit equivalency requirements of paragraph (b) above.

EFFECTIVE DATE. This section is effective August 1, 2013, and applies to students entering 9th grade in the 2013-2014 school year and later.

Sec. 6. Minnesota Statutes 2012, section 120B.11, is amended to read:

120B.11 SCHOOL DISTRICT PROCESS FOR REVIEWING CURRICULUM, INSTRUCTION, AND STUDENT ACHIEVEMENT; STRIVING FOR THE WORLD'S BEST WORKFORCE.

Subdivision 1. Definitions. For the purposes of this section and section 120B.10, the following terms have the meanings given them.

(a) "Instruction" means methods of providing learning experiences that enable a student to meet state and district academic standards and graduation requirements.

(b) "Curriculum" means district or school adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills and career and college readiness.

(c) "World's best workforce" means striving to: meet school readiness goals; have all third grade students achieve grade-level literacy; close the academic achievement gap among all racial and ethnic groups of students and between students living in poverty and students not living in poverty; have all students attain career and college readiness before graduating from high school; and have all students graduate from high school.
March 1, 2013 –Introduced by Joint Legislative Council. Referred to Committee on Education.

AN ACT to amend 118.33 (1) (a) 1. of the statutes; relating to: the number of mathematics and science credits required for a high school diploma.

Analysis by the Legislative Reference Bureau
This bill is explained in the Notes provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Joint Legislative Council prefatory note: This bill was prepared for the Joint Legislative Council’s Special Committee on Improving Educational Opportunities in High School.

Under current law, a school board may not grant a high school diploma to any student unless the student has earned all of the following minimum credits in the high school grades: 4 credits of English; 3 credits of social studies; 2 credits of mathematics; 2 credits of science; and one and one-half credits of physical education. Current law also requires the completion of one-half credit of health education in grades 7 to 12 to earn a high school diploma.

This bill increases the required credits in mathematics and science to 3.

SECTION 1. 118.33 (1) (a) 1. of the statutes is amended to read:

118.33 (1) (a) 1. In the high school grades, at least 4 credits of English including writing composition, 3 credits of social studies including state and local government,
-2\frac{1}{3} credits of mathematics, -2\frac{1}{3} credits of science and 1.5 credits of physical education. The school board shall award a pupil a science credit for successfully completing in the high school grades each course in agriculture that the department has determined qualifies as science according to criteria established by the department.

(END)
SUMMARY OF HOUSE BILL 5

This summary of House Bill 5 was prepared by TASB Legal Services and provides an overview of the changes to public school curriculum, assessment, and accountability. House Bill 5 became effective on June 10, 2013 and applies beginning with the 2014-15 school year, except as indicated otherwise. For a complete reading of the legislation, please access House Bill 5 at Texas Legislature Online: www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/HB00005F.pdf#navpanes=0.

Records Exchange: This bill adds a reference to the expanded requirement for personal graduation plans (PGPs), as described below, to the records that must be made available through the TREx/UT SPEEDE records exchange. (SECTION 1)

Science Lab Grants: To be eligible for a science laboratory grant, a school district must show that its existing labs are insufficient to provide for the distinguished level of achievement under the foundation high school program. (SECTION 2)

CTE Consortium: Effective immediately, the commissioner must consider options for the state to join a consortium of states to develop sequences of rigorous CTE courses in high-demand, high-wage careers. The CTE curriculum must comply with TEKS. (SECTION 3)

PGPs Optional for Charters: Charter schools must “consider” using PGPs with students. (SECTION 4)

Limit on Absences for Test Prep: Every school board must adopt and strictly enforce a policy limiting the removal of students from class for remediation or test preparation. Absent parental permission, a student may not be removed for this purpose if the removal would cause the student to miss more than 10 percent of the school days on which the class is offered. This applies with the 2013-14 school year. (SECTION 5)

90 Percent Rule: In addition to the existing provisions regarding loss of credit if a student attends class less than 90 percent of the days a class is offered, a student in any k-12 grade may not receive a “final grade.” This applies with the 2013-14 school year. (SECTIONS 6-7)

Algebra II: To be accredited, a district must make Algebra II available to each high school student. (SECTION 8)
CTE: With school board approval, a district may offer a course, apprenticeship, or other training for credit without SBOE approval if the district develops the program in partnership with an institution of higher education and local businesses, labor, and community leaders, and the program allows students to enter a regional career and technology training program, an institution of higher education without remediation, an apprenticeship, or an internship for an industry-recognized credential. Districts must report annually the number of students enrolled in these programs. In approving CTE courses, the SBOE must determine that at least half are cost effective for districts to offer. (SECTION 8)

By September 1, 2014, and expiring September 1, 2015, the SBOE must ensure at least six new advanced CTE or technology applications courses, including personal financial literacy and statistics, are approved to satisfy a fourth credit in math. (SECTION 9)

College Prep Courses: Each school district must partner with at least one institution of higher education to provide college prep courses in math and ELA. The courses must be designed for 12th graders whose EOC scores do not meet college readiness standards or whose coursework, college entrance exam score, or higher education assessment score for the TSI shows the student is not ready for entry-level college coursework. The course may be offered either on the high school campus or online. Appropriate faculty from both institutions must meet regularly to ensure alignment between the course and college readiness expectations. The commissioners of education and higher education may adopt rules for this subsection. Districts must notify all eligible students about the benefits of enrolling in a college prep course. A student who completes an ELA college prep course may use the credit toward the advanced ELA curriculum requirement for the foundation program. A student who completes a math college prep course may use the credit to satisfy an advanced math curriculum requirement after the student has completed Algebra I and geometry. College prep courses may be offered for dual credit at the discretion of the institution of higher education with which the school district partners. By the 2014-15 school year, each district, in consultation with the institution of higher education, must buy or develop course instructional materials, which must include technology resources to enhance effectiveness. In developing the materials, to the extent applicable, districts must draw from materials developed by TEA and THECB vertical teams. (SECTION 10)

15 Percent and Cumulative Score Repealed: This section repeals the requirement to create EOC exams, the requirement that EOC exam scores constitute 15 percent of a class grade, and the requirement to achieve a certain cumulative score on EOCs to graduate. This section applies beginning with the 2013-14 school year. (SECTION 10)

Funding for SSI: Effective immediately, annually by July 1, the commissioner must certify whether sufficient funds have been appropriated for the SSI and new requirement for accelerated instruction for students who do not perform successfully on a state assessment. The commissioner is to consider the cost of administering exams, the number of students who failed to perform satisfactorily, whether funds are sufficient to support at risk students, and
whether funds are sufficient for instructional materials. The commissioner may not consider FSP funds, except compensatory education funds. Without sufficient funds, the accelerated instruction requirements may not be implemented. (SECTION 11)

**Middle School PGPs:** Starting with the 2014-15 school year, a middle school or junior high school principal must have a school counselor or other individual develop a PGP for students who fail a state assessment or who are unlikely to graduate from high school within five years. (SECTIONS 12-13)

**High School PGPs:** TEA, in consultation with the TWC and the THECB, will provide information in English and Spanish that explains the advantages of the distinguished level of achievement and the endorsements and encourages students and parents to choose a corresponding PGP. Districts must publish the notice on their Web sites for students and parents in grades nine and above. If at least 20 students in a grade level speak primarily another language, the district must post the notice in that language as well. A high school principal must designate a school counselor or administrator to review PGP options, including the distinguished level and endorsements, for entering ninth graders and their parents. By the end of the school year, the student and parent must sign a PGP that identifies a course of study that promotes college and workforce readiness and career placement and advancement, and facilitates transition to post-secondary education. A district may not prevent a student and parent from choosing a PGP that pursues a distinguished level or an endorsement. A student may change his or her PGP; if so, the district must notify the student’s parent. (SECTION 14)

**Accelerated Instruction:** Effective immediately, each student who fails to perform successfully on an EOC exam for Algebra I, biology, English I & II, or U.S. history shall receive accelerated instruction in the relevant subject using appropriated funds. The instruction may require participation outside of normal school hours or normal school operations. (SECTION 15)

**SBOE Rulemaking:** The SBOE will determine by rule curriculum requirements for the foundation program that are consistent with law. [Note: The SBOE retains authority to set the foundation curriculum in the four core academic subjects and the enrichment curriculum for the foundation program.] Except as provided by Texas Education Code section 28.025 (see below), the SBOE may not designate a particular course or number of credits in the enrichment curriculum as requirements for the foundation program. (SECTION 16)

**Endorsements:** A district must ensure that on entering ninth grade each student indicates in writing an endorsement the student intends to earn. A district must permit a student to choose at any time to earn an endorsement other than the one the student previously indicated. A student may graduate under the foundation program without an endorsement if, after the student’s sophomore year, the student and parent are advised by a school counselor of the benefits of graduating with an endorsement and the parent provides written permission on a TEA form allowing the student to graduate without an endorsement. Prior language about permission for the minimum program is repealed. (SECTION 16)
Graduation Requirements: The SBOE must require for the foundation program that students complete:

- Four credits in ELA (English I-III and one advanced course)
- Three credits in math (Algebra I, geometry, and one advanced course)
- Three credits in science (biology, and either two advanced courses, or one advanced course and one integrated physics and chemistry course)
- Three credits in social studies (US history, .5 government, .5 economics, and world geography and/or world history)
- Two credits in the same foreign language, absent an exception
- One credit in fine arts
- One credit in PE, absent an exception
- Five electives

In adopting its rules, the SBOE must adopt a variety of options for advanced courses in ELA, math, and science. Each approved course should prepare students to enter the workforce successfully or post-secondary education without remediation.

The SBOE and THECB must adopt or revise existing rules to ensure that a student may complete the foundation program or endorsement by successfully completing the core curriculum of an institution of higher education. Notwithstanding any provision of the Education Code or local policy, a student who has completed the core curriculum is considered to have earned the distinguished level of achievement and is entitled to a high school diploma.

Formerly a pilot program, any district with the commissioner's approval may allow a student to satisfy the fine arts credit through a community-based fine arts program on or off campus that covers the TEKS.

With the commissioner's approval, a district may allow a student to complete the physical education (PE) requirement by participating in a private program on or off campus. An approved CTE course may be substituted as an academic elective (along with ELA, math, science, or social studies) for students excused from PE due to physical limitations.

SBOE rules must allow two credits in a computer programming language to substitute for the foreign language credits. SBOE rules must also allow:

- a student to substitute another appropriate course for the second foreign language credit if, based on SBOE rules, the student is unlikely to complete the second credit; and/or
• a student with a disability to substitute two academic electives that may not be used to complete any other credit requirement, at the direction of the student’s ARDC or 504 committee. (SECTION 16)

**Distinguished Level of Achievement:** A student earns a distinguished level of achievement in the high school foundation program if the student completes:

• four credits in math, including geometry, Algebra I and II, and another advanced math course (or CTE course, as permitted by SBOE rule)

• four credits in science, including biology, and either two advanced courses, or one advanced course and one integrated physics and chemistry course (or CTE course, as permitted by SBOE rule)

• the remaining foundation program credits, and

• at least one endorsement (all of which must require two additional elective credits).

Credits required to complete an endorsement or the distinguished level may also count as elective credit for the foundation program. (SECTION 16)

**CTE Rules:** By SBOE rule, elective credits needed for the foundation program may be CTE courses necessary to earn an industry-recognized credential or associates degree. SBOE rules must also provide that students can earn foundation program credits with dual-enrollment courses. (SECTION 16)

**Endorsements:** The SBOE may adopt rules detailing courses needed to earn an endorsement, but the rules must provide multiple options and must allow students to enroll in more than one endorsement before their junior year. The endorsements are:

• STEM, including environmental science, technology, computer science, engineering, and advanced mathematics

• Business and industry, including database management, information technology, communications, accounting, finance, marketing, graphic design, architecture, construction, welding, logistics, automotive technology, agricultural science, and HVAC

• Public services, including health sciences, education, law enforcement, culinary arts, and hospitality

• Arts and humanities, including political science, world languages, cultural studies, literature, history, and fine arts (allowed, with parental permission, to substitute one fine arts credit for a science credit)

• Multidisciplinary studies, which allows a student to take any of these courses sufficient to complete the distinguished level
In adopting rules for endorsements, SBOE must communicate with education and business leaders and must require school districts to report to TEA which categories of endorsements the district offers. School districts must offers courses to allow students to complete at least one endorsement. If a school district offers only one endorsement, it must be multidisciplinary studies. (SECTION 16)

**Transcript Acknowledgment:** A student may earn a performance acknowledgement on his or her transcript for outstanding performance in a dual credit course, bilingualism, an IB or AP test, a college entrance exam, or for earning a nationally or internationally recognized business or industry certification or license.

Under SBOE rules, a school district must indicate the distinguished level of achievement, an endorsement, or a performance acknowledgement on a student’s diploma and transcript. PEIMS must indicate the number of students enrolled in the foundation program, pursuing the distinguished level, and pursuing an endorsement; the data must be disaggregated by race, ethnicity, socioeconomic status, gender, and special populations. (SECTION 16)

**Transition Plan:** The commissioner must adopt a transition plan from the current high school programs to the new program beginning with the 2014-15 school year. A student in ninth grade before 2014-15 (anyone in ninth in 2013-14 and before) may graduate under:

- The foundation program, if courses selected in 2014-15
- The minimum program, if participating before 2014-15
- The recommended program, if participating before 2014-15
- The advanced program, if participating before 2014-15

By commissioner’s rule, a 2013-14 high school senior who does not satisfy the curriculum requirements of their current program may graduate if the student satisfies the foundation program and any other graduation requirements. (SECTION 16)

A student in the pilot program for students demonstrating early college readiness based at a research university is considered to have earned the distinguished level of achievement and may apply to an institution of higher education for enrollment in an academic term beginning after the student completes the pilot program. (SECTION 17)

**College Admission Information:** Charter schools must provide the notices traditional school districts provide about automatic college admission. All must also provide notice of the curriculum requirements for financial aid. Now the required forms must be signed not only by students and parents, but also by the student’s counselor. (SECTION 18)
STEM: Technology applications is added to the list of applied STEM courses. SBOE rules must allow students to substitute approved STEM courses for math and science credits. A requirement that the math substitution not be allowed until after Algebra I, geometry, and Algebra II was eliminated. Science substitution may not be permitted until after biology (but not chemistry and physics). (SECTION 19)

Accelerated Instruction for EOCs: Effectively immediately, school districts must offer, at no cost to students, accelerated instruction before the next test administration to students who fail an EOC exam required for graduation. A district required to provide accelerated instruction shall separately budget sufficient funds, including compensatory education funds, for that purpose. Compensatory education funds may not be budgeted for any other purpose until the district sets a budget for accelerated instruction. Districts must evaluate the effectiveness of accelerated instruction and hold an annual public hearing on the results. (SECTION 20)

Age of At-Risk: Effective immediately, the definition of at-risk student has been amended to include students up to age 26. (SECTION 20)

State CTE Plan: The state CTE plan must require districts, to the extent possible, to allow CTE students to enroll in dual enrollment courses that lead to a degree, license, or certification as part of the program. The district will receive a subsidy for paying for a student’s career certification exam. Limitations on types of careers (high-demand, high-wage, high-skill) are eliminated, as is the student’s need to submit an application to the district for reimbursement, because the district will pay for the exam directly. The changes related to certification exams apply beginning with the 2013-14 school year. (SECTIONS 22-23)

IMA Funds: Instructional Materials Allotment (IMA) funds may be used to buy instructional materials for use in college prep courses. (SECTION 26)

Effective immediately, TEA will provide districts an estimate of IMA funds for the next fiscal year, and districts and charter schools will be able to pre-order materials up to 80 percent of the estimate. As funds become available, TEA will prioritize the payment of these pre-orders. TEA will inform publishers about any potential delay in payment and that payment is conditioned on available funds; publishers may decline to accept pre-orders. Texas Government Code chapter 2251 on state and local governmental purchasing does not apply to pre-orders. TEA may adopt rules. (SECTION 27)

TEA must adopt rules regarding the purchase of college prep instructional materials. IMA funds may be used to buy college prep materials. (SECTION 28)

Counseling about Postsecondary Requirements: Existing provisions requiring school counselors to counsel students and parents about the academic requirements and financial aid for higher education now refers to postsecondary education. Counseling about postsecondary education, which had been required during the first and last years of high school, is now
required in every year of high school and must include the advantages of completing an endorsement and the distinguished level of achievement. These provisions also apply to charters. (SECTIONS 29-30)

NCLB: Effective the 2013-14 school year, the phrase, “except as required by federal law,” was added before an existing provision that allowed a student to avoid a state-mandated exam in the student’s grade and course if the student were enrolled in a course intended for students in a higher grade and the student would take the assessment or EOC exam associated with the course. (SECTION 31)

Assessment Options for Special Education: Effective the 2013-14 school year, alternative assessments developed for special education students for whom standard assessments, even with accommodations, would be inappropriate, will now include assessments approved by the commissioner to measure growth. The assessments must, to the extent allowed by federal law, give districts options for student assessment. TEA, along with appropriate interested persons, must redevelop assessments for significantly cognitively disabled students for administration no later than 2014-15. An assessment under this section may not require a teacher to prepare tasks or materials for a student who will take the alternative test. (SECTION 31)

Five EOCs: Effective the 2013-14 school year, Texas Education Code section 39.023 regarding state-mandated assessments is amended to eliminate EOC exams for Algebra II, geometry, chemistry, physics, English III, world geography, and world history. There are only five required EOCs:

- Algebra I
- Biology
- English I (including reading and writing in a single exam)
- English II (including reading and writing in a single exam)
- U.S. history

Effective the 2013-14 school year, the “15 percent rule,” which required EOC exam scores to count as 15 percent of students’ final course grades, and related language regarding the calculation of retakes, is repealed. (SECTION 31)

Answers from Prior EOCs: Effective the 2013-14 school year, for 2012-13 exams, pursuant to TEA rules, the agency shall release the answer keys for each required exam, except for those withheld for the purpose of retakes, after the final administration of each exam. This subsection expires on December 31, 2013.

For the 2013-14 school year, pursuant to TEA rules, the agency shall release the answer keys for each required exam (other than assessments in grades 3-8), except for those withheld for the purpose of retakes and those for courses for which 2012-13 answer keys were released, after the final administration of each exam. This subsection expires on December 31, 2014.
For 2013-14 exams, pursuant to TEA rules, the agency shall release the answer keys for each required exam, except for those withheld for the purpose of retakes, after the final administration of each exam. This subsection expires on December 31, 2014.

During 2014-15 and 2015-16, TEA shall release answer keys to required exams after the final administration of each exam (except for field test questions).

Effective the 2013-14 school year, TEA must report assessment results within 21 days of administration, and the school district must disclose the results of assessments to teachers of the students they taught in the relevant courses. (SECTION 31)

No EOC in Class Rank: Effective with the 2013-14 school year, a student’s performance on an EOC exam may not be used to determine class rank for any purpose, including Top Ten Percent. A general academic teaching institution may consider EOC scores, but may not use EOC scores as a sole criterion in student admissions. (SECTION 32)

Optional English III and Algebra II: Beginning with the 2015-16 school year, TEA must develop postsecondary readiness assessments for Algebra II and English III, which districts may administer at their option. The assessments must test essential knowledge and skills, measure growth, measure postsecondary readiness, and be validated by national postsecondary education experts. The assessments cannot be given before the second full week of May. Participating districts must administer the exams to all students enrolled in the courses and report the results to TEA, which will in turn report to state officials. Results of these exams may not be used:

- by TEA for accountability
- by a school district for teacher evaluation or students’ grades or class rank; or
- by an institution of higher education for admissions or a TEXAS grant.

Participating districts may not administer benchmark tests in anticipation of these exams. Districts that administer these exams will be acknowledged by TEA. (SECTION 34)

EOC Passing Standards: Beginning with the 2013-14 school year, the requirements that students achieve a minimum score on each EOC and a cumulative score in each academic area in order to graduate are eliminated. TEA must assign a scale score on each required EOC and covert the score to an equivalent score on a 100-point scale. Students must have satisfactory performance on the five EOCs in order to graduate.

A student in a college prep course who satisfies the TSI college readiness benchmarks on an exam administered by the THECB at the end of the college prep course satisfies the EOC requirement for that course. By October 1, 2013 the commissioner must adopt rules to determine a method by which performance on an AP, IB, ACT, SAT, PSAT, ACT-Plan, or other national norm-referenced exam used by higher education to award credit will be used to satisfy
EOC requirements. Students who take the PSAT or ACT-Plan and do not satisfy the EOC requirement must take the EOC. Students who take the remaining exams may retake the national test or take the EOC. (SECTIONS 35-36, 80)

A special education student’s ARDC will decide whether the student must pass the EOCs in order to graduate. A student who does not perform satisfactorily on an EOC may retake the exam, but is not required to retake the course. If a district determines that rising senior is unlikely to pass an EOC, the district shall require the student to enroll in the corresponding college prep course, if available; the college prep course assessment can be used to satisfy the EOC requirement. (SECTION 35-36)

These sections apply only to students who entered ninth grade in 2011-12 or later. Students who entered ninth grade in or after 2011-12, but before 2013-14, may be administered only the tests as these sections are amended, in accordance with a transition plan to be determined by the commissioner. (SECTION 79)

Limit on Benchmarks: Beginning with the 2013-14 school year, a school district may not administer to any student more than two benchmark assessments to prepare for a corresponding state-mandated assessment. This limitation does not apply to college preparation assessments, including the PSAT, ACT-Plan, SAT, ACT, AP, IB, or independent classroom exams designed or adopted by the classroom teacher. A parent of a special needs student may, in accordance with commissioner rules, request additional benchmarks be administered to the parent’s child. (SECTION 37)

Students Only Temporarily in U.S.: Beginning with the 2013-14 school year, and regardless of the date on which a student originally enrolled in a U.S. school, unless a student is enrolled in school in the U.S. for at least 60 consecutive days during a year, the student may not be considered enrolled in a U.S. school for the purpose of determining a number of years for purposes of eligibility for an alternative assessment for LEP. (SECTION 38, 81)

Minimize Disruption of Class: Effective immediately, in establishing and implementing test administration procedures, the commissioner and school districts shall ensure the procedures are designed to minimize disruptions to school operations and the classroom environment. (SECTION 39)

Conflict of Interest with Assessment Vendors: The commissioner may not appoint a person who is employed or retained by an assessment instrument vendor to a committee or panel that advises TEA on accountability or the content or administration of an assessment instrument. Starting September 1, 2013, it is a Class B misdemeanor for an agent of an entity contracted to develop or implement state assessments to make or authorize a political contribution or take part, directly or indirectly, in the campaign of a candidate for SBOE. An agent of such an entity also commits an offense if the person serves as a member of a formal or informal advisory
committee by the commissioner, TEA, or SBOE regarding state assessment and accountability. (SECTION 40-41) If on September 1, 2013, a person is serving on a committee who is no longer eligible due to this section, the person’s position will be deemed vacant and may be filled as provided by law. (SECTION 82)

**Indicators of Student Achievement:** Effective with the 2013-14 school year, the indicators of student achievement for accountability purposes, found in Texas Education Code section 39.053, now include:

- Percentage of students who complete the distinguished level of achievement
- Percentage of students who complete an endorsement
- At least three additional indicators, to include *either* the percentage of students who meet TSI, as defined by the THECB, on an assessment instrument in reading, writing, or math or the number of students who earn: at least 12 hours of postsecondary credit for high school graduation credit; at least 30 hours of postsecondary credit; an associate’s degree; or an industry certification

An indicator of student achievement cannot negatively affect the commissioner’s review of a district or campus if the district or campus is already achieving at the highest level for that indicator. The commissioner must determine by rule how a student’s performance may be included in a district or campus performance rating if the student:

- satisfies TSI on an assessment designated by the THECB; or
- performs satisfactorily on an EOC retake, even though the time has passed for including the retake as a passing score. (SECTION 42)

**Dropout Calculation:** Also effective with the 2013-14 school year, a student who was previously reported as a dropout but who reenrolls and drops out again is not included in the district’s dropout calculation, regardless of the number of times this occurs. (SECTION 42)

**Performance Ratings:** Beginning with the 2016-17 school year, the commissioner must assign each school district a performance rating of A, B, C, D, or F, setting rules to determine the criteria for each rating. A-C will reflect acceptable performance, and D-F will reflect unacceptable performance. The commissioner will assign each campus a rating of exemplary, recognized, acceptable, or unacceptable. A district may not receive an “A” if it has any unacceptable campus. Notice of an unacceptable rating will still be provided to districts by June 15; all ratings will be public by August 8. (SECTION 44)

Effective in 2013-14, in evaluating campus and charter school performance, the commissioner shall evaluate against the student achievement indicators set in Texas Education Code section 39.053, except, to the greatest extent possible, when an indicator to measure growth would negatively affect the rating of a campus achieving at the highest level. (SECTION 45)
New Community and Student Engagement Rating: Beginning in 2013-14, by August 8 annually, each district must evaluate the district and each of its campuses in community and student engagement and assign the district and each campus a rating of exemplary, recognized, acceptable, or unacceptable overall and for each factor below based on criteria set by a local committee:

- Fine arts
- Wellness and PE
- Community and parent involvement, such as opportunities for parents to assist students in preparing for state assessments, tutoring programs, and opportunities for student community service
- 21st Century Workforce Development
- Second language acquisition
- Digital learning environment
- Dropout prevention strategies
- G/T programs
- The record of the district and each campus regarding compliance with statutory reporting and policy requirements

The ratings must be reported to TEA and the public as provided by commissioner rule. (SECTION 46)

On-Site TEA Investigations: Effective immediately, if the commissioner orders an on-site investigation of a school district program for which the district receives federal funds, and the district takes action on the investigators’ recommendations, the district shall make a reasonable effort to seek assistance from a third party in developing an action plan to improve district performance using techniques that are goal oriented and research based. (SECTION 47)

Grounds for special accreditation investigations are adjusted to permit investigations: when excessive numbers of students fail to complete advanced courses, including Algebra I; when a disproportionate number of students in a particular demographic group are completing a particular endorsement; and when an excessive number of students is graduating with a particular endorsement. (SECTION 48)

FIRST Rating System: The financial accountability rating system will be expanded to include processes for anticipating future financial solvency for each district including analysis of district revenues and expenses for preceding years. Initial rules to accomplish this must be adopted by March 1, 2015, with the changes effective for the 2014-15 school year. The commissioner must set up a scoring matrix with a point system and evaluate the indicators at least once every three years. The commissioner, in consultation with the comptroller, must set criteria for financial performance ratings, and each district will be assigned a financial performance rating. A district
will receive the lowest rating if the district fails to meet a critical criterion (as determined by the commissioner) or fails to meet a category of criteria suggesting financial distress. The commissioner will first assign a preliminary rating and allow the district to provide further data on any unsatisfactory indicator. Ratings will be publicly available annually by August 8. Applies to charter schools. (SECTION 49)

If the financial accountability indicators or other factors project a district shortfall in the next three years, TEA will provide the district interim financial reports to evaluate the district’s budget status. In the past, the district provided reports to TEA. TEA may ask the district for information relevant to these reports, and if the district does not comply, TEA may require the district to acquire professional services for financial assistance or training. This provision applies to charter schools. (SECTION 50)

A district assigned the lowest financial rating shall submit a corrective action plan to the commissioner to identify financial weaknesses and strategies for improvement. If a district fails to submit a plan, the commissioner may impose sanctions. This provision applies to charter schools. (SECTION 51)

**Distinction Designations:** Beginning in 2013-14, distinction designations for outstanding performance must be directly referenced in connection with a district or campus performance rating and made available publicly together with the performance ratings. (SECTION 53)

Beginning in 2013-14, distinction designations will go to districts and campuses for outstanding performance in gaining postsecondary readiness. New criteria for distinction designations will include:

- Percentage of students who earn a nationally or internationally recognized industry certification
- Percentage of students who complete a coherent sequence of CTE courses
- Percentage of students who complete dual credit or postsecondary courses
- Percentage of students who achieve college readiness benchmarks on the PSAT, SAT, ACT, or ACT-Plan
- Percentage of students who received a score on an AP or IB exam that would lead to college credit (SECTION 54)

Beginning in 2013-14, distinction designations for fine arts, PE, 21st Century Workforce Development, and second language acquisition are eliminated. (SECTION 55)

Additional performance reports are amended in light of changes to the high school curriculum to now require reporting of the percentage of students graduating under the foundation program, the distinguished level of achievement, and each endorsement. For each campus the data will be disaggregated by subpopulations. (SECTION 57)
Texas School Accountability Dashboard: Effective immediately, TEA must create a Web site known as the Texas School Accountability Dashboard for the public to access district and campus accountability information. For the dashboard, the commissioner will adopt a performance index in:

- Student achievement
- Student progress
- Closing performance gaps
- Postsecondary readiness

The dashboard must allow for comparisons among districts' performance information disaggregated by subpopulations and student populations, including number of students, percentage of students who are LEP, unschooled asylees or refugees, educationally disadvantaged, or disabled, with comparison of performance information by subject. (SECTION 58)

TEA Annual Report: TEA's annual report to state officials must now include an evaluation of the availability of endorsements, including the endorsements for which districts offer for all required courses and districts' economic, geographic, and demographic information. (SECTION 59)

Accountability Ratings Online: Beginning in 2013-14, not later than October 1 annually, TEA must post on its Web site:

- Each letter rating and distinction designation awarded to a district, campus, or charter school
- The performance rating assigned to each district, campus, or charter school
- The financial accountability rating assigned to each district or charter school (SECTION 60)

TSI: Beginning with the 2015-16 school year, a student who has met the standard for college readiness set by the TEA/TECB vertical teams on the state assessments for Algebra II and English III will be exempt for the relevant subjects from the TSI, which requires entering college freshmen to undergo assessment and receive remediation to the extent they are not prepared for freshman-level coursework. (SECTION 62)

Beginning with 2013-14, a student who successfully completes a college prep course is exempt from TSI in the relevant subject at the institution of higher education that partnered to offer the course, for a period of time to be determined by the commissioner of higher education. By rule, the commissioner of higher education may determine the extent to which the exemption applies at other institutions of higher education. (SECTION 63)
**Top Ten Percent and College Admissions:** Starting with the 2014-15 school year, the Top Ten Percent rule is modified in light of changes to the high school curriculum. Unless an exception applies, a student must graduate at the distinguished level of achievement to be eligible for automatic admission through the Top Ten Percent. The commissioners of education and higher education will jointly adopt rules to allow students still graduating under the recommended or advanced high school programs to remain eligible for automatic admission. (SECTION 64)

Starting with the 2014-15 school year, a student who is not eligible for automatic admission may apply to any general academic teaching institution if the student completed the foundation program or achieved a certain score on the SAT or ACT. The commissioners of education and higher education will jointly adopt rules for students still graduating under the minimum, recommended, or advanced high school programs so that the admission requirements for these students are not more stringent than the requirements for students graduating in the foundation program. (SECTION 65)

The commissioners of education and higher education will jointly adopt rules to clarify eligibility requirements in instances when a student’s eligibility for participation in any student financial aid program depends on graduating under the prior recommended or advanced high school programs. (SECTION 67)

Eligibility for a TEXAS grant will be based on completing the foundation program rather than the recommended program, along with other conforming changes. A student who finishes the recommended or advanced program is considered to have met the revised curriculum requirements. (SECTION 68)

**Career Prep:** STEM courses are updated to include technology applications and refer to the foundation, rather than recommended, high school program. (SECTION 69)

To be eligible for an engineering scholarship, a student must graduate under the foundation, rather than recommended, high school program. (SECTION 70)

Tech prep sections are updated to refer to the foundation, rather than recommended high school program. (SECTIONS 71-72)

Sections on grants for CTE courses developed for high-demand occupations are updated to refer to the foundation, rather than recommended high school program. (SECTIONS 73-74)

The Texas Academy of Mathematics and Science allows students to earn high school credit while enrolled in higher education. The high school credits will allow students to complete the foundation program and appropriate endorsements. The phrase *computational* thinking was added the skills students will learn. (SECTION 75)
The Texas Academy of International Studies allows students to earn high school credit while enrolled in higher education. The high school credits will allow students to complete the foundation program and appropriate endorsements. (SECTION 76)

**Dual Enrollment:** Beginning in 2013-14, for a community college offering courses for dual credit under an agreement with a school district outside of the college’s service area, a high school student’s enrollment in the community college’s courses is limited to not more than three courses per year. (SECTION 77)

**Repealed Sections:** Effective September 1, 2013, this bill repeals:

- For the CTE subsidy for the cost of taking industry licensure exams, the sections directing TEA to have guidelines for determining financial need, rulemaking authority, and the requirement for TEA, THECB, and TWC to determine the covered occupations.
- Expired content related to developing the English III and Algebra II exams in collaboration with the THECB; however, the section defining college readiness as the attainment of English and math skills needed to succeed without remediation at a postsecondary institution remains.
- Performance standards for English III and Algebra II.
- Mandate that TEA collect data for 2009-11 and beyond to correlate EOC performance with postsecondary readiness.
- Requirement to pass English III and Algebra II EOCs to graduate and to achieve the college readiness standard on the exams for the advanced graduation program.
- Restriction on community colleges to offer courses only to public school students within their service area unless the students’ local community college did not offer the course.

Effective September 1, 2014, this bill repeals:

- The general statement that local school districts are encouraged to exceed the minimum curriculum.
- The statement encouraging schools to do PGPs for all ninth graders.
- Sections related to the minimum graduation program (parental notice and consent, option to return to recommended program, and requirement to state on transcript if a student could not complete the recommended or distinguished program due to factors beyond the student’s control).
- Section calling for an electronic financial alert system.
- Section related to requirements for a district with a projected shortfall under the now-replaced electronic alert system. (SECTION 78)
TEA, in collaboration with THECB and TWC, must use an external evaluator from an ESC to evaluate the changes to high school curriculum, with an initial report to state officials by December 1, 2015, and a final report by December 1, 2017. (SECTION 83)
of the Senate and the Speaker of the House of Representatives on
or before January 31, 2015.

Section 19. Section 1007.2616, Florida Statutes, is
created to read:

1007.2616  Computer science and technology instruction.—
(1)  Public schools shall provide students in grades K-12
opportunities for learning computer science, including, but not
limited to, computer coding and computer programming. Such
opportunities may include coding instruction in elementary
school and middle school, instruction to develop students' computer usage and digital literacy skills in middle school, and
courses in computer science, computer coding, and computer
programming in high school, including earning related industry
certifications.

(2)  Elementary schools and middle schools may establish
digital classrooms in which students are provided opportunities
to improve digital literacy and competency; to learn digital
skills, such as coding, multiple media presentation, and the
manipulation of multiple digital graphic images; and to earn
digital tool certificates and certifications pursuant to s.
1003.4203 and grade-appropriate, technology-related industry
certifications.

(3)  High schools may provide students opportunities to
take computer science courses to satisfy high school graduation
requirements, including, but not limited to, the following:

(a)  High school computer science courses of sufficient
rigor, as identified by the commissioner, such that one credit in computer science and the earning of related industry certifications constitute the equivalent of up to one credit of the mathematics requirement, with the exception of Algebra I or higher-level mathematics, or up to one credit of the science requirement, with the exception of Biology I or higher-level science, for high school graduation. Computer science courses and technology-related industry certifications that are identified as eligible for meeting mathematics or science requirements for high school graduation shall be included in the Course Code Directory.

(b) High school computer technology courses in 3D rapid prototype printing of sufficient rigor, as identified by the commissioner, such that one or more credits in such courses and related industry certifications earned may satisfy up to two credits of mathematics required for high school graduation with the exception of Algebra I. Computer technology courses in 3D rapid prototype printing and related industry certifications that are identified as eligible for meeting mathematics requirements for high school graduation shall be included in the Course Code Directory.

(4) The State Board of Education may adopt rules to administer this section.

Section 20. Subsection (1) of section 1007.27, Florida Statutes, is amended to read:

1007.27 Articulated acceleration mechanisms.—
SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS AMENDMENTS

2014 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Val L. Peterson
Senate Sponsor: ____________

LONG TITLE

General Description:
This bill amends provisions relating to the Science, Technology, Engineering, and Mathematics Action Center.

Highlighted Provisions:
This bill:
- defines terms;
- adds members to the STEM Action Center Board;
- allows the STEM Action Center Board to create a foundation;
- specifies that the STEM Action Center shall support high quality professional development for educators related to STEM education in kindergarten through grade 12;
- allows the STEM Action Center to further STEM education with nontechnological means;
- expands the scope of the STEM education related technology program to more students;
- creates the STEM education endorsement and incentive program;
- requires the STEM Action Center to select technology providers to create a certain professional development application;
- requires the STEM Action Center to create in-person STEM education high quality
Money Appropriated in this Bill:

This bill appropriates in fiscal year 2015:

- to the Governor's Office of Economic Development - STEM Action Center, as an ongoing appropriation:
  - from the General Fund, $10,000,000; and
- to the Governor's Office of Economic Development - STEM Action Center, as a one-time appropriation:
  - from the General Fund, $13,500,000.

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

63M-1-3201, as enacted by Laws of Utah 2013, Chapter 336
63M-1-3202, as enacted by Laws of Utah 2013, Chapter 336
63M-1-3203, as enacted by Laws of Utah 2013, Chapter 336
63M-1-3204, as enacted by Laws of Utah 2013, Chapter 336
63M-1-3205, as enacted by Laws of Utah 2013, Chapter 336
63M-1-3207, as enacted by Laws of Utah 2013, Chapter 336

ENACTS:

63M-1-3208, Utah Code Annotated 1953
63M-1-3209, Utah Code Annotated 1953
63M-1-3210, Utah Code Annotated 1953
63M-1-3211, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 63M-1-3201 is amended to read:

63M-1-3201. Definitions.

As used in this part:
(1) "Board" means the STEM Action Center Board created in Section 63M-1-3202.
(2) "Educator" has the meaning defined in Section 53A-6-103.
(3) "High quality professional development" means professional development that meets high quality standards developed by the State Board of Education.

Office means the Governor's Office of Economic Development.

Provider means a provider, selected by staff of the board and staff of the Utah State Board of Education, on behalf of the board:

(a) through a request for proposals process; or
(b) through a direct award or sole source procurement process for a pilot described in Section 63M-1-3205.

STEM means science, technology, engineering, and mathematics.

STEM Action Center means the center described in Section 63M-1-3204.

Section 2. Section 63M-1-3202 is amended to read:

63M-1-3202. STEM Action Center Board creation -- Membership.

(1) There is created the STEM Action Center Board within the office, composed of the following members:

(a) [five] six private sector members who represent business, appointed by the governor;
(b) the state superintendent of public instruction or the state superintendent of public instruction's designee;
(c) the commissioner of higher education or the commissioner of higher education's designee;
(d) one member appointed by the governor;
(e) a member of the State Board of Education, chosen by the chair of the State Board of Education;
(f) the executive director of the Governor's Office of Economic Development or the executive director of the Governor's Office of Economic Development's designee; [and]
(g) the president of the Utah College of Applied Technology or the president of the Utah College of Applied Technology's designee;[;]
(h) one member who has a degree in engineering and experience working in a government military installation;
(i) one member of the House of Representatives, appointed by the speaker of the House of Representatives; and

(j) one member of the Senate, appointed by the president of the Senate.

(2) (a) The private sector members appointed by the governor in Subsection (1)(a) shall represent a business or trade association whose primary focus is science, technology, or engineering.

(b) Except as required by Subsection (2)(c), members appointed by the governor shall be appointed to four-year terms.

(c) The length of terms of the members shall be staggered so that approximately half of the committee is appointed every two years.

(d) The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) Attendance of a simple majority of the members constitutes a quorum for the transaction of official committee business.

(4) Formal action by the committee requires a majority vote of a quorum.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The governor shall select the chair of the board to serve a one-year term.

(7) The executive director of the Governor's Office of Economic Development or the executive director of the Governor's Office of Economic Development's designee shall serve as the vice chair of the board.

[(8) The state science advisor described in Section 63M-1-606 and the office shall provide staff support to the board.]

Section 3. Section 63M-1-3203 is amended to read:

63M-1-3203. STEM Action Center Board -- Duties.
The board shall:

(a) establish a STEM Action Center program to:

(i) coordinate STEM activities in the state among the following stakeholders:

(A) the State Board of Education;

(B) school districts and charter schools;

(C) the State Board of Regents;

(D) institutions of higher education;

(E) parents of home-schooled students; and

(F) other state agencies;

(ii) align public education STEM activities with higher education STEM activities; and

(iii) create and coordinate best practices among public education and higher education;

(b) with the consent of the Senate, appoint an executive director to oversee the administration of the STEM Action Center;

(c) select a physical location for the STEM Action Center;

(d) strategically engage industry and business entities to cooperate with the board:

(i) to support high quality professional development and provide other assistance for educators and students; and

(ii) to provide private funding and support for the STEM Action Center;

(e) give direction to the STEM Action Center and the providers selected through a request for proposals process pursuant to this part; and

(f) work to meet the following expectations:

(i) that at least 50 educators are implementing best practice learning tools in classrooms per each product specialist or manager working with the STEM Action Center;

(ii) performance change in student achievement in each classroom working with a STEM Action Center product specialist or manager; and

(iii) that students from at least 50 high schools participate in the STEM competitions, fairs, and camps described in Subsection 63M-1-3204(2)(d).

The board may:

(a) enter into contracts for the purposes of this part;

(b) apply for, receive, and disburse funds, contributions, or grants from any source for the purposes set forth in this part;
employ, compensate, and prescribe the duties and powers of individuals necessary to execute the duties and powers of the board;

d) prescribe the duties and powers of the STEM Action Center providers; and
e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to administer this part.

(3) The board may establish a foundation to assist in:
(a) the development and implementation of the programs authorized under this part to promote STEM education; and
(b) implementation of other STEM education objectives described in this part.

(4) A foundation established by the board under Subsection (3):
(a) may solicit and receive contributions from a private organization for STEM education objectives described in this part;
(b) shall comply with Title 51, Chapter 7, State Money Management Act;
(c) does not have power or authority to incur contractual obligations or liabilities that constitute a claim against public funds;
(d) may not exercise executive or administrative authority over the programs or other activities described in this part, except to the extent specifically authorized by the board;
(e) shall provide the board with information detailing transactions and balances of funds managed for the board; and
(f) may not:
   (i) engage in lobbying activities;
   (ii) attempt to influence legislation; or
   (iii) participate in any campaign activity for or against:
   (A) a political candidate; or
   (B) an initiative, referendum, proposed constitutional amendment, bond, or any other ballot proposition submitted to the voters.

Section 4. Section 63M-1-3204 is amended to read:

63M-1-3204. STEM Action Center.
(1) As funding allows, the board shall:
(a) establish a STEM Action Center;
(b) ensure that the STEM Action Center:
(i) is accessible by the public; and
(ii) includes the components described in Subsection (2);
(c) work cooperatively with the State Board of Education to acquire technology and select schools:
   (i) further STEM education; and
   (ii) ensure best practices are implemented as described in Sections 63M-1-3205 and 63M-1-3206; and
(d) engage private entities to provide financial support or employee time for STEM activities in schools in addition to what is currently provided by private entities.

(2) As funding allows, the executive director of the STEM Action Center shall:
(a) support high quality professional development for educators regarding education-related instructional technology that supports STEM education;
(b) ensure that the STEM Action Center acts as a research and development center for STEM education-related instructional technology acquired through a request for proposals process described in Section 63M-1-3205;
(c) review and acquire STEM education related technology materials and products for:
   (i) educator high quality professional development;
   (ii) assessment, data collection, analysis, and reporting; and
   (iii) public school instruction;
   (d) facilitate participation in interscholastic STEM related competitions, fairs, and STEM education activities;
   (e) engage private industry in the development and maintenance of the STEM Action Center and STEM Action Center projects;
   (f) use resources to bring the latest STEM education learning tools into public education classrooms;
   (g) identify at least 10 best practice innovations used in Utah schools that have resulted in at least 80% of students performing at grade level in STEM areas;
   (h) identify best practices being used outside the state and, as appropriate, develop and implement selected practices through a pilot program;
   (i) identify:
(i) [three] learning tools for kindergarten through grade 6 identified as best practices;

and

(ii) [three] learning tools [per STEM subject] for grades 7 through 12 identified as best practices;

(j) provide a Utah best practices database, including best practices from public education, higher education, the Utah Education Network, and other STEM related entities;

(k) keep track of the following items related to the best practices database described in Subsection (2)(j):

(i) how the best practices database is being used; and

(ii) how many individuals are using the database, including the demographics of the users, if available;

(l) as appropriate, join and participate in a national STEM network;

(m) identify performance changes linked to use of the best practices database described in Subsection (2)(j);

(n) work cooperatively with the State Board of Education to designate schools as STEM schools, where the schools have agreed to adopt a plan of STEM implementation in alignment with criteria set by the State Board of Education and the board;

(o) support best methods of high quality professional development for STEM education in kindergarten through grade 12, including methods of high quality professional development that reduce cost and increase effectiveness, to help educators learn how to most effectively implement best practice learning tools in classrooms;

(p) recognize a high school's achievement in the STEM competitions, fairs, and camps described in Subsection (2)(d);

(q) send student results from STEM competitions, fairs, and camps described in Subsection (2)(d) to media and ask the media to report on them;

(r) develop and distribute STEM [toolkits] information to parents of students being served by the STEM Action Center;

(s) support targeted high quality professional development for improved instruction in STEM [in grades 6, 7, and 8], including:

(i) improved instructional materials that are dynamic and engaging for students;

(ii) targeted instruction for students who traditionally avoid enrolling in STEM
courses;

(iii) introduction of [engaging engineering courses] applied instruction; and

(iv) introduction of other research-based methods that support student achievement in

STEM areas; and

(i) ensure that an online college readiness assessment tool be accessible by:

(i) public education students; and

(ii) higher education students.

The board may prescribe other duties for the STEM Action Center in addition to

the responsibilities described in this section.

(4) (a) The executive director shall track and compare the student performance of

students participating in a STEM Action Center program to all other similarly situated students

in the state, in the following STEM related activities, at the beginning and end of each year:

(i) public education high school graduation rates;

(ii) the number of students taking a remedial mathematics course at an institution of

higher education described in Section 53B-2-101;

(iii) the number of students who graduate from a Utah public school and begin a

postsecondary education program; and

(iv) the number of students, as compared to all similarly situated students, who are

performing at grade level in STEM classes.

(b) The State Board of Education and the State Board of Regents shall provide

information to the board to assist the board in complying with the requirements of Subsection

(4)(a) if allowed under federal law.

Section 5. Section 63M-1-3205 is amended to read:

63M-1-3205. Acquisition of STEM education related instructional technology

program -- Research and development of education related instructional technology

through a pilot program.

(1) For purposes of this section:

(a) "Pilot" means a pilot of the program.

(b) "Program" means the STEM education related instructional technology program

created in Subsection (2).

(2) (a) There is created the STEM education related instructional technology program
to provide public schools the STEM education related instructional technology described in Subsection (3).

(b) On behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate and may select one or more providers, through a request for proposals process, to provide STEM education related instructional technology to school districts and charter schools.

(c) On behalf of the board, the staff of the board and the staff of the State Board of Education shall consider and may accept an offer from a provider in response to the request for proposals described in Subsection (2)(b) even if the provider did not participate in a pilot described in Subsection (5).

(3) The STEM education related instructional technology shall:

(a) support mathematics instruction for students in [grade 6, 7, or 8; or]:

(i) kindergarten though grade 6; or

(ii) grades 7 and 8; or

(b) support mathematics instruction for secondary students to prepare the secondary students for college mathematics courses.

(4) In selecting a provider for STEM education related instructional technology to support mathematics instruction for the students [in grade 6, 7, or 8 as] described in Subsection (3)(a), the board shall consider the following criteria:

(a) the technology contains individualized instructional support for skills and understanding of the core standards in mathematics;

(b) the technology is self-adapting to respond to the needs and progress of the learner;

(c) the technology provides opportunities for frequent, quick, and informal assessments and includes an embedded progress monitoring tool and mechanisms for regular feedback to students and teachers.

(5) Before issuing a request for proposals described in Subsection (2), on behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate and may:

(a) conduct a pilot of the program to test and select providers for the program;

(b) select at least two providers through a direct award or sole source procurement
process for the purpose of conducting the pilot; and
(c) select schools to participate in the pilot.

(6) (a) A contract with a provider for STEM education related instructional technology
may include professional development for full deployment of the STEM education related
instructional technology.
(b) No more than 10% of the money appropriated for the program may be used to
provide professional development related to STEM education related instructional technology
in addition to the professional development described in Subsection (6)(a).

Section 6. Section 63M-1-3207 is amended to read:
63M-1-3207. Report to Legislature and the State Board of Education.

(1) The board shall report the progress of the STEM Action Center, including the
information described in Subsection (2), to the following groups once each year:
(a) the Education Interim Committee;
(b) the Public Education Appropriations Subcommittee; and
(c) the State Board of Education.
(2) The report described in Subsection (1) shall include information that demonstrates
the effectiveness of the program, including:
(a) the number of educators receiving high quality professional development;
(b) the number of students receiving services from the STEM Action Center;
(c) a list of the providers selected pursuant to this part;
(d) a report on the STEM Action Center's fulfillment of its duties described in
Subsection 63M-1-3204; and
(e) student performance of students participating in a STEM Action Center program as
collected in Subsection 63M-1-3204(4).

Section 7. Section 63M-1-3208 is enacted to read:
63M-1-3208. STEM education endorsement and incentive program.
The STEM Action Center shall collaborate with the State Board of Education to:
(1) develop a STEM education endorsement; and
(2) create and implement financial incentives for educators who earn an elementary or
secondary STEM education endorsement described in Subsection (1).

Section 8. Section 63M-1-3209 is enacted to read:
63M-1-3209. Acquisition of STEM education high quality professional development.

(1) From the technology providers tested under the pilot described in Subsection 63M-1-3205(5), the STEM Action Center shall, in accordance with Chapter 63G, Title 6a, Utah Procurement Code, select technology providers for the purpose of providing a STEM education high quality professional development application.

(2) The high quality professional development application described in Subsection (1) shall:

(a) allow the State Board of Education, a school district, or a school to define the application's input and track educator performance;

(b) allow educators to access automatic tools, resources, and strategies;

(c) allow educators to work in online learning communities, including giving and receiving feedback via uploaded video;

(d) track and report data on the usage of the components of the application's system and the relationship to improvement in classroom instruction;

(e) include video examples of highly effective STEM education teaching that:

(i) cover a cross section of grade levels and subjects;

(ii) under the direction of the State Board of Education, include videos of highly effective Utah STEM educators; and

(iii) contain tools to help educators implement what they have learned; and

(f) allow for additional STEM education video content to be added.

(3) In addition to the high quality professional development application described in Subsections (1) and (2), the STEM Action Center may create STEM education hybrid or blended high quality professional development that allows for face-to-face applied learning.

Section 9. Section 63M-1-3210 is enacted to read:

63M-1-3210. STEM education middle school applied science initiative.

(1) The STEM Action Center shall develop an applied science program for students in grades 7 and 8.

(2) The program described in Subsection (1) shall include:

(a) a STEM applied science curriculum with instructional materials;

(b) STEM hybrid or blended high quality professional development that allows for
face-to-face applied learning; and
(c) hands-on tools for STEM applied science learning.

(3) The STEM Action Center may, through the request for proposals process, select a
consultant to assist in developing the program described in Subsection (1).

Section 10. Section 63M-1-3211 is enacted to read:

63M-1-3211. High school STEM education initiative.

(1) Subject to legislative appropriations, the STEM Action Center shall award grants to
school districts and charter schools to fund STEM certification for high school students.

(2) (a) A school district or charter school may apply for a grant from the STEM Action
Center, through a competitive process, to fund the school district's or charter school's STEM
certification training program.

(b) A school district's or charter school's STEM certification training program shall:

(i) prepare high school students to be job ready for available STEM positions of
employment; and

(ii) when a student completes the program, result in the student gaining a nationally
industry-recognized employer STEM certification.

(3) A school district or charter school may partner with a Utah College of Technology
college campus or private sector employer to provide a STEM certification training program.

Section 11. Appropriation.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
the fiscal year beginning July 1, 2014, and ending June 30, 2015, the following sums of money
are appropriated from resources not otherwise appropriated, or reduced from amounts
previously appropriated, out of the funds or accounts indicated. These sums of money are in
addition to any amounts previously appropriated for fiscal year 2015.

To Governor's Office of Economic Development - STEM Action Center

From General Fund $10,000,000
From General Fund, one-time $13,500,000

Schedule of Programs:

STEM Action Center $23,500,000

The Legislature intends that:

(1) up to $5,000,000 of the appropriation for the STEM Action Center program be used
for STEM education related instructional technology and related professional development to support mathematics instruction as described in Subsection 63M-1-3205(3)(a) and Section 63M-1-3206, and related assessment, data collection, analysis, and reporting;

(2) up to $5,000,000 of the appropriation for the STEM Action Center program be used for developing the STEM education endorsement and related incentive program described in Section 63M-1-3208;

(3) up to $5,000,000 of the appropriation for the STEM Action Center program be used for providing a STEM education high quality professional development application as described in Section 63M-1-3209;

(4) up to $3,500,000 of the appropriation for the STEM Action Center program be used to fund the STEM education middle school applied science initiative described in Section 63M-1-3210;

(5) up to $5,000,000 of the appropriation for the STEM Action Center program be used to fund the high school STEM education initiative described in Section 63M-1-3210;

(6) the appropriations described in Subsections (3), (4), and (5):

(a) are one-time; and

(b) not lapse at the close of fiscal year 2015; and

(7) the appropriations described in Subsections (1) and (2):

(a) are ongoing; and

(b) not lapse at the close of fiscal year 2015.

Section 12. **Effective date.**

(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) Uncodified Section 11, Appropriation, takes effect on July 1, 2014.
AN ACT Relating to awarding academic credit for military training; 
and adding a new section to chapter 28B.10 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW 
to read as follows:

(1) Before December 31, 2015, each institution of higher education 
must adopt a policy to award academic credit for military training 
applicable to the student's certificate or degree requirements. The 
policy shall apply to any individual who is enrolled in the institution 
of higher education and who has successfully completed a military 
training course or program as part of his or her military service that 
is:

(a) Recommended for credit by a national higher education 
association that provides credit recommendations for military training 
courses and programs;

(b) Included in the individual's military transcript issued by any 
branch of the armed services; or

(c) Other documented military training or experience.
(2) Each institution of higher education must develop a procedure for receiving the necessary documentation to identify and verify the military training course or program that an individual is claiming for academic credit.

(3) Each institution of higher education must provide a copy of its policy for awarding academic credit for military training to any applicant who listed prior or present military service in his or her application. Each institution of higher education must develop and maintain a list of military training courses and programs that have qualified for academic credit.

(4) Each institution of higher education must submit its policy for awarding academic credit for military training to the prior learning assessment work group convened pursuant to RCW 28B.77.230.

--- END ---
CHAPTER 1

HOUSE BILL 2064

AN ACT

AMENDING SECTIONS 15-701.01 AND 15-763, ARIZONA REVISED STATUTES; RELATING TO SCHOOL CURRICULA.

(TEXT OF BILL BEGINS ON NEXT PAGE)
H.B. 2064

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-701.01, Arizona Revised Statutes, is amended to read:

15-701.01. High school; graduation; requirements; community college or university courses; transfer from private schools; academic credit

A. The state board of education shall:

1. Prescribe a minimum course of study, as defined in section 15-101 and incorporating the academic standards adopted by the state board of education, for the graduation of pupils from high school.
2. Prescribe competency requirements for the graduation of pupils from high school incorporating the academic standards in at least the areas of reading, writing, mathematics, science and social studies. The academic standards prescribed by the state board of education in social studies shall include personal finance. This paragraph does not allow the state board of education to establish a required separate personal finance course for the purpose of the graduation of pupils from high school. BEGINNING IN THE 2016-2017 SCHOOL YEAR, THE COMPETENCY REQUIREMENTS FOR SOCIAL STUDIES SHALL INCLUDE A REQUIREMENT THAT, IN ORDER TO GRADUATE FROM HIGH SCHOOL OR OBTAIN A HIGH SCHOOL EQUIVALENCE DIPLOMA, A PUPIL MUST CORRECTLY ANSWER AT LEAST SIXTY OF THE ONE HUNDRED QUESTIONS LISTED ON A TEST THAT IS IDENTICAL TO THE CIVICS PORTION OF THE NATURALIZATION TEST USED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES. A DISTRICT SCHOOL OR CHARTER SCHOOL SHALL DOCUMENT ON THE PUPIL'S TRANSCRIPT THAT THE PUPIL HAS PASSED A TEST THAT IS IDENTICAL TO THE CIVICS PORTION OF THE NATURALIZATION TEST USED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES AS REQUIRED BY THIS SECTION.
3. Develop and adopt competency tests pursuant to section 15-741. English language learners who are subject to article 3.1 of this chapter are subject to the assessments prescribed in section 15-741.

B. The governing board of a school district shall:

1. Prescribe curricula that include the academic standards in the required subject areas pursuant to subsection A, paragraph 1 of this section.
2. Prescribe criteria for the graduation of pupils from the high schools in the school district. These criteria shall include accomplishment of the academic standards in at least reading, writing, mathematics, science and social studies, as determined by district assessment. Other criteria may include additional measures of academic achievement and attendance. Pursuant to the prescribed graduation requirements adopted by the state board of education, the governing board may approve a rigorous computer science course that would fulfill a mathematics course required for graduation from high school. The governing board may approve a rigorous computer science course only if the rigorous computer science course includes significant mathematics content and the governing board determines the high school where the rigorous computer science course is offered has sufficient capacity, infrastructure and qualified staff, including competent teachers of computer science. THE SCHOOL DISTRICT GOVERNING BOARD OR CHARTER SCHOOL GOVERNING BODY MAY
DETERMINE THE METHOD AND MANNER IN WHICH TO ADMINISTER A TEST THAT IS
IDENTICAL TO THE CIVICS PORTION OF THE NATURALIZATION TEST USED BY THE UNITED
STATES CITIZENSHIP AND IMMIGRATION SERVICES. A PUPIL WHO DOES NOT OBTAIN A
PASSING SCORE ON THE TEST THAT IS IDENTICAL TO THE CIVICS PORTION OF THE
NATURALIZATION TEST MAY RETAKE THE TEST UNTIL THE PUPIL OBTAINS A PASSING
SCORE.

C. The governing board may prescribe the course of study and
competency requirements for the graduation of pupils from high school that
are in addition to or higher than the course of study and competency
requirements that the state board prescribes.

D. The governing board may prescribe competency requirements for the
passage of pupils in courses that are required for graduation from high
school.

E. A teacher shall determine whether to pass or fail a pupil in a
course in high school as provided in section 15-521, paragraph 4 on the basis
of the competency requirements, if any have been prescribed. The governing
board, if it reviews the decision of a teacher to pass or fail a pupil in a
course in high school as provided in section 15-342, paragraph 11, shall base
its decision on the competency requirements, if any have been prescribed.

F. Graduation requirements established by the governing board may be
met by a pupil who passes courses in the required or elective subjects at a
community college or university, if the course is at a higher level than the
course taught in the high school attended by the pupil or, if the course is
not taught in the high school, the level of the course is equal to or higher
than the level of a high school course. The governing board shall determine
if the subject matter of the community college or university course is
appropriate to the specific requirement the pupil intends it to fulfill and
if the level of the community college or university course is less than,
equal to or higher than a high school course, and the governing board shall
award one-half of a carnegie unit for each three semester hours of credit the
pupil earns in an appropriate community college or university course. If a
pupil is not satisfied with the decision of the governing board regarding the
amount of credit granted or the subjects for which credit is granted, the
pupil may request that the state board of education review the decision of
the governing board, and the state board shall make the final determination
of the amount of credit to be given the pupil and for which subjects. The
governing board shall not limit the number of credits that is required for
high school graduation and that may be met by taking community college or
university courses. For the purposes of this subsection:

1. "Community college" means an educational institution that is
operated by a community college district as defined in section 15-1401 or a
postsecondary educational institution under the jurisdiction of an Indian
tribe recognized by the United States department of the interior.

2. "University" means a university under the jurisdiction of the
Arizona board of regents.
G. A pupil who transfers from a private school shall be provided with a list that indicates those credits that have been accepted and denied by the school district. A pupil may request to take an examination in each particular course in which credit has been denied. The school district shall accept the credit for each particular course in which the pupil takes an examination and receives a passing score on a test designed and evaluated by a teacher in the school district who teaches the subject matter on which the examination is based. In addition to the above requirements, the governing board of a school district may prescribe requirements for the acceptance of the credits of pupils who transfer from a private school.

H. If a pupil who was previously enrolled in a charter school or school district enrolls in a school district in this state, the school district shall accept credits earned by the pupil in courses or instructional programs at the charter school or school district. The governing board of a school district may adopt a policy concerning the application of transfer credits for the purpose of determining whether a credit earned by a pupil who was previously enrolled in a school district or charter school will be assigned as an elective or core credit.

I. A pupil who transfers from a charter school or school district shall be provided with a list that indicates which credits have been accepted as an elective credit and which credits have been accepted as a core credit by the school district. Within ten school days after receiving the list, a pupil may request to take an examination in each particular course in which core credit has been denied. The school district shall accept the credit as a core credit for each particular course in which the pupil takes an examination and receives a passing score on a test designed and evaluated by a teacher in the school district who teaches the subject matter on which the examination is based.

J. The state board of education shall adopt rules to allow high school pupils who can demonstrate competency in a particular academic course or subject to obtain academic credit for the course or subject without enrolling in the course or subject.

K. Pupils who earn a Grand Canyon diploma pursuant to article 6 of this chapter are exempt from the graduation requirements prescribed in this section. Pupils who earn a Grand Canyon diploma are entitled to all the rights and privileges of persons who graduate with a high school diploma issued pursuant to this section, including access to postsecondary scholarships and other forms of student financial aid and access to all forms of postsecondary education. Notwithstanding any other law, a pupil who is eligible for a Grand Canyon diploma may elect to remain in high school through grade twelve and shall not be prevented from enrolling at a high school after the pupil becomes eligible for a Grand Canyon diploma. A pupil who is eligible for a Grand Canyon diploma and who elects not to pursue one of the options prescribed in section 15-792.03 may only be readmitted to that high school or another high school in this state pursuant to policies adopted by the school district of readmission.
Sec. 2. Section 15-763, Arizona Revised Statutes, is amended to read:

15-763. Plan for providing special education; definition
A. All school districts and charter schools shall develop policies and procedures for providing special education to all children with disabilities within the district or charter school. All children with disabilities shall receive special education programming commensurate with their abilities and needs. Each child shall be ensured access to the general curriculum and an opportunity to meet the state's academic standards. Pupils who receive special education shall not be required to achieve passing scores on the Arizona instrument to measure standards test or the test that is identical to the civics portion of the naturalization test under Section 15-701.01 in order to graduate from high school unless the pupil is learning at a level appropriate for the pupil's grade level in a specific academic area and unless a passing score on the Arizona instrument to measure standards test or the test that is identical to the civics portion of the naturalization test under Section 15-701.01 is specifically required in a specific academic area by the pupil's individualized education program as mutually agreed on by the pupil's parents and the pupil's individualized education program team or the pupil, if the pupil is at least eighteen years of age. The pupil's individualized education program shall include any necessary testing accommodations. Special education services shall be provided at no cost to the parents of children with disabilities.

B. The state board of education shall adopt guidelines to define a parent's or guardian's role or a pupil's role, if the pupil is at least eighteen years of age, in the development of a pupil's section 504 plan as defined in section 15-731, including testing and testing accommodations.

C. For the purposes of determining the services to pupils served by private schools under existing federal law, the state shall consider the term to include homeschooled pupils.

D. If federal monies are provided to a school district or a charter school for special education services to homeschooled or private schooled pupils, the school district or charter school shall provide the services to both the homeschooled pupils and the private schooled pupils in the same manner.

E. For the purposes of this section, "special education" has the same meaning prescribed in section 15-1201.

Sec. 3. Short title
This act may be cited as the "American Civics Act".

APPROVED BY THE GOVERNOR JANUARY 15, 2015.

AN ACT relating to education; revising provisions governing the licensure of certain teachers who are not citizens or lawful permanent residents of the United States; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Upon request of a school district, existing law authorizes the Superintendent of Public Instruction to issue a license to teach to a person who is not a citizen or lawful permanent resident of the United States but who is otherwise entitled to work in the United States pursuant to federal laws and regulations if: (1) the school district has demonstrated to the satisfaction of the Superintendent that a shortage of teachers exists in the subject area for which the person is qualified; (2) the person is otherwise qualified to teach in the subject area for which there is a shortage of teachers; and (3) the school district agrees to employ the person to teach in the subject area for which there is a shortage of teachers. (NRS 391.060) This bill removes the requirement that a school district demonstrate that a shortage of teachers exists in a particular subject area as a condition to licensure and instead allows such a person to be licensed to teach if: (1) the school district can demonstrate that any shortage of teachers exists or that the school district has not been able to employ a person possessing the skills, experience or abilities of the person to be licensed and such skills, experience or abilities are needed to address an area of concern for the school district; (2) the person is otherwise qualified to teach; and (3) the school district agrees to employ the person. This bill also authorizes the governing body of a charter school to request the Superintendent to issue a license to such a person and employ such a person in the same circumstances as a school district.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 391.060 is hereby amended to read as follows:

391.060 1. Except as otherwise provided in this section and NRS 391.070, it is unlawful for:
(a) The Superintendent of Public Instruction to issue a license to, or a board of trustees of a school district or a governing body of a charter school to employ, any teacher, instructor, principal or superintendent of schools who is not a citizen of the United States or a person who has filed a valid declaration to become a citizen or valid petition for naturalization, or who is not a lawful permanent resident of the United States.
(b) The State Controller or any county auditor to issue any warrant to any teacher, instructor, principal or superintendent of schools who is not a citizen of the United States or a person who has
filed a valid declaration to become a citizen or valid petition for naturalization, or who is not a lawful permanent resident of the United States.

2. Upon the request of a school district or the governing body of the charter school, as applicable, the Superintendent of Public Instruction may issue a license to a person who does not meet the requirements of subsection 1 but is otherwise entitled to work in the United States pursuant to federal laws and regulations if:

(a) The school district or the governing body of the charter school, as applicable, has demonstrated to the satisfaction of the Superintendent of Public Instruction that:

(1) A shortage of teachers exists in the subject area for which the person is qualified; or

(2) The school district or governing body of the charter school, as applicable, has not been able to employ a person possessing the skills, experience or abilities of the person to be licensed and such skills, experience or abilities are needed to address an area of concern for the school district or charter school;

(b) The person is otherwise qualified to teach, in the subject area for which there is a shortage of teachers, except that the person does not meet the requirements of subsection 1; and

(c) The school district or governing body of the charter school, as applicable, agrees to employ the person to teach in the subject area for which there is a shortage of teachers.

3. If the employment of a person to whom a license is issued pursuant to subsection 2 is terminated, the school district or governing body of the charter school, as applicable, must notify the Superintendent of Public Instruction within 5 business days.

4. A license issued by the Superintendent of Public Instruction pursuant to subsection 2:

(a) Automatically expires on the date that the licensee is no longer entitled to work in the United States pursuant to federal laws and regulations; and

(b) Authorizes the person who holds the license to teach only in the:

(1) School district or charter school that submitted the request for the issuance of the license to that person; and

(2) Subject area for which the person is qualified.

5. Upon compliance with all applicable federal laws and regulations, the board of trustees of a school district or the governing body of a charter school may employ a person who does not meet the requirements of subsection 1 if the person holds a
license issued by the Superintendent of Public Instruction pursuant to subsection 2. A teacher’s employment with a school district or the governing body of a charter school, as applicable, pursuant to this subsection automatically expires on the date that he or she is no longer entitled to work in the United States pursuant to federal laws and regulations.

Sec. 6. The State Controller or a county auditor may issue a warrant to a teacher who is employed pursuant to subsection 4.

Sec. 7. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 2. This act becomes effective upon passage and approval.
Senator De León

An act to add Section 67386 to the Education Code, relating to student safety.

[Approved by Governor September 28, 2014. Filed with Secretary of State September 28, 2014.]

LEGISLATIVE COUNSEL’S DIGEST

SB 967, De León. Student safety: sexual assault.

Existing law requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

This bill would require the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions, in order to receive state funds for student financial assistance, to adopt policies concerning sexual assault, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or collaborative partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. The bill would also require the governing boards to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

SECTION 1. Section 67386 is added to the Education Code, to read:

67386. (a) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt a policy concerning
sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1092(f)) involving a student, both on and off campus. The policy shall include all of the following:

(1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

(2) A policy that, in the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

(3) A policy that the standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

(4) A policy that, in the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

(A) The complainant was asleep or unconscious.

(B) The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

(C) The complainant was unable to communicate due to a mental or physical condition.

(b) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

(1) A policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality.

(2) Initial response by the institution’s personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.

(3) Response to stranger and nonstranger sexual assault.

(4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive followup victim interview, as appropriate.

(5) Contacting and interviewing the accused.

(6) Seeking the identification and location of witnesses.

(7) Providing written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.
(9) Investigating allegations that alcohol or drugs were involved in the incident.

(10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution’s student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) The role of the institutional staff supervision.

(12) A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

(13) Procedures for confidential reporting by victims and third parties.

(c) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall, to the extent feasible, enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.

(d) In order to receive state funds for student financial assistance, the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions shall implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution’s policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution’s overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.

(e) Outreach programming shall be included as part of every incoming student’s orientation.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
218A.390 Prescription Monitoring Program Compact.

The Prescription Monitoring Program compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I
PURPOSE

The purpose of this interstate compact is to provide a mechanism for state prescription monitoring programs to securely share prescription data to improve public health and safety. This interstate compact is intended to:

A. Enhance the ability of state prescription monitoring programs, in accordance with state laws, to provide an efficient and comprehensive tool for:
   1. Practitioners to monitor patients and support treatment decisions;
   2. Law enforcement to conduct diversion investigations where authorized by state law;
   3. Regulatory agencies to conduct investigations or other appropriate reviews where authorized by state law; and
   4. Other uses of prescription drug data authorized by state law for purposes of curtailing drug abuse and diversion; and

B. Provide a technology infrastructure to facilitate secure data transmission.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Authentication" means the process of verifying the identity and credentials of a person before authorizing access to prescription data;

B. "Authorize" means the process by which a person is granted access privileges to prescription data;

C. "Bylaws" means those bylaws established by the interstate commission pursuant to Article VIII for its governance, or for directing or controlling its actions and conduct;

D. "Commissioner" means the voting representative appointed by each member state pursuant to Article VI of this compact;

E. "Interstate commission" or "commission" means the interstate commission created pursuant to Article VI of this compact;

F. "Member state" means any state that has adopted a prescription monitoring program and has enacted the enabling compact legislation;

G. "Practitioner" means a person licensed, registered or otherwise permitted to prescribe or dispense a prescription drug;

H. "Prescription data" means data transmitted by a prescription monitoring program that contains patient, prescriber, dispenser, and prescription drug information;

I. "Prescription drug" means any drug required to be reported to a state prescription monitoring program and which includes but is not limited to substances listed in the federal Controlled Substances Act;

J. "Prescription Monitoring Program" means a program that collects, manages,
analyzes, and provides prescription data under the auspices of a state;

K. "Requestor" means a person authorized by a member state who has initiated a request for prescription data;

L. "Rule" means a written statement by the interstate commission promulgated pursuant to Article VII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

M. "State" means any state, commonwealth, district, or territory of the United States;

N. "Technology infrastructure" means the design, deployment, and use of both individual technology based components and the systems of such components to facilitate the transmission of information and prescription data among member states; and

O. "Transmission" means the release, transfer, provision, or disclosure of information or prescription data among member states.

ARTICLE III
AUTHORIZED USES AND RESTRICTIONS ON THE PRESCRIPTION DATA

A. Under the Prescription Monitoring Program compact a member state:
   1. Retains its authority and autonomy over its prescription monitoring program and prescription data in accordance with its laws, regulations and policies;
   2. May provide, restrict or deny prescription data to a requestor of another state in accordance with its laws, regulations and policies;
   3. May provide, restrict or deny prescription data received from another state to a requestor within that state; and
   4. Has the authority to determine which requestors shall be authorized.

B. Prescription data obtained by a member state pursuant to this compact shall have the following restrictions:
   1. Be used solely for purposes of providing the prescription data to a requestor; and
   2. Not be stored in the states prescription monitoring program database, except for stored images, nor in any other database.

C. A state may limit the categories of requestors of another member state that will receive prescription data.

D. The commission shall promulgate rules establishing standards for requestor authentication.
   1. Every member state shall authenticate requestors according to the rules established by the commission.
   2. A member state may authorize its requestors to request prescription data from another member state only after such requestor has been authenticated.
   3. A member state that becomes aware of a requestor who violated the laws
or regulations governing the appropriate use of prescription data shall notify the state that transmitted the prescription data.

ARTICLE IV
TECHNOLOGY AND SECURITY
A. The commission shall establish security requirements through rules for the transmission of prescription data.
B. The commission shall foster the adoption of open (vendor- and technology-neutral) standards for the technology infrastructure.
C. The commission shall be responsible for acquisition and operation of the technology infrastructure.

ARTICLE V
FUNDING
A. The commission, through its member states, shall be responsible to provide for the payment of the reasonable expenses for establishing, organizing and administering the operations and activities of the interstate compact.
B. The interstate commission may levy on and collect annual dues from each member state to cover the cost of operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commissions annual budget as approved each year. The aggregate annual dues amount shall be allocated in an equitable manner and may consist of a fixed fee component as well as a variable fee component based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states. Such a formula shall take into account factors including, but not limited to the total number of practitioners or licensees within a member state. Fees established by the commission may be recalculated and assessed on an annual basis.
C. Notwithstanding the above or any other provision of law, the interstate commission may accept non-state funding, including grants, awards and contributions to offset, in whole or in part, the costs of the annual dues required under Article V, Section B.
D. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member states.
E. The interstate commission shall keep accurate accounts of all receipts and disbursements subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE VI
INTERSTATE COMMISSION
The member states hereby create the Interstate Prescription Monitoring Program Commission. The Prescription Monitoring Program compact shall be governed by an interstate commission comprised of the member states and not by a third-party group or federal agency. The activities of the commission are the formation of public policy and are a discretionary state function.
A. The commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. The commission shall consist of one (1) voting representative from each member state who shall be that state’s appointed compact commissioner and who is empowered to determine statewide policy related to matters governed by this compact. The compact commissioner shall be a policymaker within the agency that houses the state’s Prescription Monitoring Program.

C. In addition to the state commissioner, the state shall appoint a non-voting advisor who shall be a representative of the state Prescription Monitoring Program.

D. In addition to the voting representatives and non-voting advisor of each member state, the commission may include persons who are not voting representatives, but who are members of interested organizations as determined by the commission.

E. Each member state represented at a meeting of the commission is entitled to one vote. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the commission, the appropriate appointing authority may delegate voting authority to another person from their state for a specified meeting. The bylaws may provide for meetings of the commission to be conducted by electronic communication.

F. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings.

G. The commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking. During periods when the commission is not in session the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary.

H. The commission shall maintain a robust committee structure for governance (i.e., policy, compliance, education, technology, etc.) and shall include specific opportunities for stakeholder input.

I. The commission’s bylaws and rules shall establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure information or official records that would adversely affect personal privacy rights or proprietary interests.

J. The commission shall provide public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission may close a meeting, or portion
thereof, where it determines by a two-thirds (2/3) vote of the members present that an open meeting would be likely to:

1. Relate solely to the commission's internal personnel practices and procedures;
2. Discuss matters specifically exempted from disclosure by federal and state statute;
3. Discuss trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing a person of a crime, or formally censuring a person;
5. Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Discuss investigative records compiled for law enforcement purposes; or
7. Specifically relate to the commission's participation in a civil action or other legal proceeding.

K. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

ARTICLE VII
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

A. To oversee and maintain the administration of the technology infrastructure;
B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact, provided that no member state shall be required to create an advisory committee. The rules shall have the force and effect of statutory law and shall be binding in the member states to the extent and in the manner provided in this compact;
C. To establish a process for member states to notify the commission of changes to a state's prescription monitoring program statutes, regulations, or policies. This applies only to changes that would affect the administration of the compact;
D. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions;
E. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
F. To establish and maintain one (1) or more offices;
G. To purchase and maintain insurance and bonds;
H. To borrow, accept, hire or contract for personnel or services;
I. To establish and appoint committees including, but not limited to, an executive committee as required by Article VI, Section G, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
J. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commissioners personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
K. To seek and accept donations and grants of money, equipment, supplies, materials, and services, and to utilize or dispose of them;
L. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;
M. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;
N. To establish a budget and make expenditures;
O. To adopt a seal and bylaws governing the management and operation of the interstate commission;
P. To report annually to the legislatures, Governors and Attorneys General of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission and shall be made publically available;
Q. To coordinate education, training and public awareness regarding the compact, its implementation and operation;
R. To maintain books and records in accordance with the bylaws;
S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
T. To provide for dispute resolution among member states.

ARTICLE VIII
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION
A. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:
1. Establishing the fiscal year of the interstate commission;
2. Establishing an executive committee, and such other committees as may be necessary for governing any general or specific delegation of authority or function of the interstate commission;
3. Providing procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
4. Establishing the titles and responsibilities of the officers and staff of the interstate commission; and
5. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

B. The interstate commission shall, by a majority of the members present, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairpersons absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. Executive Committee, Officers and Staff

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:
   a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
   b. Overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the administration of the compact; and
   c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the purpose of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commissions executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commissions executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such persons state may not exceed the limits
of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director, its employees, and subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorneys fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE IX
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect. Any rules promulgated by the commission shall not override the states authority to govern prescription drugs or each states Prescription Monitoring Program.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition
shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission’s authority.

ARTICLE X
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight
1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact’s purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law but, shall not override the states authority to govern prescription drugs or the states Prescription Monitoring Program.
2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.
3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination - If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:
1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.
2. Provide remedial training and specific technical assistance regarding the default.
3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.
4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the Governor, the majority and minority leaders of the defaulting state’s legislature, and each of the member states.
5. The state which has been suspended or terminated is responsible for all
dues, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorneys’ fees.

C. Dispute Resolution
   1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states.
   2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution as appropriate.

D. Enforcement
   1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
   2. The interstate commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys’ fees.
   3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XI
MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state that has enacted Prescription Monitoring Program legislation through statute or regulation is eligible to become a member state of this compact.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than six (6) of the states. Thereafter it shall become effective and binding on a state upon enactment of the compact into law by that state. The Governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until
it is enacted into law by unanimous consent of the member states.

ARTICLE XII
WITHDRAWAL AND DISSOLUTION

A. Withdrawal
   1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.
   2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.
   3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing states intent to withdraw within sixty (60) days of its receipt thereof.
   4. The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.
   5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of the Compact
   1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.
   2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XIV
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws
   1. Nothing herein prevents the enforcement of any other law of a member
state that is not inconsistent with this compact.

B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Effective: July 20, 2012


Legislative Research Commission Note (7/20/2012). 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, Article XI, B. states that the compact contained in this statute "shall become effective and binding upon legislative enactment of the compact into law by no less than six states." At the time of the codification of this statute, that threshold had not been met.
Assembly Bill No. 1535

CHAPTER 326

An act to add Section 4052.01 to the Business and Professions Code, relating to pharmacists.

[ Approved by Governor September 15, 2014. Filed with Secretary of State September 15, 2014. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 1535, Bloom. Pharmacists: naloxone hydrochloride.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy. Existing law, generally, authorizes a pharmacist to dispense or furnish drugs only pursuant to a valid prescription. Existing law authorizes a pharmacist to furnish emergency contraceptives and hormonal contraceptives pursuant to standardized procedures or protocols developed and approved by both the board and the Medical Board of California, as specified, or developed by the pharmacist and an authorized prescriber. Existing law also authorizes a pharmacist to furnish nicotine replacement products pursuant to standardized procedures or protocols developed and approved by both the board and the Medical Board of California, as specified. Existing law authorizes a licensed health care provider who is permitted to prescribe an opioid antagonist and is acting with reasonable care to prescribe and dispense or distribute an opioid antagonist for the treatment of an opioid overdose to a person at risk of an opioid-related overdose or a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose.

This bill would authorize a pharmacist to furnish naloxone hydrochloride in accordance with standardized procedures or protocols developed and approved by both the board and the Medical Board of California, in consultation with specified entities. The bill would require the board and the Medical Board of California, in developing those procedures and protocols, to include procedures requiring the pharmacist to provide a consultation to ensure the education of the person to whom the drug is furnished, as specified, and notification of the patient’s primary care provider of drugs or devices furnished to the patient, as specified. The bill would prohibit a pharmacist furnishing naloxone hydrochloride pursuant to its provisions from permitting the person to whom the drug is furnished to waive the consultation described above. The bill would require a pharmacist to complete a training program on the use of opioid antagonists prior to performing this procedure. The bill would require each board to enforce these provisions with respect to its respective licensees.

This bill would authorize the California State Board of Pharmacy to adopt emergency regulations to establish the standardized procedures or protocols that would remain in effect until the earlier of 180 days following their effective date or the effective date of regulations adopted as described above.

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

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

SECTION 1. Section 4052.01 is added to the Business and Professions Code, to read:

4052.01. (a) Notwithstanding any other provision of law, a pharmacist may furnish naloxone hydrochloride in
accordance with standardized procedures or protocols developed and approved by both the board and the Medical Board of California, in consultation with the California Society of Addiction Medicine, the California Pharmacists Association, and other appropriate entities. In developing those standardized procedures or protocols, the board and the Medical Board of California shall include the following:

(1) Procedures to ensure education of the person to whom the drug is furnished, including, but not limited to, opioid overdose prevention, recognition, and response, safe administration of naloxone hydrochloride, potential side effects or adverse events, and the imperative to seek emergency medical care for the patient.

(2) Procedures to ensure the education of the person to whom the drug is furnished regarding the availability of drug treatment programs.

(3) Procedures for the notification of the patient’s primary care provider with patient consent of any drugs or devices furnished to the patient, or entry of appropriate information in a patient record system shared with the primary care provider, as permitted by that primary care provider, and with patient consent.

(b) A pharmacist furnishing naloxone hydrochloride pursuant to this section shall not permit the person to whom the drug is furnished to waive the consultation required by the board and the Medical Board of California.

(c) Prior to performing a procedure authorized under this section, a pharmacist shall complete a training program on the use of opioid antagonists that consists of at least one hour of approved continuing education on the use of naloxone hydrochloride.

(d) The board and the Medical Board of California are each authorized to ensure compliance with this section. Each board is specifically charged with enforcing this section with respect to its respective licensees. This section does not expand the authority of a pharmacist to prescribe any prescription medication.

(e) The board may adopt emergency regulations to establish the standardized procedures or protocols. The adoption of regulations pursuant to this subdivision shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this subdivision are exempt from review by the Office of Administrative Law. The emergency regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect until the earlier of 180 days following their effective date or the effective date of regulations adopted pursuant to subdivision (a).
A08637 Text:

STATE OF NEW YORK

8637--B

IN ASSEMBLY

January 29, 2014

Introduced by M. of A. DINOWITZ, GOTTFRIED, CYMBROWITZ, CLARK, QUART, GALEF, ROSENTHAL, ORTIZ, SALADINO, MONTESANO, GUNHER, P. LOPEZ -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, COOK, GIGLIO, HEVESI, MCDONALD, PAULIN, PERRY, RIVERA, ROSA, SEPULEDAD -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to use of opioid antagonists

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 3309 of the public health law, as added by chapter 413 of the laws of 2005, is amended to read as follows:

S 3309. Opioid overdose prevention. 1. The commissioner is authorized to establish standards for approval of any opioid overdose prevention program, AND OPIOID ANTAGONIST PRESCRIBING, DISPENSING, DISTRIBUTION, POSSESSION AND ADMINISTRATION PURSUANT TO THIS SECTION which may include, but not be limited to, standards for program directors, appropriate clinical oversight, training, record keeping and reporting.

2. Notwithstanding any inconsistent provisions of section sixty-five hundred twelve of the education law or any other law, the purchase, acquisition, possession or use of an opioid antagonist pursuant to this section shall not constitute the unlawful practice of a profession or other violation under title eight of the education law or this article.

3. (A) AS USED IN THIS SECTION:

(I) "OPIOID ANTAGONIST" MEANS A DRUG APPROVED BY THE FOOD AND DRUG ADMINISTRATION THAT, WHEN ADMINISTERED, NEGATES OR NEUTRALIZES IN WHOLE OR IN PART THE PHARMACOLOGICAL EFFECTS OF AN OPIOID IN THE BODY. "OPIOID ANTAGONIST" SHALL BE LIMITED TO NALOXONE AND OTHER MEDICATIONS APPROVED BY THE DEPARTMENT FOR SUCH PURPOSE.

(II) "HEALTH CARE PROFESSIONAL" MEANS A PERSON LICENSED, REGISTERED OR AUTHORIZED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW TO PRESCRIBE PRESCRIPTION DRUGS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

A. 8637--B

1 (III) "PHARMACIST" MEANS A PERSON LICENSED OR AUTHORIZED TO PRACTICE PHARMACY PURSUANT TO ARTICLE ONE HUNDRED THIRTY-SEVEN OF THE EDUCATION LAW.

4 (IV) "OPIOID ANTAGONIST RECIPIENT" OR "RECIPIENT" MEANS A PERSON AT
RISK OF EXPERIENCING AN OPIOID-RELATED OVERDOSE, OR A FAMILY MEMBER, FRIEND OR OTHER PERSON IN A POSITION TO ASSIST A PERSON EXPERIENCING OR AT RISK OF EXPERIENCING AN OPIOID-RELATED OVERDOSE, OR AN ORGANIZATION REGISTERED AS AN OPIOID OVERDOSE PREVENTION PROGRAM PURSUANT TO THIS SECTION.

(B)(I) A HEALTH CARE PROFESSIONAL MAY PRESCRIBE BY A PATIENT-SPECIFIC OR NON-PATIENT-SPECIFIC PRESCRIPTION, DISPENSE OR DISTRIBUTE, DIRECTLY OR INDIRECTLY, AN OPIOID ANTAGONIST TO AN OPIOID ANTAGONIST RECIPIENT.

(II) A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST, THROUGH A PATIENT-SPECIFIC OR NON-PATIENT-SPECIFIC PRESCRIPTION PURSUANT TO THIS PARAGRAPH, TO AN OPIOID ANTAGONIST RECIPIENT.

(III) AN OPIOID ANTAGONIST RECIPIENT MAY POSSESS AN OPIOID ANTAGONIST OBTAINED PURSUANT TO THIS PARAGRAPH, MAY DISTRIBUTE SUCH OPIOID ANTAGONIST TO A RECIPIENT, AND MAY ADMINISTER SUCH OPIOID ANTAGONIST TO A PERSON THE RECIPIENT REASONABLY BELIEVES IS EXPERIENCING AN OPIOID OVERDOSE.

(IV) THE PROVISIONS OF THIS PARAGRAPH SHALL NOT BE DEEMED TO REQUIRE A PRESCRIPTION FOR ANY OPIOID ANTAGONIST THAT DOES NOT OTHERWISE REQUIRE A PRESCRIPTION; NOR SHALL IT BE DEEMED TO LIMIT THE AUTHORITY OF A HEALTH CARE PROFESSIONAL TO PRESCRIBE, DISPENSE OR DISTRIBUTE, OR OF A PHARMACIST TO DISPENSE, AN OPIOID ANTAGONIST UNDER ANY OTHER PROVISION OF LAW.

4. Use of an opioid antagonist pursuant to this section shall be considered first aid or emergency treatment for the purpose of any statute relating to liability.

[4.] A RECIPIENT OR OPIOID OVERDOSE PREVENTION PROGRAM UNDER THIS SECTION, ACTING REASONABLY AND IN GOOD FAITH IN COMPLIANCE WITH THIS SECTION, SHALL NOT BE SUBJECT TO CRIMINAL, CIVIL OR ADMINISTRATIVE LIABILITY SOLELY BY REASON OF SUCH ACTION.

5. The commissioner shall publish findings on statewide opioid overdose data that reviews overdose death rates and other information to ascertain changes in the cause and rates of fatal opioid overdoses. The report may be part of existing state mortality reports issued by the department, and shall be submitted annually [for three years and as deemed necessary by the commissioner thereafter,) to the governor, the temporary president of the senate [and], the speaker of the assembly, AND THE CHAIRS OF THE SENATE AND ASSEMBLY HEALTH COMMITTEES. The report shall include, at a minimum, the following information:

(a) information on opioid overdose deaths, including age, gender, ethnicity, and geographic location;

(b) data on emergency room utilization for the treatment of opioid overdose;

(c) data on utilization of pre-hospital services;

(d) [suggested improvements in data collection.] DATA ON UTILIZATION OF OPIOID ANTAGONISTS; AND

(E) ANY OTHER INFORMATION NECESSARY TO ASCERTAIN THE SUCCESS OF THE PROGRAM AND WAYS TO FURTHER REDUCE OVERDOSES.

S 2. This act shall take effect immediately.
AN ACT REQUIRING HEALTH CARE FACILITIES THAT PERFORM MAMMOGRAPHY EXAMINATIONS TO COMMUNICATE MAMMOGRAPHIC BREAST DENSITY INFORMATION TO PATIENTS AND TO MAKE A CORRECTION TO A STATUTE INVOLVING THE CANCER REGISTRY.

Whereas, mammographic examinations are typically used to characterize breast density into one of four groups; and

Whereas, women classified in the highest two levels have heterogeneously or extremely dense breast tissue and could have abnormalities that are not easily visible on a mammogram; and

Whereas, dense breast tissue may also increase the risk of developing cancer; and

Whereas, knowing her individual breast density level may aid in helping a woman better understand that supplemental screening may be beneficial if she is classified in the two highest levels of breast density; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-215.5. Communication of mammographic breast density information to patients.

(a) All health care facilities that perform mammography examinations shall include in the summary of the mammography report, required by federal law to be provided to a patient, information that identifies the patient's individual breast density classification based on the Breast Imaging Reporting and Data System established by the American College of Radiology. If the facility determines that a patient has heterogeneously or extremely dense breasts, the summary of the mammography report shall include the following notice:

"Your mammogram indicates that you may have dense breast tissue. Dense breast tissue is relatively common and is found in more than forty percent (40%) of women. The presence of dense tissue may make it more difficult to detect abnormalities in the breast and may be associated with an increased risk of breast cancer. We are providing this information to raise your awareness of this important factor and to encourage you to talk with your physician about this and other breast cancer risk factors. Together, you can decide which screening options are right for you. A report of your results was sent to your physician."

(b) Patients who receive diagnostic or screening mammograms may be directed to informative material about breast density. This informative material may include the American College of Radiology's most current brochure on the subject of breast density."

SECTION 2. G.S. 130A-211 reads as rewritten:

"§ 130A-211. Immunity of persons who report cancer.

A person who makes a report pursuant to G.S. 130A-209 or 130A-210 to the central cancer registry shall be immune from any civil or criminal liability that might otherwise be incurred or imposed."
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; defining terms; requiring certain information be published on a website; providing online information to assist consumers in making informed decisions concerning purchase of a qualified health plan; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-50-1, §33-50-2 and §33-50-3, all to read as follows:

ARTICLE 50. PATIENT PROTECTION AND TRANSPARENCY ACT.

§33-50-1. Definitions.

1 For the purposes of this article, the following words and terms mean the following:
(1) “Commissioner” means the West Virginia Insurance Commissioner.

(2) “Consumer” means an individual or family purchasing insurance coverage through the exchange.

(3) “Exchange” means the West Virginia Health Benefit Exchange or an exchange website operated by the federal government.

(4) “Health care provider” means a provider of medical or health services and any other person or organization who furnishes, bills or is paid for health care in the normal course of business.

(5) “Health carrier” means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

(6) “Network” means a group of health care providers that have contracted with a health plan to provide care at a discounted rate.

(7) “Qualified health plan” means a health plan certified to be offered for sale through the exchange.

(8) “West Virginia Health Benefit Exchange” means the government-regulated marketplace of qualified health plans with multiple levels of coverage established pursuant to article sixteen-g of this chapter.
§33-50-2. Information available to the public and disclosures required of health carriers.

(a) The commissioner shall on his or her website provide information regarding the qualified health plans being offered for sale through the exchange in a format easily found by a consumer on such website. Information may be provided through links to specific information, including through links to the website of each health carrier offering a qualified health plan for sale through the exchange.

(b) Information to be made available to consumers for each qualified health plan offered for sale through the exchange include:

1. The names of the physicians, hospitals and other health care providers that are in network;
2. A list of the types of specialists that are in network;
3. Exclusions from coverage by category of benefits;
4. Restrictions on use or quantity of covered items and services by category of benefits;
5. The dollar amount of copayments;
6. The percentage of coinsurance by item and service;
7. Required cost-sharing;
8. Information sufficient to determine whether a specific drug is available on formulary;
9. Clinical prerequisites or authorization requirements for coverage of specific drugs;
(10) A description of how medications will be included in or excluded from the deductible;

(11) A description of out-of-pocket costs that may not apply to the deductible for a medication;

(12) Information sufficient to determine whether a specific drug is covered when furnished by a physician or clinic;

(13) An explanation of the amount of coverage for out-of-network providers or noncovered services;

(14) The process for a patient to appeal a health plan decision; and

(15) Contact information for the qualified health plan.

(c) The commissioner may require a qualified health plan to make the information listed in subsection (b) of this section available, including for website usage, and to provide for the reasonable updating of such information.

(d) The commissioner’s website should provide general information concerning the exchange, qualified health plans, health insurance terminology and other information consumers may need to assist them in making informed decisions concerning the purchase of a qualified health plan through the exchange.


The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.
Suspected cases of fraud shall be referred to the Department's Inspector General.

The Department shall adopt any rules necessary to implement this Section.

Sec. 11-5.3. Procurement of vendor to verify eligibility for assistance under Article V.

(a) No later than 60 days after the effective date of this amendatory Act of the 97th General Assembly, the Chief Procurement Officer for General Services, in consultation with the Department of Healthcare and Family Services, shall conduct and complete any procurement necessary to procure a vendor to verify eligibility for assistance under Article V of this Code. Such authority shall include procuring a vendor to assist the Chief Procurement Officer in conducting the procurement. The Chief Procurement Officer and the Department shall jointly negotiate final contract terms with a vendor selected by the Chief Procurement Officer. Within 30 days of selection of an eligibility verification vendor, the Department of Healthcare and Family Services shall enter into a contract with the selected vendor. The Department of Healthcare and Family Services and the Department of Human Services shall cooperate with and provide any information requested by the Chief Procurement Officer to conduct the procurement.

(b) Notwithstanding any other provision of law, any
procurement or contract necessary to comply with this Section shall be exempt from: (i) the Illinois Procurement Code pursuant to Section 1-10(h) of the Illinois Procurement Code, except that bidders shall comply with the disclosure requirement in Sections 50-10.5(a) through (d), 50-13, 50-35, and 50-37 of the Illinois Procurement Code and a vendor awarded a contract under this Section shall comply with Section 50-37 of the Illinois Procurement Code; (ii) any administrative rules of this State pertaining to procurement or contract formation; and (iii) any State or Department policies or procedures pertaining to procurement, contract formation, contract award, and Business Enterprise Program approval.

(c) Upon becoming operational, the contractor shall conduct data matches using the name, date of birth, address, and Social Security Number of each applicant and recipient against public records to verify eligibility. The contractor, upon preliminary determination that an enrollee is eligible or ineligible, shall notify the Department. Within 20 business days of such notification, the Department shall accept the recommendation or reject it with a stated reason. The Department shall retain final authority over eligibility determinations. The contractor shall keep a record of all preliminary determinations of ineligibility communicated to the Department. Within 30 days of the end of each calendar quarter, the Department and contractor shall file a joint report on a quarterly basis to the Governor, the Speaker of the
House of Representatives, the Minority Leader of the House of Representatives, the Senate President, and the Senate Minority Leader. The report shall include, but shall not be limited to, monthly recommendations of preliminary determinations of eligibility or ineligibility communicated by the contractor, the actions taken on those preliminary determinations by the Department, and the stated reasons for those recommendations that the Department rejected.

(d) An eligibility verification vendor contract shall be awarded for an initial 2-year period with up to a maximum of 2 one-year renewal options. Nothing in this Section shall compel the award of a contract to a vendor that fails to meet the needs of the Department. A contract with a vendor to assist in the procurement shall be awarded for a period of time not to exceed 6 months.

(305 ILCS 5/11-13) (from Ch. 23, par. 11-13)

Sec. 11-13. Conditions For Receipt of Vendor Payments - Limitation Period For Vendor Action - Penalty For Violation. A vendor payment, as defined in Section 2-5 of Article II, shall constitute payment in full for the goods or services covered thereby. Acceptance of the payment by or in behalf of the vendor shall bar him from obtaining, or attempting to obtain, additional payment therefor from the recipient or any other person. A vendor payment shall not, however, bar recovery of the value of goods and services the obligation for which, under
An Act

ENROLLED SENATE
BILL NO. 1536

By: Crain, Shortey, Allen and Johnson (Constance) of the Senate

and

Wright, Pittman, Shelton, Hulbert, DeWitt, Echols, Scott and Blackwell of the House

An Act relating to designated caregivers; providing definitions; permitting hospital patients to designate certain caregivers; requiring patient consent; requiring certain notation in medical records; permitting modifications to caregiver designations; prohibiting certain construction; requiring certain notices to caregivers; requiring hospital to consult with caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact caregiver; prohibiting certain construction; prohibiting use of state or federal funds for payment of caregivers; prohibiting impact on state or federal funds; providing for codification; and providing an effective date.

SUBJECT: Designated caregivers

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3112 of Title 63, unless there is created a duplication in numbering, reads as follows:

For the purposes of Sections 2 through 6 of this act:
1. "Aftercare" means any assistance provided by a designated lay caregiver to an individual under this act after the patient's discharge from a hospital. Such assistance may include tasks that are limited to the patient's condition at the time of discharge that do not require a licensed professional;

2. "Discharge" means a patient's exit or release from a hospital to the patient's residence following any inpatient stay;

3. "Hospital" means a facility licensed pursuant to the provisions of Section 1-701 et seq. of Title 63 of the Oklahoma Statutes;

4. "Lay caregiver" means any individual eighteen (18) years of age or older, including next of kin, duly designated as a lay caregiver pursuant to the provisions of this act who provides aftercare assistance to a patient in the patient's residence; and

5. "Residence" means a dwelling considered by a patient to be his or her home, not including any hospital as defined by Section 1-701 et seq. of Title 63 of the Oklahoma Statutes, nursing home or group home as defined by the Long-Term Care Reform and Accountability Act of 2001, or assisted living facility as defined by the Continuum of Care and Assisted Living Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3113 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Hospitals shall provide each patient or the patient's legal guardian with an opportunity to designate one lay caregiver following the patient's admission into a hospital and prior to the patient's discharge to the patient's residence:

1. In the event the patient is unconscious or otherwise incapacitated upon admission to the hospital, the hospital shall provide the patient's legal guardian with an opportunity to designate a lay caregiver following the patient's recovery of consciousness or capacity, so long as the designation or lack of a designation does not interfere with, delay or otherwise affect the medical care provided to the patient.
2. In the event the patient or the patient's legal guardian declines to designate a lay caregiver under this act, the hospital shall promptly document such in the patient's medical record, and the hospital shall be deemed to comply with the provisions of this act.

3. In the event that the patient or the patient's legal guardian designates an individual as a lay caregiver under this act, the hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the patient's designated lay caregiver pursuant to the hospital's established procedures for releasing personal health information and in compliance with applicable state and federal law.

4. If the patient or the patient's legal guardian declines to consent to the release of medical information to the patient's designated lay caregiver, the hospital is not required to provide notice to the lay caregiver pursuant to the provisions of Section 3 of this act.

5. The hospital shall record the patient's designation of a lay caregiver, the relationship of the lay caregiver to the patient, and the name, telephone number, and physical address of the patient's designated lay caregiver in the patient's medical record.

   B. A patient may elect to change his or her designated lay caregiver in the event that the lay caregiver becomes incapacitated.

   C. Designation of a lay caregiver by a patient or a patient's legal guardian pursuant to the provisions of this act does not obligate any individual to perform any aftercare tasks for the patient.

   D. This section shall not be construed so as to require a patient or a patient's legal guardian to designate any individual as a lay caregiver as defined by this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3114 of Title 63, unless there is created a duplication in numbering, reads as follows:
If a patient has designated a lay caregiver, a hospital shall notify the patient's designated lay caregiver of the patient's discharge to the patient's residence or transfer to another licensed facility as soon as practicable. In the event the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115 of Title 63, unless there is created a duplication in numbering, reads as follows:

As soon as practicable, the hospital shall attempt to consult with the designated lay caregiver to prepare him or her for aftercare and issue a discharge plan describing a patient's aftercare needs. In the event the hospital is unable to contact the designated lay caregiver, the lack of contact shall not interfere with, delay or otherwise affect an appropriate discharge of the patient.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3116 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed to interfere with the rights of a person legally authorized to make health care decisions as defined in paragraph 4 of Section 3090.2 of Title 63 of the Oklahoma Statutes.

B. Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital, or otherwise supersede or replace existing rights or remedies under any other general or special law.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3117 of Title 63, unless there is created a duplication in numbering, reads as follows:

No state or federal dollars shall be used for payment to any lay caregiver as defined in this act after discharge from a hospital. No state or federal program funding shall be impacted by this act.
SECTION 7. This act shall become effective November 1, 2014.
Passed the Senate the 5th day of May, 2014.

______________________________
Presiding Officer of the Senate

Passed the House of Representatives the 24th 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: _____________________________
WHEREAS, as the costs of specialty drugs increase, the practice of health plans creating a cost-sharing mechanism known as specialty-tiers has begun to occur, greatly increasing the potential financial burden on patients; and

WHEREAS, the Delaware Health Care Commission completed a study of the effect of specialty-tiers in Delaware summarizing the issue of specialty tier pricing, the impact on patient access and care when specialty-tier pricing is used; and

WHEREAS, the increased cost-sharing associated with specialty tiers drugs potentially presents a significant financial strain on seriously ill Delawareans and their families facing serious health conditions such as: hemophilia, human immunodeficiency virus (HIV), hepatitis, multiple sclerosis, lupus, some cancers, rheumatoid arthritis, and others.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33 Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3364. Specialty Tier Prescription Study Coverage.

The Delaware Healthcare Commission shall conduct a study for specialty tier prescription drugs to determine the impact on access and patient care. The Delaware Healthcare Commission shall submit a report to the General Assembly summarizing this impact by March 15, 2012.

(a) Unless otherwise specifically provided, the definitions herein apply throughout this section.

“Class of drugs” means a group of medications having similar actions designed to treat a particular disease process.

“Coinsurance” means a cost-sharing amount set as a percentage of the total cost of the drug.

“Commissioner” means the Insurance Commissioner of this State.

“Copayment” means a cost-sharing amount set as a dollar value.

“Non-preferred drug” means a Specialty drug formulary classification for certain Specialty drugs deemed non-preferred and therefore subject to limits on eligibility for coverage or to higher cost-sharing amounts than preferred
Specialty drugs.

“Preferred drug” means a Specialty drug formulary classification for certain Specialty drugs deemed preferred and therefore not subject to limits on eligibility for coverage or not subject to higher cost-sharing amounts than non-preferred Specialty drugs.

“Specialty drug” means a prescription drug that:

(1) is prescribed for a person with: (a) a complex or chronic medical condition, defined as a physical, behavioral, or developmental condition that may have no known cure and/or is progressive and/or can be debilitating or fatal if left untreated or under-treated, such as multiple sclerosis, hepatitis C, and rheumatoid arthritis; or (b) a rare medical condition, defined as any disease or condition that affects fewer than 200,000 persons in the United States, or about 1 in 1,500 people, such as cystic fibrosis, hemophilia, and multiple myeloma; and

(2) The total monthly cost of the prescription is $600 or more; and

(3) The drug is not stocked at a majority of retail pharmacies; and

(4) The drug has one or more of the following characteristics:

(a) It is an oral, injectable, or infusible drug product.

(b) It has unique storage or shipment requirements, such as refrigeration.

(c) Patients receiving the drug require education and support beyond traditional dispensing activities.

“Specialty drug formulary” means a specialty drug benefit design that distinguishes for purposes of eligibility for coverage or for cost sharing between Preferred drugs and Non-Preferred drugs.

“Specialty drug tier” means a tier of cost sharing designed for Specialty drugs that imposes a cost-sharing obligation for Specialty drugs that exceeds the amount for non-Specialty drugs and such a cost sharing amount is based on a coinsurance.

(b) A health plan that provides coverage for prescription drugs and utilizes a Specialty drug tier shall ensure that any required copayment or coinsurance applicable to specialty drugs on a specialty tier does not exceed $150 per month for each specialty drug up to a 30-day supply of any single drug.

(c) A health plan that provides coverage for prescription drugs and utilizes a Specialty drug formulary shall implement an exceptions process that allows enrollees to request an exception to the formulary. Under such an exception, a non-formulary specialty drug could be deemed covered under the formulary if the prescribing physician determines that the formulary drug for treatment of the same condition either would not be as effective for the individual, or would have adverse effects for the individual, or both. In the event an enrollee is denied an exception, such denial shall be considered an adverse event and will be subject to the health plan internal review process set forth in 18 Del. C. § 332 and the state external review process set forth in 18 Del. C. § 6416.

(d) A health plan that provides coverage for prescription drugs shall be prohibited from placing all drugs in a given class of drugs on a specialty tier.

(e) Nothing in this section shall be construed to require a health plan to:

(1) provide coverage for any additional drugs not otherwise required by law;

(2) implement specific utilization management techniques, such as prior authorization or step therapy; or
(3) cease utilization of tiered cost-sharing structures, including those strategies used to incent use of preventive services, disease management, and low-cost treatment options.

(f) Nothing in this section shall be construed to require a pharmacist to substitute a drug without the consent of the prescribing physician.

(g) Nothing contained in any other provision of Delaware law or regulation shall preclude a health plan or other entity subject to this chapter from requiring specialty drugs to be obtained through a designated pharmacy or other source of such drugs.

Section 2. Amend Chapter 35 Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3580. Specialty Tier Prescription Coverage.

(a) Unless otherwise specifically provided, the definitions herein apply throughout this section.

“Class of drugs” means a group of medications having similar actions designed to treat a particular disease process.

“Coinsurance” means a cost-sharing amount set as a percentage of the total cost of the drug.

“Commissioner” means the Insurance Commissioner of this State.

“Copayment” means a cost-sharing amount set as a dollar value.

“Non-preferred drug” means a Specialty drug formulary classification for certain Specialty drugs deemed non-preferred and therefore subject to limits on eligibility for coverage or to higher cost-sharing amounts than preferred Specialty drugs.

“Preferred drug” means a Specialty drug formulary classification for certain Specialty drugs deemed preferred and therefore not subject to limits on eligibility for coverage or not subject to higher cost-sharing amounts than non-preferred Specialty drugs.

“Specialty drug” means a prescription drug that:

(1) is prescribed for a person with: (a) a complex or chronic medical condition, defined as a physical, behavioral, or developmental condition that may have no known cure and/or is progressive and/or can be debilitating or fatal if left untreated or under-treated, such as multiple sclerosis, hepatitis C, and rheumatoid arthritis; or (b) a rare medical condition, defined as any disease or condition that affects fewer than 200,000 persons in the United States, or about 1 in 1,500 people, such as cystic fibrosis, hemophilia, and multiple myeloma; and

(2) The total monthly cost of the prescription is $600 or more; and

(3) The drug is not stocked at a majority of retail pharmacies; and

(4) The drug has one or more of the following characteristics:

____ (a) It is an oral, injectable, or infusible drug product.

____ (b) It has unique storage or shipment requirements, such as refrigeration.

____ (c) Patients receiving the drug require education and support beyond traditional dispensing activities.

“Specialty drug formulary” means a specialty drug benefit design that distinguishes for purposes of eligibility for coverage or for cost sharing between Preferred drugs and Non-Preferred drugs.
“Specialty drug tier” means a tier of cost sharing designed for Specialty drugs that imposes a cost-sharing obligation for Specialty drugs that exceeds the amount for non-Specialty drugs and such a cost sharing amount is based on a coinsurance.

(b) A health plan that provides coverage for prescription drugs and utilizes a Specialty drug tier shall ensure that any required copayment or coinsurance applicable to specialty drugs on a specialty tier does not exceed $150 per month for each specialty drug up to a 30-day supply of any single drug.

(c) A health plan that provides coverage for prescription drugs and utilizes a Specialty drug formulary shall implement an exceptions process that allows enrollees to request an exception to the formulary. Under such an exception, a non-formulary specialty drug could be deemed covered under the formulary if the prescribing physician determines that the formulary drug for treatment of the same condition either would not be as effective for the individual, or would have adverse effects for the individual, or both. In the event an enrollee is denied an exception, such denial shall be considered an adverse event and will be subject to the health plan internal review process set forth in 18 Del. C. § 332 and the state external review process set forth in 18 Del. C. § 6416.

(d) A health plan that provides coverage for prescription drugs shall be prohibited from placing all drugs in a given class of drugs on a specialty tier.

(e) Nothing in this section shall be construed to require a health plan to:

   (1) provide coverage for any additional drugs not otherwise required by law;

   (2) implement specific utilization management techniques, such as prior authorization or step therapy; or

   (3) cease utilization of tiered cost-sharing structures, including those strategies used to incent use of preventive services, disease management, and low-cost treatment options.

(f) Nothing in this section shall be construed to require a pharmacist to substitute a drug without the consent of the prescribing physician.

(g) Nothing contained in any other provision of Delaware law or regulation shall preclude a health plan or other entity subject to this chapter from requiring specialty drugs to be obtained through a designated pharmacy or other source of such drugs.

Section 3. This act shall take effect and be in force from and after January 1, 2014. The provisions above shall apply to a health plan contract issued, amended, or renewed on or after January 1, 2014.

Section 4. The Commissioner shall have the authority to promulgate regulations regarding the enforcement processes for this act.

SYNOPSIS

This Bill imposes dollar limits on the health plan practice of prescription drug cost-sharing known as specialty tiers, in order to protect patients from unaffordable co-insurance or co-payment amounts. Patients’ co-insurance or co-payment fees for specialty tier drugs will be limited to $150 per month for up to a 30-day supply of any single specialty tier drug. Patients will also be able to request an exception to obtain a specialty drug that would not otherwise be available on a health plan formulary. The bill goes into effect on January 1, 2014.

Author: Senator Henry
AN ACT

To enact R.S. 22:1060.5, relative to prescription drug specialty tiers; to provide with respect
to limits on coinsurance; to provide for limits on out-of-pocket expenses for
prescription drugs; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1060.5 is hereby enacted to read as follows:

§1060.5. Specialty drug tiers; prohibitions; limits on co-payments

A. A health insurance issuer of a health benefit plan that covers
prescription drugs, as defined in R.S. 22:1060.1(8), and utilizes a formulary tier
that is higher than a preferred or non-preferred brand drug tier, sometimes
known as a specialty drug tier, shall limit any required co-payment or
coinsurance applicable to drugs on such tier to an amount not to exceed one
hundred and fifty dollars per month for each drug up to a thirty-day supply of
any single drug. This limit shall be inclusive of any co-payment or coinsurance.
This limit shall be applicable after any deductible is reached and until the
individual's maximum out-of-pocket limit has been reached.

B. A health care issuer of a health benefit plan that covers prescription
drugs, as defined in R.S. 22:1060.1(8), and utilizes specialty tiers shall be
required to implement an exceptions process that allows enrollees to request an
exception to the formulary. Under such an exception, a non-formulary specialty
drug could be deemed covered under the formulary if the prescribing physician
determines that the formulary drug for treatment of the same condition either
would not be as effective for the individual, would have adverse effects for the
individual, or both. In the event an enrollee is denied an exception, such denial shall be considered an adverse event and shall be subject to the health plan internal review process and the state external review process.

C. The provisions of this Section shall not apply to the Office of Group Benefits or to the claims of the Office of Group Benefits enrollees administered by health insurance issuers.

Section 2. The provisions of this Section shall become effective on January 1, 2015.

__________________________
PRESIDENT OF THE SENATE

__________________________
SPEAKER OF THE HOUSE OF REPRESENTATIVES

__________________________
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____________
AN ACT to amend the public health law and the insurance law, in relation to cost-sharing, deductible or co-insurance for tier IV prescription drugs; and to amend the executive law, in relation to unlawful discriminatory practice in relation to tier IV prescription drugs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The cost-sharing, deductibles and co-insurance obligations for certain drugs are becoming cost prohibitive for persons trying to overcome serious and often life-threatening diseases and conditions such as cancer, multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia and psoriasis. These drugs are typically new, produced in lesser quantities than other drugs, and not available as less expensive brand name or generic prescription drugs. Some health insurance plans and policies in other states as well as some self-insured plans in New York have established unique categories or specialty tiers for these drugs, sometimes referred to as Tier IV or Tier V. Patients under these plans are required to pay a percentage of the cost of these high-priced drugs, rather than the traditional co-payment amounts for generic, preferred brand, and non-preferred brand prescription drugs, often covered by Tier I, Tier II, and Tier III plans and policies, respectively. As a result, patients covered under plans

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.
with specialty tiers must pay thousands of dollars in out-of-pocket costs for drugs critical for their treatment.

It is in the public interest to help patients to afford necessary prescription drugs by prohibiting cost-sharing, deductibles and co-insurance obligations by patients that exceed payments for non-preferred brand prescription drugs or the equivalent thereof. It is not the intent of this legislation to preclude plans or policies from categorizing drugs used in the treatment of these common diseases as brand name prescription drugs or generic prescription drug equivalents.

The extraordinary disparity in cost-sharing, deductible and co-insurance burdens imposed on patients whose life and health depend on these drugs constitutes serious and unjustified discrimination based on their disease or disability.

This legislation is intended to provide patients more affordable access to prescription drugs essential for their treatment of cancer, multiple sclerosis, rheumatoid arthritis, hepatitis C, hemophilia, psoriasis, and other diseases.

S 2. Section 4406-c of the public health law is amended by adding a new subdivision 7 to read as follows:

7. NO HEALTH MAINTENANCE ORGANIZATION WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 3. Subsection (i) of section 3216 of the insurance law is amended by adding a new paragraph 27 to read as follows:

(27) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 4. Subsection (a) of section 3221 of the insurance law is amended by adding a new paragraph 16 to read as follows:

(16) NO POLICY DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).

S 5. Section 4303 of the insurance law is amended by adding a new subsection (gg) to read as follows:

(GG) NO MEDICAL EXPENSE INDEMNITY CORPORATION, A HOSPITAL SERVICE CORPORATION OR A HEALTH SERVICE CORPORATION WHICH PROVIDES COVERAGE FOR PRESCRIPTION DRUGS AND FOR WHICH COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS ARE DETERMINED BY CATEGORY OF PRESCRIPTION DRUGS SHALL IMPOSE COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG THAT EXCEEDS THE DOLLAR AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY).
S. 5000--B                          3

1 EQUIVALENT (OR BRAND DRUGS IF THERE IS NO NON-PREFERRED BRAND DRUG CATE-
2 GORY).

3 S 6. Subdivision 20 of section 296 of the executive law, as renum-
4 bered by chapter 204 of the laws of 1996, is renumbered subdivision 21
5 and a new subdivision 20 is added to read as follows:
6 20. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR ANY EMPLOYER,
7 LABOR ORGANIZATION, INSURER, HEALTH MAINTENANCE ORGANIZATION OR OTHER
8 ENTITY TO LIMIT HEALTH CARE COVERAGE SUCH THAT COST-SHARING, DEDUCTIBLES
9 OR CO-INSURANCE OBLIGATIONS FOR ANY PRESCRIPTION DRUG EXCEEDS THE DOLLAR
10 AMOUNT OF COST-SHARING, DEDUCTIBLES OR CO-INSURANCE OBLIGATIONS FOR ANY
11 OTHER PRESCRIPTION DRUG PROVIDED UNDER SUCH HEALTH CARE COVERAGE IN THE
12 CATEGORY OF NON-PREFERRED BRAND DRUGS OR ITS EQUIVALENT (OR BRAND DRUGS
13 IF THERE IS NO NON-PREFERRED BRAND DRUG CATEGORY); PROVIDED HOWEVER,
14 THIS SUBDIVISION SHALL NOT APPLY TO ANY SELF-INSURED EMPLOYEE WELFARE
15 BENEFIT PLAN, AS DEFINED IN THE EMPLOYEE RETIREMENT INCOME SECURITY ACT
16 OF 1974, AS AMENDED.
17
18 S 7. Severability. If any provision of this act, or any application of
19 any provision of this act, is held to be invalid, or ruled by any feder-
20 al agency to violate or be inconsistent with any applicable federal law
21 or regulation, that shall not affect the validity or effectiveness of
22 any other provision of this act, or of any other application of any
23 provision of this act.
24 S 8. This act shall take effect on the thirtieth day after it shall
25 have become a law.
AN ACT
RELATING TO THE UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS
ACT; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER
15, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO
PROVIDE FOR THE VALIDITY OF A SUBSTITUTE DECISION-MAKING DOCUMENT, TO
PROVIDE MEANING AND EFFECT OF A SUBSTITUTE DECISION-MAKING DOCUMENT,
TO AUTHORIZE RELIANCE UPON A SUBSTITUTE DECISION-MAKING DOCUMENT UNDER
CERTAIN CONDITIONS, TO PROVIDE FOR AN OBLIGATION TO ACCEPT A SUBSTI-
TUTE DECISION-MAKING DOCUMENT UNDER CERTAIN CONDITIONS, TO PROVIDE FOR
REMEDIES UNDER OTHER LAW, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND
CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN
GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE APPLICABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended
by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
ter 15, Title 15, Idaho Code, and to read as follows:

CHAPTER 15
UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT

15-15-101. SHORT TITLE. This chapter shall be known and may be cited as
the "Uniform Recognition of Substitute Decision-Making Documents Act."

15-15-102. DEFINITIONS. As used in this chapter:
(1) "Decision maker" means a person authorized to act for an individual
under a substitute decision-making document, whether denominated a decision
maker, agent, attorney in fact, proxy, representative or by another title.
The term includes an original decision maker, a co-decision maker, a succes-
sor decision maker and a person to which a decision maker's authority is del-
egated.

(2) "Good faith" means honesty in fact.

(3) "Health care" means a service or procedure to maintain, diagnose,
treat or otherwise affect an individual's physical or mental condition.

(4) "Person" means an individual, estate, business or nonprofit en-
tity, public corporation, government or governmental subdivision, agency,
or instrumentality or other legal entity.

(5) "Personal care" means an arrangement or service to provide an indi-
vidual shelter, food, clothing, transportation, education, recreation, so-
cial contact or assistance with the activities of daily living.

(6) "Property" means anything that may be subject to ownership, whether
real or personal or legal or equitable, or any interest or right therein.
(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) "Substitute decision-making document" means a record created by an individual to authorize a decision maker to act for the individual with respect to property, health care or personal care.

15-15-103. VALIDITY OF SUBSTITUTE DECISION-MAKING DOCUMENT. (1) A substitute decision-making document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

(2) A substitute decision-making document for health care or personal care executed outside this state is valid in this state if, when the document was executed, the execution complied with:
   (a) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or
   (b) The law of this state other than this chapter.

(3) Except as otherwise provided by law of this state other than this chapter, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

15-15-104. MEANING AND EFFECT OF SUBSTITUTE DECISION-MAKING DOCUMENT. The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

15-15-105. RELIANCE UPON SUBSTITUTE DECISION-MAKING DOCUMENT. (1) Except as otherwise provided for in sections 15-12-119 and 39-4513, Idaho Code, a person that in good faith accepts a substitute decision-making document without actual knowledge that the document is void, invalid or terminated, or that the authority of the purported decision maker is void, invalid or terminated, may assume without inquiry that the document is genuine, valid and still in effect and that the decision maker's authority is genuine, valid and still in effect.

(2) A person that is asked to accept a substitute decision-making document may request and without further investigation rely upon:
   (a) The decision maker's assertion of a fact concerning the individual for whom a decision will be made, the decision maker or the document;
   (b) A translation of the document if the document contains, in whole or in part, language other than English; and
   (c) An opinion of counsel regarding any matter of law concerning the document if the person provides in a record the reason for the request.

15-15-106. OBLIGATION TO ACCEPT SUBSTITUTE DECISION-MAKING DOCUMENT. (1) Except as otherwise provided in subsection (2) of this section or by law of this state other than this act, including section 15-12-120(2)(b),
Idaho Code, a person that is asked to accept a substitute decision-making document shall accept within a reasonable time a document that purportedly meets the validity requirements of section 15-15-103, Idaho Code. The person may not require an additional or different form of document for authority granted in the document presented.

(2) A person that is asked to accept a substitute decision-making document is not required to accept the document if:
(a) The person otherwise would not be required in the same circumstances to act if requested by the individual who executed the document;
(b) The person has actual knowledge of the termination of the decision maker's authority or the document;
(c) The person's request under section 15-15-105(2), Idaho Code, for the decision maker's assertion of fact, a translation or an opinion of counsel is refused;
(d) The person in good faith believes that the document is not valid or the decision maker does not have the authority to request a particular transaction or action; or
(e) The person makes, or has actual knowledge that another person has made, a report to the local office of adult protective services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation or abandonment by the decision maker or a person acting for or with the decision maker.

(3) A person that in violation of the provisions of this section refuses to accept a substitute decision-making document is subject to:
(a) A court order mandating acceptance of the document; and
(b) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

15-15-107. REMEDIES UNDER OTHER LAW. The remedies under this act are not exclusive and do not abrogate any right or remedy under law of this state other than this chapter.

15-15-108. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

15-15-109. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

15-15-110. APPLICABILITY. This chapter applies to a substitute decision-making document created before, on or after the effective date of this chapter.
AB-2365 Contracts: unlawful contracts. (2013-2014)

Assembly Bill No. 2365

CHAPTER 308

An act to add Section 1670.8 to the Civil Code, relating to contracts.

[ Approved by Governor September 09, 2014. Filed with Secretary of State September 09, 2014. ]

LEGISLATIVE COUNSEL’S DIGEST


Existing law generally regulates formation and enforcement of contracts, including what constitutes an unlawful contract. Under existing law a contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals.

This bill would prohibit a contract or proposed contract for the sale or lease of consumer goods or services from including a provision waiving the consumer’s right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services. The bill would make it unlawful to threaten or to seek to enforce, a provision made unlawful under the bill, or to otherwise penalize a consumer for making any statement protected under the bill. The bill would impose civil penalties upon any person who violates the provisions of the bill, of $2,500 for the initial violation and $5,000 for each subsequent violation, as well as an additional penalty of $10,000 if the violation was willful, intentional, or reckless. The bill would authorize the consumer, the Attorney General, or a district attorney or city attorney to bring a civil action for a violation of the provisions of the bill. The bill would provide that the penalty set forth in the bill is not an exclusive remedy, and does not affect any other relief or remedy provided by law. The bill would not prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

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

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

SECTION 1. Section 1670.8 is added to the Civil Code, to read:

1670.8. (a) (1) A contract or proposed contract for the sale or lease of consumer goods or services may not include a provision waiving the consumer’s right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services.

(2) It shall be unlawful to threaten or to seek to enforce a provision made unlawful under this section, or to otherwise penalize a consumer for making any statement protected under this section.

(b) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(c) Any person who violates this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars ($2,500) for the first violation, and five thousand dollars ($5,000) for the second and for each
subsequent violation, to be assessed and collected in a civil action brought by the consumer, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. When collected, the civil penalty shall be payable, as appropriate, to the consumer or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

(d) In addition, for a willful, intentional, or reckless violation of this section, a consumer or public prosecutor may recover a civil penalty not to exceed ten thousand dollars ($10,000).

(e) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law. This section shall not be construed to prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.