THE COUNCIL OF STATE GOVERNMENTS
SHARED STATE LEGISLATION

2017 CYCLE
BOOK B

LEGISLATION TO BE CONSIDERED
May 13, 2016
Lexington, Kentucky
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-7, relating to shared animal ownership agreements to consume raw milk; permitting a responsible party to acquire a percentage ownership interest to consume raw milk; setting forth required provisions for shared animal ownership agreements; requiring responsible party to acquire percentage ownership interest in milk-producing animal; requiring payment for percentage ownership for care and boarding of milk-producing animal; providing for receipt of a share of raw milk pursuant to an agreement; requiring written document acknowledging the inherent dangers of consuming raw milk; providing immunity to herd seller for inherent dangers of consuming raw milk; providing no waiver of immunity to herd seller for dangers caused by negligence of herd seller; prohibiting responsible party from distributing, selling or reselling raw milk received pursuant to shared ownership agreement; requiring herd seller to file shared animal ownership agreement with Commissioner of Agriculture; requiring certain additional information be provided by herd seller to Commissioner of Agriculture; requiring herd seller meet animal health requirements established by state veterinarian; requiring parties and physicians to report illnesses related to consumption of raw milk; requiring parties to shared animal ownership agreement and physicians to report illnesses directly related to consuming raw milk; requiring Commissioner of Agriculture contact other parties consuming raw milk from same herd seller upon receipt of report of illness; providing administrative penalties; permitting a person against whom a penalty is imposed to administratively contest that penalty; and providing rule-making authority.

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 section, designated §19-1-7, to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. Shared animal ownership agreement to consume raw milk.
(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

1. Acquires a percentage ownership interest in a milk-producing animal;
2. Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;
3. Is entitled to receive a fair share of the animal’s raw milk production as a condition of the contractual agreement;
4. Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and
5. Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.

(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses and phone numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.

(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:

1. Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous twelve months for brucellosis, tuberculosis and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous thirty days before introduction into the herd; and
(2) Milk-producing animals producing bloody, stringy or abnormal milk, but with only slight inflation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.

(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed $100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to article five, chapter twenty-nine-a of this code.

(f) The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code in compliance with raw milk dairy industry standards.
An act to add Chapter 4.5 (commencing with Section 14400) to Division 7 of the Food and Agricultural Code, relating to livestock.

[Approved by Governor October 10, 2015. Filed with Secretary of State October 10, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 27, Hill. Livestock: use of antimicrobial drugs.

(1) Existing law regulates the distribution and use of livestock drugs, as defined, by the Secretary of Food and Agriculture. Existing law also requires a person to obtain a license from the secretary to manufacture, sell, distribute, or store commercial feed, including commercial feed containing drugs.

This bill would, beginning January 1, 2018, prohibit the administration of medically important antimicrobial drugs, as defined, to livestock unless ordered by a licensed veterinarian through a prescription or veterinary feed directive pursuant to a veterinarian-client-patient relationship, as specified, and would prohibit the administration of a medically important antimicrobial drug to livestock solely for purposes of promoting weight gain or improving feed efficiency. The bill would require the Department of Food and Agriculture, in consultation with the Veterinary Medical Board, the State Department of Public Health, universities, and cooperative extensions, to develop antimicrobial stewardship guidelines and best management practices on the proper use of medically important antimicrobial drugs and would require the department to gather information on medically important antimicrobial drug sales and usage, antimicrobial resistant bacteria, and livestock management practice data. The bill would require information provided pursuant to those provisions to be held confidential, as specified. The bill would authorize the department to request and receive copies of veterinary feed directives from certain persons to implement the bill’s provisions. The bill would make a first violation of the bill’s provisions subject to a civil penalty of up to $250 for each day a violation occurs, and would make second and subsequent violations subject to an administrative fine of $500 for each day a violation occurs, except as specified.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.
The people of the State of California do enact as follows:

SECTION 1. Chapter 4.5 (commencing with Section 14400) is added to Division 7 of the Food and Agricultural Code, to read:

**CHAPTER 4.5. LIVESTOCK: USE OF ANTIMICROBIAL DRUGS**

14400. For purposes of this chapter, the following definitions apply:
(a) “Medically important antimicrobial drug” means an antimicrobial drug listed in Appendix A of the federal Food and Drug Administration’s Guidance for Industry #152, including critically important, highly important, and important antimicrobial drugs, as that appendix may be amended.
(b) “Livestock” means all animals and poultry, including aquatic and amphibian species, that are raised, kept, or used for profit. Livestock does not include bees or those species that are usually kept as pets, such as dogs, cats, and pet birds.
(c) “Veterinary feed directive” has the same definition as in Section 558.3 of Title 21 of the Code of Federal Regulations.

14401. Beginning January 1, 2018, a medically important antimicrobial drug shall not be administered to livestock unless ordered by a licensed veterinarian through a prescription or veterinary feed directive, pursuant to a veterinarian-client-patient relationship that meets the requirements of Section 2032.1 of Title 16 of the California Code of Regulations.

14402. (a) Beginning January 1, 2018, a medically important antimicrobial drug may be used when, in the professional judgment of a licensed veterinarian, the medically important antimicrobial drug is any of the following:
(1) Necessary to treat a disease or infection.
(2) Necessary to control the spread of a disease or infection.
(3) Necessary in relation to surgery or a medical procedure.
(b) A medically important antimicrobial drug may also be used when, in the professional judgment of a licensed veterinarian, it is needed for prophylaxis to address an elevated risk of contraction of a particular disease or infection.
(c) A person shall not administer a medically important antimicrobial drug to livestock solely for purposes of promoting weight gain or improving feed efficiency.
(d) Unless the administration is consistent with subdivision (a), a person shall not administer a medically important antimicrobial drug in a regular pattern.

14403. (a) Notwithstanding Sections 14401 and 14402 of this code and Article 15 (commencing with Section 4196) of Chapter 9 of Division 2 of the Business and Professions Code, medically important antimicrobial drugs may be sold by retailers licensed pursuant to Article 5 (commencing with Section 14321) of Chapter 4 of Division 7 with a prescription or veterinary feed directive from a licensed veterinarian.
This section shall not be construed to invalidate the requirement to obtain a prescription or veterinary feed directive to administer a medically important antimicrobial drug as required by Section 14401.

(c) The department may promulgate regulations to implement this section.

14404. (a) The department, in consultation with the Veterinary Medical Board, the State Department of Public Health, universities, and cooperative extensions, shall develop antimicrobial stewardship guidelines and best management practices for veterinarians, as well as livestock owners and their employees who are involved with administering medically important antimicrobial drugs, on the proper use of medically important antimicrobial drugs for disease treatment, control, and prevention. The guidelines shall include scientifically validated practical alternatives to the use of medically important antimicrobial drugs, including, but not limited to, the introduction of effective vaccines and good hygiene and management practices.

(b) The department shall consult with livestock producers, licensed veterinarians, and any other relevant stakeholders on ensuring livestock timely access to treatment for producers in rural areas with limited access to veterinary care.

(c) For purposes of this section, “antimicrobial stewardship” is a commitment to do all of the following:

1. To use medically important antimicrobial drugs only when necessary to treat, control, and, in some cases, prevent, disease.

2. To select the appropriate medically important antimicrobial drug and the appropriate dose, duration, and route of administration.

3. To use medically important antimicrobial drugs for the shortest duration necessary and to administer them to the fewest animals necessary.

14405. (a) It is the intent of the Legislature that the department coordinate with the United States Department of Agriculture, the federal Food and Drug Administration, and the federal Centers for Disease Control and Prevention to implement the expanded antimicrobial resistance surveillance efforts included in the National Action Plan for Combating Antibiotic-Resistant Bacteria, and that the information gathered through this effort will help lead to a better understanding of the links between antimicrobial use patterns in livestock and the development of antimicrobial resistant bacterial infections.

(b) (1) The department shall gather information on medically important antimicrobial drug sales and usage, as well as antimicrobial resistant bacteria and livestock management practice data. Monitoring efforts shall not be duplicative of the National Animal Health Monitoring System and the National Antimicrobial Resistance Monitoring System, and, to the extent feasible, the department shall coordinate with the United States Department of Agriculture, the federal Centers for Disease Control and Prevention, and the federal Food and Drug Administration in the development of these efforts.

(2) In coordinating with the National Animal Health Monitoring System and the National Antimicrobial Resistant Monitoring System, the department shall gather representative samples from all of the following:
(A) California’s major livestock segments.
(B) Regions with considerable livestock production.
(C) Representative segments of the food production chain.

d) (1) The department shall work with willing participants to gather samples and shall consult with, and conduct outreach to, livestock producers, licensed veterinarians, and any other relevant stakeholders on the implementation of the monitoring efforts. Participation in this effort shall be done in a manner that does not breach veterinary-client-patient confidentiality laws.

(2) The department shall report to the Legislature by January 1, 2019, the results of its outreach activities and monitoring efforts. The department shall advise the Legislature as to whether or not participation is sufficient to provide statistically relevant data. The report shall be submitted in compliance with Section 9795 of the Government Code.

This subdivision is inoperative on January 1, 2023, pursuant to Section 10231.5 of the Government Code.

e) The department shall seek funds from federal, state, and other sources to implement this section.

(f) The department may promulgate regulations to implement this section.

14406. The department has the authority to request and receive copies of veterinary feed directives from the livestock owner, veterinarian, or distributor to fully implement the provisions of this chapter.

14407. Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), any information provided pursuant to this chapter and Section 14902.5, if that section is added by Senate Bill 770 of the 2015–16 Regular Session of the Legislature, shall be held confidential, and shall not be disclosed to any person or governmental agency, other than the department or the Veterinary Medical Board, for the purposes of enforcing the Veterinary Medicine Practice Act (Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code), unless the data is aggregated to prevent the identification of an individual farm or business. Information may be shared with federal agencies so long as it is protected by the federal Confidential Information Protection and Statistical Efficiency Act of 2002 (Public Law 107-347).

14408. (a) A person who violates this chapter shall be liable for a civil penalty of not more than two hundred and fifty dollars ($250) for each day a violation occurs.

(b) (1) For a second or subsequent violation, a person who violates this chapter shall be punishable by an administrative fine, levied by the secretary, in the amount of five hundred dollars ($500) for each day a violation occurs.

(2) In addition to the administrative fine, the violator shall attend an educational program on the judicious use of medically important antimicrobial drugs that has been approved by the secretary. The violator shall successfully complete the program and provide proof to the secretary within 90 days from the occurrence of the violation.

(c) Subdivisions (a) and (b) do not apply to licensed veterinarians. If the Veterinary Medical Board determines that a veterinarian is in violation of
the Veterinary Medicine Practice Act (Chapter 11 (commencing with Section 4800) of Division 2 of the Business and Professions Code), the veterinarian may be subject to disciplinary sanctions pursuant to the act.

(d) The moneys collected pursuant to this article shall be deposited into the Department of Food and Agriculture Fund and shall be available for expenditure upon appropriation by the Legislature.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 14407 to the Food and Agricultural Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure the confidentiality of the information collected pursuant to this act and the integrity of that information for regulatory and enforcement purposes, it is necessary that this act take effect.
An Act to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 51, consisting of sections numbered 59.1-556 through 59.1-570, relating to the Fantasy Contests Act; registration required; conditions of registration; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 51, consisting of sections numbered 59.1-556 through 59.1-570, as follows:

CHAPTER 51.
FANTASY CONTESTS ACT.

§ 59.1-556. Definitions.
As used in this chapter, unless the context requires otherwise:

"Confidential information" means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.

"Department" means the Department of Agriculture and Consumer Services.

"Entry fee" means cash or cash equivalent that is required to be paid by a fantasy contest participant to a fantasy contest operator in order to participate in a fantasy contest.

"Fantasy contest" includes any online fantasy or simulated game or contest with an entry fee in which (i) the value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest; (ii) all winning outcomes reflect the relative knowledge and skill of the participants and shall be determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events; and (iii) no winning outcome is based on the score, point spread, or any performance of any single actual team or combination of teams or solely on any single performance of an individual athlete or player in any single actual event.

"Fantasy contest operator" or "operator" means a person or entity that offers fantasy contests for a cash prize to members of the public.

"Fantasy contest player" or "player" means a person who participates in a fantasy contest offered by a fantasy contest operator.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, 15 percent or more of the equity ownership of a fantasy contest operator or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 15 percent or more of any such operator.

§ 59.1-557. Registration of fantasy contest operators required; application for registration; issuance of registration certificate; penalty.

A. No fantasy contest operator shall offer any fantasy contest in the Commonwealth without first being registered with the Department. Applications for registration shall be on forms prescribed by the Department. Any registration issued by the Department shall be valid for one year from the date of issuance.

B. The application for registration submitted by a fantasy contest operator shall contain the following information:

1. The name and principal address of the applicant; if a corporation, the state of its incorporation, the full name and address of each officer and director thereof, and, if a foreign corporation, whether it is qualified to do business in the Commonwealth; if a partnership or joint venture, the name and address of each officer thereof;

2. The address of any offices of the applicant in the Commonwealth and its designated agent for process within the Commonwealth. If no such agent is designated, the applicant shall be deemed to have designated the Commissioner of the Department. If the operator does not maintain an office, the name and address of the person having custody of its financial records;

3. The place where and the date when the applicant was legally established and the form of its organization;

4. The names and addresses of the officers, directors, trustees, and principal salaried executive staff officer;

5. The name and address of each principal stockholder or member of such corporation; and

6. Such information as the Department deems necessary to ensure compliance with the provisions of this chapter.
C. Every registration filed under this chapter shall be accompanied by a nonrefundable, initial application fee set by the Department.

D. As a condition of registration, a fantasy contest operator shall submit evidence satisfactory to the Department that the operator has established and will implement procedures for fantasy contests that:

1. Prevent him or his employees and relatives living in the same household as the operator from competing in any public fantasy contest offered by such operator in which the operator offers a cash prize;
2. Prevent the sharing of confidential information that could affect fantasy contest play with third parties until the information is made publicly available;
3. Verify that any fantasy contest player is 18 years of age or older;
4. Ensure that players who are the subject of a fantasy contest are restricted from entering a fantasy contest that is determined, in whole or part, on the accumulated statistical results of a team of individuals in which such players are participants;
5. Allow individuals to restrict themselves from entering a fantasy contest upon request and take reasonable steps to prevent those individuals from entering the operator’s fantasy contests;
6. Disclose the number of entries a single fantasy contest player may submit to each fantasy contest and take reasonable steps to prevent such players from submitting more than the allowable number; and
7. Segregate player funds from operational funds in separate accounts and maintain a reserve in the form of cash, cash equivalents, irrevocable letter of credit, bond, or a combination thereof in an amount sufficient to pay all prizes and awards offered to winning participants.

E. If the registration forms are filed online using a website approved by the Commissioner of the Department, the operator shall follow the procedures on that website for signing the forms.

F. Any operator that allows its registration to lapse, without requesting an extension of time to file, shall be required to resubmit an initial registration. An extension may be granted by the Department upon receipt of a written request.

§ 59.1-558. Issuance of registration; denial of same.
A. The Department shall consider all applications for registration and shall issue a valid registration to an applicant that meets the criteria set forth in this chapter.
B. The Department shall deny registration to any applicant unless it finds that:
1. If the corporation is a stock corporation, such stock is fully paid and nonassessable and has been subscribed and paid for only in cash or property to the exclusion of past services and, if the corporation is a nonstock corporation, that there are at least five members;
2. All principal stockholders or members have submitted to the jurisdiction of the Virginia courts for the purposes of this chapter, and all nonresident principal stockholders or members have designated the Commissioner of the Department as their agent for receipt of process;
3. The applicant’s articles of incorporation provide that the corporation may, on vote of a majority of the stockholders or members, purchase at fair market value the entire membership interest of any stockholder or require the resignation of any member who is or becomes unqualified for such position under subsection C; and
4. The applicant meets the criteria established by the Department for the granting of registration.
C. The Department may deny registration to an applicant if it finds that the applicant, or any officer, partner, principal stockholder, or director of the applicant:
1. Has knowingly made a false statement of material fact or has deliberately failed to disclose any information requested;
2. Is or has been found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in connection with any fantasy contest in this or any other state or has been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust within the 10 years prior to the date of application for registration;
3. Has at any time knowingly failed to comply with the provisions of this chapter or of any requirements of the Department;
4. Has had a registration or permit to hold or conduct fantasy contests denied for just cause, suspended, or revoked in any other state or country;
5. Has legally defaulted in the payment of any obligation or debt due to the Commonwealth; or
6. Is not qualified to do business in the Commonwealth or is not subject to the jurisdiction of the courts of the Commonwealth.
D. Any operator applying for registration or renewal of a registration may operate during the application period unless the Department has reasonable cause to believe that such operator is or may be in violation of the provisions of this chapter and the Department requires such operator to suspend the operation of any fantasy contest until registration or renewal of registration is issued.
E. The Department shall issue such registration within 60 days of receipt of the application for registration. If the registration is not issued, the Department shall provide the operator with the
§ 59.1-559. Independent audit required; submission to Department.
A registered operator shall (i) annually contract with a certified public accountant to conduct an independent audit, consistent with the standards accepted by the Board of Accountancy; (ii) annually contract with a testing laboratory recognized by the Department to verify compliance with the provisions of subsection D of § 59.1-557; and (iii) submit to the Department a copy of the (a) audit report and (b) report of the testing laboratory as required by clause (ii).

§ 59.1-560. Powers and duties of Department.
A. The Department shall have all powers and duties necessary to carry out the provisions of this chapter. In the conduct of such investigation, the Department may:
1. Require or permit any person to file a statement in writing, under oath or otherwise as the Department determines, as to all facts and circumstances concerning the matter to be investigated; and
2. Administer oaths or affirmations and, upon its own motion or upon request of any party, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.
D. Any proceedings or hearings by the Department under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.
E. Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Department may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

§ 59.1-561. Suspension or revocation of registration.
A. After a hearing with 15 days' notice, the Department may suspend or revoke any registration or impose on such operator a monetary penalty of not more than $1,000 for each violation of this chapter, not to exceed $50,000, in any case where a violation of this chapter has been shown by a preponderance of the evidence. The Department may revoke a registration if it finds that facts not known by it at the time it considered the application indicate that such registration should not have been issued.
B. The Department may summarily suspend any registration for a period of not more than seven days pending a hearing and final determination by the Department if the Department determines that a violation of this chapter has occurred and emergency action is required to protect the public health, safety, and welfare. The Department shall (i) schedule a hearing within seven business days after the registration is summarily suspended and (ii) notify the registered operator not less than five business days before the hearing of the date, time, and place of the hearing.
C. If any such registration is suspended or revoked, the Department shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with § 59.1-562. Suspension or revocation of a registration issued by the Department for any violation shall not preclude civil liability for such violation.

Any person aggrieved by a denial of the Department to issue a registration, the suspension or revocation of a registration, the imposition of a fine, or any other action of the Department may seek review of such action in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act in the Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 59.1-563. Fees and charges.
All fees, charges, and monetary penalties collected by the Department as provided in this chapter shall be paid into a special fund of the state treasury. Such funds shall be used to finance the administration and operation of this chapter.

§ 59.1-564. Department to adjust fees; certain transfer of money collected prohibited.
A. Nongeneral funds generated by fees collected in accordance with this chapter on behalf of the Department and accounted for and deposited into a special fund by the Commissioner of the
Department shall be held exclusively to cover the expenses of the Department in administering this chapter and shall not be transferred to any other agency.

B. Following the close of any biennium, when the account for the Department maintained under this chapter shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Department, it shall revise the fees levied by it for registration and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 59.1-565. Public inspection of information filed with Department; charges for production.

A. Except as provided in subsection B, registrations required to be filed under this chapter shall be open to the public for inspection at such time and under such conditions as the Department may prescribe. A charge not exceeding $1 per page may be made for any copy of such documents as may be furnished to any person by the Department.

B. Reports, data, or documents submitted to the Department pursuant to the audit requirements of § 59.1-559 and records submitted to the Department as part of an application for registration or renewal that contain information about the character or financial responsibility of the operator or its principal stockholders shall be deemed confidential and shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).

§ 59.1-566. Registration not endorsement.

No registered operator shall use or exploit the fact of registration under this chapter so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the Commonwealth.

§ 59.1-567. Acquisition of interest in fantasy contest operator.

A. If any person acquires actual control of a registered operator, such person shall register with the Department in accordance with § 59.1-557.

B. Where any such acquisition of control is without prior approval of the Department, the Department may suspend any registration it has issued to such operator, order compliance with this section, or take such other action as may be appropriate within the authority of the Department.

§ 59.1-568. Civil penalty.

In addition to the provisions of § 59.1-561, any person, firm, corporation, association, agent, or employee who knowingly violates any procedure implemented under subsection D of § 59.1-557 or any other provision of this chapter shall be liable for a civil penalty of not more than $1,000 for each such violation. Such amount shall be recovered in a civil action brought by the Department and be paid into the State Literary Fund.

§ 59.1-569. Fantasy contests conducted under this chapter not illegal gambling.

Nothing contained in Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 shall be applicable to a fantasy contest conducted in accordance with this chapter. The award of any prize money for any fantasy contest shall not be deemed to be part of any gaming contract within the purview of § 11-14.

§ 59.1-570. Liability imposed by other laws not decreased.

Nothing contained in this chapter shall be construed as making lawful any act or omission that is now unlawful, or as decreasing the liability, civil or criminal, of any person, imposed by existing laws.

2. That the initial fee for an application for registration in accordance with this act shall be $50,000. Thereafter, the fee for an application for registration shall be set by the Department of Agriculture and Consumer Services in accordance with § 59.1-564 of the Code of Virginia, as created by this act.
LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature     Second Regular Session - 2016

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 398

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO THE REVISED UNIFORM ATHLETE AGENTS ACT; REPEALING CHAPTER 48, TITLE 54, IDAHO CODE, RELATING TO THE UNIFORM ATHLETE AGENTS ACT; AND AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 48, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE RULEMAKING AUTHORITY, TO PROVIDE CERTAIN AUTHORITY TO THE BUREAU OF OCCUPATIONAL LICENSES, TO REQUIRE REGISTRATION FOR ATHLETE AGENTS, TO PROVIDE CERTAIN EXCEPTIONS TO REGISTRATION, TO PROVIDE THAT A CONTRACT ENTERED INTO WITH AN UNREGISTERED INDIVIDUAL IS VOID, TO PROVIDE PROCEDURES AND REQUIREMENTS FOR APPLICATION AS AN ATHLETE AGENT, TO PROVIDE FOR THE ISSUANCE, DENIAL AND RENEWAL OF A CERTIFICATE OF REGISTRATION, TO PROVIDE FOR THE SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATION, TO PROVIDE FOR TEMPORARY REGISTRATION, TO PROVIDE FOR REGISTRATION AND RENEWAL FEES, TO PROVIDE FOR REQUIREMENTS OF AN AGENCY CONTRACT, TO PROVIDE FOR NOTICE TO AN EDUCATIONAL INSTITUTION IN CERTAIN Instances, TO PROVIDE FOR A STUDENT ATHLETE'S RIGHT TO CANCEL AN AGENCY CONTRACT IN CERTAIN Instances, TO REQUIRE AN ATHLETE AGENT TO CREATE AND RETAIN CERTAIN RECORDS, TO PROHIBIT CERTAIN CONDUCT FOR AN ATHLETE AGENT, TO PROVIDE A CRIMINAL PENALTY, TO PROVIDE A CIVIL REMEDY FOR AN EDUCATIONAL INSTITUTION OR STUDENT ATHLETE IN CERTAIN Instances, TO PROVIDE A CIVIL PENALTY, TO PROVIDE FOR UNIFORMITY OF CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 48, Title 54, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 48, Title 54, Idaho Code, and to read as follows:

CHAPTER 48
REVISED UNIFORM ATHLETE AGENTS ACT

54-4801. SHORT TITLE. This chapter may be cited as the "Revised Uniform Athlete Agents Act."

54-4802. DEFINITIONS. As used in this chapter:
(1) "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the athlete a professional-sports-services contract or endorsement contract.
(2) "Athlete agent":
(a) Means an individual, whether or not registered under this chapter, who:
(i) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;
(ii) For compensation or in anticipation of compensation related to a student athlete's participation in athletics:
   1. Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or
   2. Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes; or
(iii) In anticipation of representing a student athlete for a purpose related to the athlete's participation in athletics:
   1. Gives consideration to the student athlete or another person;
   2. Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions; or
   3. Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes; but

(b) Does not include an individual who:
   (i) Acts solely on behalf of a professional sports team or organization; or
   (ii) Is a licensed, registered or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:
      1. Also recruits or solicits the athlete to enter into an agency contract;
      2. Also, for compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or
      3. Receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(3) "Athletic director" means the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.
(4) "Bureau" means the bureau of occupational licenses.
(5) "Educational institution" includes a public or private elementary school, secondary school, technical or vocational school, community college, college and university.
(6) "Endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other
party any value that the athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance.

(7) "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls" has a corresponding meaning.

(8) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association that promotes or regulates collegiate athletics.

(9) "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges or universities.

(10) "Licensed, registered or certified professional" means an individual licensed, registered or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant or member of a profession, other than that of athlete agent, who is licensed, registered or certified by the state or a nationally recognized organization that licenses, registers or certifies members of the profession on the basis of experience, education or testing.

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(12) "Professional-sports-services contract" means an agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.

(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) "Recruit or solicit" means attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not include giving advice on the selection of a particular agent in a family, coaching or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

(15) "Registration" means registration as an athlete agent under this chapter.

(16) "Sign" means, with present intent to authenticate or adopt a record:

   (a) To execute or adopt a tangible symbol; or

   (b) To attach to or logically associate with the record an electronic symbol, sound or process.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Student athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. The term does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.
54-4803. BUREAU OF OCCUPATIONAL LICENSES -- AUTHORITY -- PROCE- DURE. (1) Chapter 52, title 67, Idaho Code, shall apply to this chapter. The bureau may adopt rules pursuant to chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

(2) By acting as an athlete agent in this state, a nonresident individ- ual appoints the bureau as the individual's agent for service of process in any civil action in this state related to the individual acting as an athlete agent in this state.

(3) The bureau may issue subpoenas for any material that is relevant to the administration of this chapter.

54-4804. ATHLETE AGENT REGISTRATION REQUIRED -- VOID CONTRACT. (1) Except as otherwise provided in subsection (2) of this section, an in- dividual may not act as an athlete agent in this state without holding a certificate of registration under this chapter.

(2) Before being issued a certificate of registration under this chap- ter, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) A student athlete or another person acting on behalf of the athlete initiates communication with the individual; and

(b) Not later than seven (7) days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this sec- tion is void, and the athlete agent shall return any consideration received under the contract.

54-4805. REGISTRATION AS ATHLETE AGENT -- APPLICATION -- REQUIREMENTS -- RECIPROCAL REGISTRATION. (1) An applicant for registration as an athlete agent shall submit an application for registration to the bureau in a form prescribed by the bureau. The applicant must be an individual, and the ap- plication must be signed by the applicant under penalty of perjury. An ap- plication filed under this section is a public record. The application must contain at least the following:

(a) The name and date and place of birth of the applicant and the follow- ing contact information for the applicant:

(i) The address of the applicant's principal place of business;

(ii) Work and mobile telephone numbers; and

(iii) Any means of communicating electronically, including a fac- simile number, electronic-mail address and personal and business or employer websites;

(b) The name of the applicant's business or employer, if applicable, including for each business or employer, its mailing address, telephone number, type of business organization and the nature of the business;

(c) Each social media account with which the applicant or the appli- cant's business or employer is affiliated;

(d) Each business or occupation in which the applicant engaged within five (5) years before the date of the application, including self-em- ployment and employment by others, and any professional or occupational
license, registration or certification held by the applicant during that time;

(e) A description of the applicant's:
   (i) Formal training as an athlete agent;
   (ii) Practical experience as an athlete agent; and
   (iii) Educational background relating to the applicant's activities as an athlete agent;

(f) The name of each student athlete for whom the applicant acted as an athlete agent within five (5) years before the date of the application or, if the individual is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last known team;

(g) The name and address of each person that:
   (i) Is a partner, member, officer, manager, associate or profit sharer or directly or indirectly holds an equity interest of five percent (5%) or greater of the athlete agent's business if it is not a corporation; and
   (ii) Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent (5%) or greater in the corporation;

(h) A description of the status of any application by the applicant, or any person named under paragraph (g) of this subsection, for a state or federal business, professional or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal or termination of the license and any reprimand or censure related to the license;

(i) Whether the applicant, or any person named under paragraph (g) of this subsection, has pleaded guilty or no contest to; has been convicted of; entered an Alford plea for; received a withheld judgment, suspended sentence or deferred prosecution for; or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state and, if so, identification of:
   (i) The crime;
   (ii) The law enforcement agency involved; and
   (iii) If applicable, the date of the conviction and the fine or penalty imposed;

(j) Whether, within fifteen (15) years before the date of application, the applicant, or any person named under paragraph (g) of this subsection, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence and, if so, the date and a full explanation of each proceeding;

(k) Whether the applicant, or any person named under paragraph (g) of this subsection, has an unsatisfied judgment or a judgment of continuing effect, including spousal support or a domestic order in the nature of child support, that is not current at the date of the application;

(l) Whether, within ten (10) years before the date of application, the applicant, or any person named under paragraph (g) of this subsection, was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

(m) Whether there has been any administrative or judicial determination that the applicant, or any person named under paragraph (g) of this
subsection, made a false, misleading, deceptive or fraudulent representa-
(n) Each instance in which conduct of the applicant, or any person named
under paragraph (g) of this subsection, resulted in the imposition of a
sanction, suspension or declaration of ineligibility to participate in
an interscholastic, intercollegiate or professional athletic event on
a student athlete or a sanction on an educational institution;
o) Each sanction, suspension or disciplinary action taken against the
applicant, or any person named under paragraph (g) of this subsection,
arising out of occupational or professional conduct;
p) Whether there has been a denial of an application for, suspension
or revocation of, refusal to renew or abandonment of the registration of
the applicant, or any person named under paragraph (g) of this subsec-
tion, as an athlete agent in any state;
(q) Each state in which the applicant currently is registered as an ath-
lete agent or has applied to be registered as an athlete agent;
r) If the applicant is certified or registered by a professional
league or players association:
   (i) The name of the league or association;
   (ii) The date of certification or registration and the date of ex-
       piration of the certification or registration, if any; and
   (iii) If applicable, the date of any denial of an application for,
       suspension or revocation of, refusal to renew, withdrawal of, or
       termination of the certification or registration, or any repre-
       mand or censure related to the certification or registration; and
(s) Any additional information requested by the bureau.
(2) Instead of proceeding under subsection (1) of this section, an in-
dividual registered as an athlete agent in another state may apply for regis-
tration as an athlete agent in this state by submitting to the bureau:
   (a) A copy of the application for registration in the other state;
   (b) A statement that identifies any material change in the information
       on the application or verifies there is no material change in the infor-
       mation, signed under penalty of perjury; and
   (c) A copy of the certificate of registration from the other state.
(3) The bureau shall issue a certificate of registration to an individ-
ual who applies for registration under subsection (2) of this section, if the
bureau determines:
   (a) The application and registration requirements of the other state
       are substantially similar to or more restrictive than this chapter; and
   (b) The registration has not been revoked or suspended and no action in-
       volving the individual's conduct as an athlete agent is pending against
       the individual or the individual's registration in any state.
(4) For purposes of implementing subsection (3) of this section, the
bureau shall:
   (a) Cooperate with national organizations concerned with athlete agent
       issues, and agencies in other states that register athlete agents, to
       develop a common registration form and determine which states have laws
       that are substantially similar to or more restrictive than this chap-
       ter; and
(b) Exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

54-4806. CERTIFICATE OF REGISTRATION -- ISSUANCE OR DENIAL -- RENEWAL. (1) Except as otherwise provided in subsection (2) of this section, the bureau shall issue a certificate of registration to an applicant for registration who complies with section 54-4805(1), Idaho Code.

(2) The bureau may refuse to issue a certificate of registration to an applicant for registration under section 54-4805(1), Idaho Code, if the bureau determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the bureau may consider whether the applicant has:

(a) Pledged guilty or no contest to; has been convicted of; entered an Alford plea for; received a withheld judgment, suspended sentence or deferred prosecution for; or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state;
(b) Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;
(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
(d) Engaged in conduct prohibited by section 54-4814, Idaho Code;
(e) Had a registration as an athlete agent suspended, revoked or denied in any state;
(f) Been refused renewal of registration as an athlete agent in any state;
(g) Engaged in conduct resulting in imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic, intercollegiate or professional athletic event on a student athlete or a sanction on an educational institution; or
(h) Engaged in conduct that adversely reflects on the applicant's credibility, honesty or integrity.

(3) In making a determination under subsection (2) of this section, the bureau shall consider:

(a) How recently the conduct occurred;
(b) The nature of the conduct and the context in which it occurred; and
(c) Other relevant conduct of the applicant.

(4) An athlete agent registered under subsection (1) of this section may apply to renew the registration by submitting an application for renewal in a form prescribed by the bureau. The applicant shall sign the application for renewal under penalty of perjury and include current information on all matters required in an original application for registration.

(5) An athlete agent registered under section 54-4805(3), Idaho Code, may renew the registration by proceeding under subsection (4) of this section or, if the registration in the other state has been renewed, by submitting to the bureau copies of the application for renewal in the other state and the renewed registration from the other state. The bureau shall renew the registration if the bureau determines:

(a) The registration requirements of the other state are substantially similar to or more restrictive than this chapter; and
(b) The renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(6) A certificate of registration or renewal of registration under this chapter is valid for two (2) years.

54-4807. SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATION. (1) The bureau may limit, suspend, revoke or refuse to renew a registration of an individual registered under section 54-4806(1), Idaho Code, for conduct that would have justified refusal to issue a certificate of registration under section 54-4806(2), Idaho Code.

(2) The bureau may suspend or revoke the registration of an individual registered under section 54-4805(3), Idaho Code, or renewed under section 54-4806(5), Idaho Code, for any reason that the bureau could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration under section 54-4806(2), Idaho Code.

(3) The bureau may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code.

54-4808. TEMPORARY REGISTRATION. The bureau may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.

54-4809. REGISTRATION AND RENEWAL FEES. (1) An application for registration or renewal of registration as an athlete agent must be accompanied by a fee in an amount prescribed by the bureau, but not to exceed two hundred fifty dollars ($250), for any registration period for the following:

(a) An initial application for registration;

(b) Registration based on a certificate of registration issued by another state;

(c) An application for renewal of registration; or

(d) Renewal of registration based on a renewal of registration in another state.

(2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the bureau under the provisions of this chapter shall be a charge against and paid from said fund for such purposes. Notwithstanding the provisions of any other law, the funds collected hereunder shall be immediately available for the administration of this chapter. In no event will the occupational licenses fund be obligated to pay any claims which, in aggregate with claims already paid, exceed the income to the occupational licenses fund that has been derived by the application of this chapter.

(3) The money paid into the occupational licenses fund is continuously appropriated to the bureau for expenditure in the manner prescribed herein to defray the expenses of the bureau in carrying out and enforcing the provisions of this chapter.
54-4810. REQUIRED FORM OF AGENCY CONTRACT. (1) An agency contract must be in a record signed by the parties.
(2) An agency contract must contain:
(a) A statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which the agent is registered as an athlete agent;
(b) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the agent under the contract and any other consideration the agent has received or will receive from any other source for entering into the contract or providing the services;
(c) The name of any person not listed in the agent's application for registration or renewal of registration that will be compensated because the athlete signed the contract;
(d) A description of any expenses the athlete agrees to reimburse;
(e) A description of the services to be provided to the athlete;
(f) The duration of the contract; and
(g) The date of execution.
(3) Subject to subsection (7) of this section, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

WARNING TO STUDENT ATHLETE
IF YOU SIGN THIS CONTRACT:
(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;
(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.

(4) An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.
(5) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.
(6) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgment required by subsection (4) of this section.
(7) If a student athlete is a minor, an agency contract must be signed by
the parent or guardian of the minor and the notice required by subsection (3)
of this section must be revised accordingly.

54-4811. NOTICE TO EDUCATIONAL INSTITUTION. (1) As used in this sec-
tion, "communicating or attempting to communicate" means contacting or at-
tempting to contact by an in-person meeting, a record or any other method
that conveys or attempts to convey a message.

(2) Not later than seventy-two (72) hours after entering into an agency
contract or before the next scheduled athletic event in which the student
athlete may participate, whichever occurs first, the athlete agent shall
give notice in a record of the existence of the contract to the athletic
director of the educational institution at which the athlete is enrolled or
at which the agent has reasonable grounds to believe the athlete intends to
 enroll.

(3) Not later than seventy-two (72) hours after entering into an agency
contract or before the next scheduled athletic event in which the student
athlete may participate, whichever occurs first, the athlete shall inform
the athletic director of the educational institution at which the athlete is
enrolled that the athlete has entered into an agency contract and the name
and contact information of the athlete agent.

(4) If an athlete agent enters into an agency contract with a student
athlete and the athlete subsequently enters at an educational institution,
the agent shall notify the athletic director of the institution of the exist-
tence of the contract not later than seventy-two (72) hours after the agent
knew or should have known that the student is enrolled.

(5) If an athlete agent has a relationship with a student athlete be-
fore the athlete enters at an educational institution and receives an ath-
etic scholarship from the institution, the agent shall notify the institu-
tion of the relationship not later than ten (10) days after the enrollment if
the agent knows or should have known of the enrollment and:

(a) The relationship was motivated in whole or in part by the intention
of the agent to recruit or solicit the athlete to enter an agency con-
tract in the future; or

(b) The agent directly or indirectly recruited or solicited the athlete
to enter an agency contract before the enrollment.

(6) An athlete agent shall give notice in a record to the athletic di-
gerator of any educational institution at which a student athlete is enrolled
before the agent communicates or attempts to communicate with:

(a) The athlete or, if the athlete is a minor, a parent or guardian of
the athlete, to influence the athlete or parent or guardian to enter
into an agency contract; or

(b) Another individual to have that individual influence the athlete
or, if the athlete is a minor, the parent or guardian of the athlete to
enter into an agency contract.

(7) If a communication or attempt to communicate with an athlete agent
is initiated by a student athlete or another individual on behalf of the ath-
lete, the agent shall notify in a record the athletic director of any educa-
tional institution at which the athlete is enrolled. The notification must
be made not later than ten (10) days after the communication or attempt.
(8) An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the bureau and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.

54-4812. STUDENT ATHLETE'S RIGHT TO CANCEL. (1) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an agency contract by giving notice in a record of cancellation to the athlete agent not later than fourteen (14) days after the contract is signed.
(2) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may not waive the right to cancel an agency contract.
(3) If a student athlete, parent or guardian cancels an agency contract, the athlete, parent or guardian is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the athlete to enter into the contract.

54-4813. REQUIRED RECORDS. (1) An athlete agent shall create and retain for five (5) years records of the following:
(a) The name and address of each individual represented by the agent;
(b) Each agency contract entered into by the agent; and
(c) The direct costs incurred by the agent in the recruitment or solicitation of each student athlete to enter into an agency contract.
(2) Records described in subsection (1) of this section are open to inspection by the bureau during normal business hours.

54-4814. PROHIBITED CONDUCT. (1) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:
(a) Give materially false or misleading information or make a materially false promise or representation;
(b) Furnish anything of value to the athlete before the athlete enters into the contract; or
(c) Furnish anything of value to an individual other than the athlete or another registered athlete agent.
(2) An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:
(a) Initiate contact, directly or indirectly, with a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the athlete, parent or guardian to enter an agency contract unless registered under this chapter;
(b) Fail to create or retain or to permit inspection of the records required by section 54-4813, Idaho Code;
(c) Fail to register when required by section 54-4804, Idaho Code;
(d) Provide materially false or misleading information in an application for registration or renewal of registration;
(e) Predate or postdate an agency contract; or
(f) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, before the athlete, parent or guardian signs an agency contract for a particular sport that the signing may make the athlete ineligible to participate as a student athlete in that sport.

54-4815. CRIMINAL PENALTY. An athlete agent who violates section 54-4814, Idaho Code, shall be guilty of a misdemeanor.

54-4816. CIVIL REMEDY. (1) An educational institution or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or an individual who was a student athlete at the time of the act or omission and enrolled in the institution:

(a) Is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(b) Suffers financial damage.

(2) A plaintiff that prevails in an action under this section may recover costs and reasonable attorney's fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.

54-4817. CIVIL PENALTY. The bureau may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars ($25,000) for a violation of this chapter.

54-4818. 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.

54-4819. 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).

54-4820. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.
AN ACT Relating to the unauthorized interference of ticket sales over the internet; and adding a new chapter to Title 19 RCW.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to protect consumers and ticket sellers from software that simulates the action of a human being purchasing tickets from a ticket seller in order to evade controls and measures on a ticket seller's web site. The legislature is concerned by the use of software, commonly referred to as BOTs (web robots), to interfere with the operation of ticket sales over the internet, gaining unauthorized priority access to purchasing tickets, and thereby reducing access to the general public of online ticket sales at the intended original price. In order to protect consumers and ticket sellers, the legislature intends to prohibit acts and practices of persons that use or sell software to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site. It is not the intent of the legislature to interrupt the online ticket buying process established by the authorized ticket seller, including the distribution of tickets to season ticket holders.
NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission ticket" means evidence of a right of entry to a venue or an entertainment event.

(2) "Affinity group" means an identifiable group of people who are members of the same organization, or who are customers of the same person, and who enjoy special privileges.

(3) "Event" means a concert, theatrical performance, sporting event, exhibition, show, or other similar activity held in this state.

(4) "Initial sale" means the first sale of an admission ticket by the ticket seller. "Initial sale" also includes the distribution of admission tickets under an agreement between the ticket seller and the recipient.

(5) "Person" means any individual, partnership, corporation, limited liability company, other organization, or any combination thereof.

(6) "Place of entertainment" means any privately or publicly owned or operated entertainment facility within this state, such as a theater, stadium, museum, arena, park, racetrack, or other place where concerts, theatrical performances, sporting events, exhibitions, shows, or other similar activities are held and for which an entry fee is charged.

(7) "Presale" means a sale of admission tickets at or below the price printed on the ticket by, or with the permission of, a ticket seller, prior to their release to the general public.

(8) "Promoter" means a person who organizes financing and publicity for an entertainment event.

(9) "Ticket seller" means a person that makes admission tickets available, directly or indirectly, at an initial presale or sale to the general public, and may include an owner or operator of a place of entertainment, a sponsor or promoter of an event, a sports team participating in an event, a fan club or affinity group, a theater company, a musical group, or similar participant in an event, or an employee or agent of any such person.

NEW SECTION. Sec. 3. (1) A person may not:
(a) Use software to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site; or

(b) Sell software that is advertised for profit with the express purpose to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site.

(2) The use or sale of software as described in subsection (1) of this section only violates this section if the user or seller knows or should know that the purpose of the software is to circumvent, thwart, interfere with, or evade a security measure, access control system, or other control or measure on a ticket seller's internet web site.

(3) The legislature finds that the conduct described in subsection (1) of this section vitally affects the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Using or selling software to circumvent, thwart, or evade a control or measure, which is used on a ticket seller's internet web site to ensure an equitable distribution of tickets, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purposes of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act constitute a new chapter in Title 19 RCW.

Passed by the House April 20, 2015.
Passed by the Senate April 8, 2015.
Approved by the Governor April 28, 2015.
Filed in Office of Secretary of State April 28, 2015.

--- END ---
AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM TRUST DECANTING ACT; REVISING THE STATUTORY RULE AGAINST PERPETUITIES AS IT AFFECTS PROPERTY INTERESTS, INCLUDING REAL PROPERTY INTERESTS, HELD IN TRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

UNIFORM TRUST DECANTING ACT

SECTION 1-101. SHORT TITLE.--Sections 1-101 through 1-129 of this act may be cited as the "Uniform Trust Decanting Act".

SECTION 1-102. DEFINITIONS.--As used in the Uniform Trust Decanting Act:

A. "appointive property" means the property or property interest subject to a power of appointment;

B. "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of 26 U.S.C. Section 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1), as amended, and any applicable regulations;

C. "authorized fiduciary" means:

(1) a trustee or other fiduciary, other than a settlor, that has discretion to distribute, or direct a trustee to distribute, part or all of the principal of the first trust to one or more current beneficiaries;
(2) a special fiduciary appointed under Section 1-109 of the Uniform Trust Decanting Act; or
(3) a special-needs fiduciary under Section 1-113 of the Uniform Trust Decanting Act;

D. "beneficiary" means a person that:
(1) has a present or future, vested or contingent, beneficial interest in a trust;
(2) holds a power of appointment over trust property; or
(3) is an identified charitable organization that will or may receive distributions under the terms of the trust;

E. "charitable interest" means an interest in a trust that:
(1) is held by an identified charitable organization and makes the organization a qualified beneficiary;
(2) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or
(3) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary;
F. "charitable organization" means:
   (1) a person, other than an individual, organized and operated exclusively for charitable purposes; or
   (2) a government or governmental subdivision, agency or instrumentality, to the extent it holds funds exclusively for a charitable purpose;

G. "charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose or another purpose the achievement of which is beneficial to the community;

H. "court" means the district court;

I. "current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal. "Current beneficiary":
   (1) includes the holder of a presently exercisable general power of appointment; and
   (2) does not include a person that is a beneficiary only because the person holds any other power of appointment;

J. "decanting power" or "the decanting power" means the power of an authorized fiduciary under the Uniform Trust Decanting Act to distribute property of a first trust
to one or more second trusts or to modify the terms of the
first trust;

K. "expanded distributive discretion" means a
discretionary power of distribution that is not limited to an
ascertainable standard or a reasonably definite standard;

L. "first trust" means a trust over which an
authorized fiduciary may exercise the decanting power;

M. "first-trust instrument" means the trust
instrument for a first trust;

N. "general power of appointment" means a power of
appointment exercisable in favor of a powerholder, the
powerholder's estate, a creditor of the powerholder or a
creditor of the powerholder's estate;

O. "jurisdiction", with respect to a geographic
area, includes a state or country;

P. "person" means an individual; an estate; a
business or nonprofit entity; a public corporation; a
government or governmental subdivision, agency or
instrumentality; or another legal entity;

Q. "power of appointment" means a power that
enables a powerholder acting in a nonfiduciary capacity to
designate a recipient of an ownership interest in or another
power of appointment over the appointive property. "Power of
appointment" does not include a power of attorney;

R. "powerholder" means a person in which a donor
creates a power of appointment;

S. "presently exercisable power of appointment"
means a power of appointment exercisable by the powerholder
at the relevant time. "Presently exercisable power of
appointment":

(1) includes a power of appointment
exercisable only after the occurrence of a specified event,
the satisfaction of an ascertainable standard or the passage
of a specified time only after:

(a) the occurrence of the specified
event;

(b) the satisfaction of the
ascertainable standard; or

(c) the passage of the specified time;

and

(2) does not include a power exercisable
only at the powerholder's death;

T. "qualified beneficiary" means a beneficiary
that on the date the beneficiary's qualification is
determined:

(1) is a distributee or permissible
distributee of trust income or principal;

(2) would be a distributee or permissible
distributee of trust income or principal if the interests of
the distributees described in Paragraph (1) of this
subsection terminated on that date without causing the trust to terminate; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

U. "reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. Section 674(b)(5)(A), as amended, and any applicable regulations;

V. "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;

W. "second trust" means:

(1) a first trust after modification under the Uniform Trust Decanting Act; or

(2) a trust to which a distribution of property from a first trust is or may be made under the Uniform Trust Decanting Act;

X. "second-trust instrument" means the trust instrument for a second trust;

Y. "settlor", except as otherwise provided in Section 1-125 of the Uniform Trust Decanting Act, means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or
contributes property to a trust, each person is a settlor of
the portion of the trust property attributable to the
person's contribution except to the extent that another
person has power to revoke or withdraw that portion;

Z. "sign" means, with present intent to
authenticate or adopt a record:

(1) to execute or adopt a tangible symbol;
or

(2) to attach to or logically associate with
the record an electronic symbol, sound or process;

AA. "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. "State" includes
an Indian tribe, pueblo, nation or band located within the
United States and recognized by federal law or formally
acknowledged by a state of the United States;

BB. "terms of the trust" means the manifestation
of the settlor's intent regarding a trust's provisions as
expressed in the trust instrument, as may be established by
other evidence that would be admissible in a judicial
proceeding or as may be established by court order or
nonjudicial settlement agreement; and

CC. "trust instrument" means a record executed by
the settlor to create a trust or by any person to create a
second trust that contains some or all of the terms of the trust, including any amendments.

SECTION 1-103. SCOPE.--

A. Except as otherwise provided in Subsections B and C of this section, the Uniform Trust Decanting Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

B. The Uniform Trust Decanting Act does not apply to a trust held solely for charitable purposes.

C. Subject to Section 1-115 of the Uniform Trust Decanting Act, a trust instrument may restrict or prohibit exercise of the decanting power.

D. The Uniform Trust Decanting Act does not limit the power of a trustee, powerholder or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, New Mexico law other than the Uniform Trust Decanting Act, common law, a court order or a nonjudicial-settlement agreement.

E. The Uniform Trust Decanting Act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

SECTION 1-104. FIDUCIARY DUTY.--
A. In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

B. The Uniform Trust Decanting Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of the Uniform Trust Decanting Act.

C. Except as otherwise provided in a first-trust instrument, the terms of the first trust are, for purposes of the Uniform Trust Decanting Act, Section 46A-8-801 NMSA 1978 and Subsection A of Section 46A-8-802 NMSA 1978, deemed to include the decanting power.

SECTION 1-105. APPLICATION--GOVERNING LAW.--

A. The Uniform Trust Decanting Act applies to a trust that:

(1) has its principal place of administration in New Mexico, including a trust whose principal place of administration has been changed to New Mexico; or

(2) provides by its trust instrument that it is governed by New Mexico law or is governed by New Mexico law for the purpose of:

(a) administration, including administration of a trust whose governing law for purposes of
administration has been changed to New Mexico law;

(b) construction of terms of the trust;

or

(c) determining the meaning or effect

of terms of the trust.

B. Except as otherwise provided in the Uniform
Trust Decanting Act, on and after January 1, 2017:

(1) the Uniform Trust Decanting Act applies
to a trust created before, on or after January 1, 2017;

(2) the Uniform Trust Decanting Act applies
to a judicial proceeding concerning a trust commenced on or
after January 1, 2017;

(3) the Uniform Trust Decanting Act applies
to a judicial proceeding concerning a trust commenced before
January 1, 2017 unless the court finds that application of a
particular provision of the Uniform Trust Decanting Act would
interfere substantially with the effective conduct of the
judicial proceeding or prejudice a right of a party, in which
case the particular provision of the Uniform Trust Decanting
Act does not apply and the superseded law applies;

(4) a rule of construction or presumption
provided in the Uniform Trust Decanting Act applies to a
trust instrument executed before January 1, 2017 unless there
is a clear indication of a contrary intent in the terms of
the instrument; and
(5) except as otherwise provided in Paragraphs (1) through (4) of this subsection, an action done before January 1, 2017 is not affected by the Uniform Trust Decanting Act.

C. If a right is acquired, extinguished or barred on the expiration of a prescribed period that commenced under New Mexico law other than the Uniform Trust Decanting Act before January 1, 2017, the law continues to apply to the right.

SECTION 1-106. REASONABLE RELIANCE.--A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust under the Uniform Trust Decanting Act, New Mexico law other than the Uniform Trust Decanting Act or the law of another jurisdiction, is not liable to any person for any action or failure to act as a result of the reliance.

SECTION 1-107. NOTICE--EXERCISE OF DECANTING POWER.--

A. In this section, a notice period begins on the day notice is given under Subsection C of this section and ends fifty-nine days after the day notice is given.

B. Except as otherwise provided in the Uniform Trust Decanting Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.
C. Except as otherwise provided in Subsection F of
this section, an authorized fiduciary shall give notice in a
record of the intended exercise of the decanting power not
later than sixty days before the exercise to:

(1) each settlor of the first trust, if
living or then in existence;

(2) each qualified beneficiary of the first
trust;

(3) each holder of a presently exercisable
power of appointment over any part or all of the first trust;

(4) each person that currently has the right
to remove or replace the authorized fiduciary;

(5) each other fiduciary of the first trust;

(6) each fiduciary of the second trust; and

(7) the attorney general, if Subsection B of
Section 1-114 of the Uniform Trust Decanting Act applies.

D. An authorized fiduciary is not required to give
notice under Subsection C of this section to a person that is
not known to the fiduciary or is known to the fiduciary but
cannot be located by the fiduciary after reasonable
diligence.

E. A notice given under Subsection C of this
section shall:

(1) specify the manner in which the
authorized fiduciary intends to exercise the decanting power;
(2) specify the proposed effective date for exercise of the power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of all second-trust instruments.

F. The decanting power may be exercised before expiration of the notice period specified in Subsection A of this section if all persons entitled to receive notice waive the period in a signed record.

G. The receipt of notice, waiver of the notice period or expiration of the notice period does not affect the right of a person to file an application under Section 1-109 of the Uniform Trust Decanting Act asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with the Uniform Trust Decanting Act or was an abuse of discretion or breach of fiduciary duty; or

(2) Section 1-122 of the Uniform Trust Decanting Act applies to the exercise of the decanting power.

H. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under Subsection C of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.
SECTION 1-108. REPRESENTATION.--

A. Notice to a person with authority to represent and bind another person under a first-trust instrument or the Uniform Trust Code has the same effect as notice given directly to the person represented.

B. Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the Uniform Trust Code is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

C. A person with authority to represent and bind another person under a first-trust instrument or the Uniform Trust Code may file an application under Section 1-109 of the Uniform Trust Decanting Act on behalf of the person represented.

D. A settlor shall not represent or bind a beneficiary under the Uniform Trust Decanting Act.

SECTION 1-109. COURT INVOLVEMENT.--

A. On application of an authorized fiduciary, a person entitled to notice under Subsection C of Section 1-107 of the Uniform Trust Decanting Act, a beneficiary or, with respect to a charitable interest, the attorney general or other person that has standing to enforce the charitable interest, the court, may:
(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the
decanting power is permitted under the Uniform Trust Decanting Act and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the Uniform Trust Decanting Act and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

   (a) after applying Section 1-122 of the Uniform Trust Decanting Act, the proposed or attempted exercise does not or did not comply with the Uniform Trust Decanting Act; or

   (b) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which Section 1-122 of the Uniform Trust Decanting Act applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of Section 1-122 of the Uniform
Trust Decanting Act to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of the Uniform Trust Decanting Act.

B. On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under Section 1-116 of the Uniform Trust Decanting Act; or

(2) a modification under Section 1-118 of the Uniform Trust Decanting Act of a provision granting a person the right to remove or replace the fiduciary.

SECTION 1-110. FORMALITIES.--An exercise of the decanting power shall be made in a record signed by an authorized fiduciary. The signed record shall, directly or by reference to the notice required by Section 1-107 of the Uniform Trust Decanting Act, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

SECTION 1-111. DECANTING POWER UNDER EXPANDED DISTRIBUTIVE DISCRETION.--

A. As used in this section:

(1) "noncontingent right" means a right that is not subject to the exercise of discretion or the
occurrence of a specified event that is not certain to occur.
"Noncontingent right" does not include a right held by a
beneficiary if any person has discretion to distribute
property subject to the right to any person other than the
beneficiary or the beneficiary’s estate;

(2) "presumptive remainder beneficiary"
means a qualified beneficiary other than a current
beneficiary;

(3) "successor beneficiary" means a
beneficiary that is not a qualified beneficiary on the date
the beneficiary's qualification is determined. "Successor
beneficiary" does not include a person that is a beneficiary
only because the person holds a nongeneral power of
appointment; and

(4) "vested interest" means:

(a) a right to a mandatory distribution
that is a noncontingent right as of the date of the exercise
of the decanting power;

(b) a current and noncontingent right,
annually or more frequently, to a mandatory distribution of
income, a specified dollar amount or a percentage of value of
some or all of the trust property;

(c) a current and noncontingent right,
annually or more frequently, to withdraw income, a specified
dollar amount or a percentage of value of some or all of the
trust property;

(d) a presently exercisable general power of appointment; or

(e) a right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

B. Subject to Subsection C of this section and Section 1-114 of the Uniform Trust Decanting Act, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

C. Subject to Section 1-113 of the Uniform Trust Decanting Act, in an exercise of the decanting power under this section, a second trust shall not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in Subsection D of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary or successor beneficiary of the first trust, except as otherwise provided in Subsection D of this section; or

(3) reduce or eliminate a vested interest.
D. Subject to Paragraph (3) of Subsection C of this section and Section 1-114 of the Uniform Trust Decanting Act, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

E. A power of appointment described in Paragraphs (1) through (4) of Subsection D of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

F. If an authorized fiduciary has expanded
distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

SECTION 1-112. DECANTING POWER UNDER LIMITED DISTRIBUTIVE DISCRETION.--

A. As used in this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

B. An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

C. Under this section and subject to Section 1-114 of the Uniform Trust Decanting Act, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, shall grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

D. A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to
make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated and the distribution is made as permitted under the Uniform Trust Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

E. If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power provided by this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

SECTION 1-113. TRUST FOR BENEFICIARY WITH DISABILITY.--

A. As used in this section:

(1) "beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated;
(2) "governmental benefits" means financial aid or services from a state, federal or other type of public agency; 

(3) "special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:
   (a) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;
   (b) if no trustee or fiduciary has discretion under Subparagraph (a) of this paragraph, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or
   (c) if no trustee or fiduciary has discretion under Subparagraphs (a) and (b) of this paragraph, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries; and

(4) "special-needs trust" means a trust that the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

B. A special-needs fiduciary may exercise the decanting power provided by Section 1-111 of the Uniform
Trust Decanting Act over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

C. In an exercise of the decanting power provided by this section, the following rules apply:

(1) notwithstanding Paragraph (2) of Subsection C of Section 1-111 of the Uniform Trust Decanting Act, the interest in the second trust of a beneficiary with a disability may:

(a) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. Section 1396p(d)(4)(C), as amended; or

(b) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. Section 1396p(d)(4)(A), as amended;

(2) Paragraph (3) of Subsection C of Section 1-111 of the Uniform Trust Decanting Act does not apply to the interests of the beneficiary with a disability; and
(3) except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trusts that are substantially similar to the beneficiary's beneficial interests in the first trust.

SECTION 1-114. PROTECTION OF CHARITABLE INTEREST.--

A. As used in this section:

(1) "determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event or after the passage of a specified time and that is unconditional or will be held solely for charitable purposes; and

(2) "unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended, on the date of the distribution if the charitable organization meets the requirement on the date of determination.

B. If a first trust contains a determinable charitable interest, the attorney general has the rights of a
qualified beneficiary and may represent and bind the charitable interest.

C. If a first trust contains a charitable interest, the second trust or trusts shall not:

   (1) diminish the charitable interest;
   (2) diminish the interest of an identified charitable organization that holds the charitable interest;
   (3) alter any charitable purpose stated in the first-trust instrument; or
   (4) alter any condition or restriction related to the charitable interest.

D. If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of Subsection C of this section.

E. If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to Subsection C of this section shall be administered under New Mexico law unless:

   (1) the attorney general, after receiving notice under Section 1-107 of the Uniform Trust Decanting Act, fails to object in a signed record delivered to the authorized fiduciary within the notice period;
(2) the attorney general consents in a
signed record to the second trust or trusts being
administered under the law of another jurisdiction; or
(3) the court approves the exercise of the
decanting power.

F. The Uniform Trust Decanting Act does not limit
the powers and duties of the attorney general under New
Mexico law other than that act.

SECTION 1-115. TRUST LIMITATION ON DECANTING.--
A. An authorized fiduciary shall not exercise the
decanting power to the extent that the first-trust instrument
expressly prohibits exercise of:
   (1) the decanting power; or
   (2) a power granted by state law to the
fiduciary to distribute part or all of the principal of the
trust to another trust.

B. Exercise of the decanting power is subject to
any restriction in the first-trust instrument that expressly
applies to exercise of:
   (1) the decanting power; or
   (2) a power granted by state law to a
fiduciary to distribute part or all of the principal of the
trust to another trust or to modify the trust.

C. A general prohibition of the amendment or
revocation of a first trust, a spendthrift clause or a clause
restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

D. Subject to Subsections A and B of this section, an authorized fiduciary may exercise the decanting power provided by the Uniform Trust Decanting Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

E. If a first-trust instrument contains an express prohibition described in Subsection A of this section or an express restriction described in Subsection B of this section, the provision shall be included in the second-trust instrument.

SECTION 1-116. CHANGE IN COMPENSATION.--

A. If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary shall not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

1. all qualified beneficiaries of the second trust consent to the increase in a signed record; or

2. the increase is approved by the court.

B. If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary shall not
exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Uniform Trust Code unless:

   (1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

   (2) the increase is approved by the court.

C. A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of Subsections A and B of this section.

SECTION 1-117. RELIEF FROM LIABILITY AND INDEMNIFICATION.--

A. Except as otherwise provided in this section, a second-trust instrument shall not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

B. A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

C. A second-trust instrument shall not reduce fiduciary liability in the aggregate.
D. Subject to Subsection C of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by New Mexico law other than the Uniform Trust Decanting Act.

SECTION 1-118. REMOVAL OR REPLACEMENT OF AUTHORIZED FIDUCIARY.--An authorized fiduciary shall not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

A. the person holding the power consents to the modification in a signed record and the modification applies only to the person;

B. the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

C. the court approves the modification and the modification grants a substantially similar power to another person.

SECTION 1-119. TAX-RELATED LIMITATIONS.--

A. As used in this section:

(1) "grantor trust" means a trust as to
which a settlor of a first trust is considered the owner under 26 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C. Section 679, as amended;

(2) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

(3) "nongrantor trust" means a trust that is not a grantor trust; and

(4) "qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or subject to any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as amended or the regulations.

B. An exercise of the decanting power is subject to the following limitations:

(1) if a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the
amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(2) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a charitable deduction for purposes of the income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(3) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C. Section 2503(b), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(b), as
amended. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C. Section 2503(b), as amended, by application of 26 U.S.C. Section 2503(c), as amended, the second-trust instrument shall not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(c), as amended;

(4) if the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. Section 1361, as amended, and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a permitted shareholder under any provision of 26 U.S.C. Section 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. Section 1361(c)(2), as amended. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. Section 1361(d), as amended, the
second-trust instrument shall not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust;

(5) if the first trust contains property that qualified, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would have qualified, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. Section 2642(c), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. Section 2642(c), as amended;

(6) if the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as amended, or the regulations. If an attempted exercise of the decanting power violates this paragraph, the trustee is deemed to have held the qualified benefits property and any reinvested
distributions of the property as a separate share from the date of the exercise of the power, and Section 1-122 of the Uniform Trust Decanting Act applies to the separate share;

(7) if the first trust qualifies as a grantor trust because of the application of 26 U.S.C. Section 672(f)(2)(A), as amended, the second trust shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

(8) as used in this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to Paragraph (9) of this subsection, a second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(a) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(b) the transfer of property held by the first trust or the first trust qualified, or, but for provisions of the Uniform Trust Decanting Act other than
those in this section, would have qualified, for the tax benefit;

(9) subject to Paragraph (4) of this subsection:

(a) except as otherwise provided in Paragraph (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust;

and

(b) except as otherwise provided in Paragraph (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust;

and

(10) an authorized fiduciary shall not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(a) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the second trust to cease to be a grantor trust and the second trust does not grant an equivalent power to the settlor or other person; or

(b) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless: 1) the settlor
has the power at all times to cause the second trust to cease to be a grantor trust; or 2) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

**SECTION 1-120. DURATION OF SECOND TRUST.--**

A. Subject to Subsection B of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

B. To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any maximum perpetuity, accumulation or suspension-of-the-power-of-alienation rules that apply to property of the first trust.

**SECTION 1-121. NEED TO DISTRIBUTE NOT REQUIRED.--** An authorized fiduciary may exercise the decanting power regardless of whether under the first trust's discretionary distribution standard the fiduciary would have made, or could have been compelled to make, a discretionary distribution of principal at the time of the exercise.

**SECTION 1-122. SAVING PROVISION.--**

A. If exercise of the decanting power would be effective under the Uniform Trust Decanting Act except that the second-trust instrument in part does not comply with the
Uniform Trust Decanting Act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) a provision in the second-trust instrument that is not permitted under the Uniform Trust Decanting Act is void to the extent necessary to comply with the Uniform Trust Decanting Act; and

(2) a provision required by the Uniform Trust Decanting Act to be in the second-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with the Uniform Trust Decanting Act.

B. If a trustee or other fiduciary of a second trust determines that Subsection A of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

SECTION 1-123. TRUST FOR CARE OF ANIMAL.--

A. As used in this section:

(1) "animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals; and

(2) "protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal
or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

B. The decanting power may be exercised over an animal trust that has a protector to the extent that the trust could be decanted under the Uniform Trust Decanting Act as if each animal that benefits from the trust were an individual if the protector consents in a signed record to the exercise of the power.

C. A protector for an animal has the rights under the Uniform Trust Decanting Act of a qualified beneficiary.

D. Notwithstanding any other provision of the Uniform Trust Decanting Act, if a first trust is an animal trust, in an exercise of the decanting power, the second trust shall provide that trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

SECTION 1-124. TERMS OF SECOND TRUST.--A reference in the Uniform Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

SECTION 1-125. SETTLOR.--

A. For purposes of New Mexico law other than the Uniform Trust Decanting Act and subject to Subsection B of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of
the principal of the first trust subject to the exercise of
the decanting power.

B. In determining settlor intent with respect to a
second trust, the intent of a settlor of the first trust, a
settlor of the second trust and the authorized fiduciary may
be considered.

SECTION 1-126. LATER-DISCOVERED PROPERTY.--

A. Except as otherwise provided in Subsection C of
this section, if exercise of the decanting power was intended
to distribute all the principal of the first trust to one or
more second trusts, later-discovered property belonging to
the first trust and property paid to or acquired by the first
trust after the exercise of the power is part of the trust
estate of the second trust or trusts.

B. Except as otherwise provided in Subsection C of
this section, if exercise of the decanting power was intended
to distribute less than all the principal of the first trust
to one or more second trusts, later-discovered property
belonging to the first trust or property paid to or acquired
by the first trust after exercise of the power remains part
of the trust estate of the first trust.

C. An authorized fiduciary may provide in an
exercise of the decanting power, or by the terms of a second
trust, for disposition of later-discovered property belonging
to the first trust or property paid to or acquired by the
first trust after exercise of the power.

SECTION 1-127. OBLIGATIONS.--A debt, liability or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

SECTION 1-128. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Trust Decanting Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1-129. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Trust Decanting Act 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).

SECTION 2-101. Section 45-2-904 NMSA 1978 (being Laws 1992, Chapter 66, Section 4, as amended) is amended to read:

"45-2-904. EXCLUSIONS.--

A. Section 45-2-901 NMSA 1978 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment
arising out of:

(a) a premarital or postmarital agreement;
(b) a separation or divorce settlement;
(c) a spouse's election;
(d) a similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;
(e) a contract to make or not to revoke a will or trust;
(f) a contract to exercise or not to exercise a power of appointment;
(g) a transfer in satisfaction of a duty of support; or
(h) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property and the power of a fiduciary to determine principal and income;
(3) a power to appoint a fiduciary;
(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
(5) a nonvested property interest held by a
charity, government or governmental agency or subdivision if
the nonvested property interest is preceded by an interest
held by another charity, government or governmental agency or
subdivision;

(6) a nonvested property interest in or a
power of appointment with respect to a trust or other
property arrangement forming part of a pension,
profit-sharing, stock bonus, health, disability, death
benefit, income deferral or other current or deferred benefit
plan for one or more employees, independent contractors or
their beneficiaries or spouses, to which contributions are
made for the purpose of distributing to or for the benefit of
the participants or their beneficiaries or spouses the
property, income or principal in the trust or other property
arrangement, except a nonvested property interest or a power
of appointment that is created by an election of a
participant or a beneficiary or spouse;

(7) a property interest, power of
appointment or arrangement that was not subject to the
common-law rule against perpetuities or that is excluded by
another statute of New Mexico; or

(8) a property interest held in trust.

B. For real property held in trust, at the end of
three hundred sixty-five years from the later of the date on
which an interest in real property is added to or purchased
by a trust or the date that the trust became irrevocable, if
the interest in real property is still held in trust and if
the trust instrument:

(1) provides for the distribution of the
interest upon termination of the trust, the property shall be
distributed as though termination occurred at that time;

(2) does not provide for the distribution of
the interest upon termination of the trust, the property
shall be distributed to the beneficiaries who are then
entitled to receive income from the trust:

(a) in proportion to the amount of
income each is entitled to receive; or

(b) if that proportion is not specified
in the trust instrument, in equal shares; or

(3) does not provide for the distribution of
the interest upon termination of the trust and there is no
income beneficiary of the trust, the property shall be
distributed, pursuant to the laws of New Mexico then in
effect that govern the distribution of intestate real
property, to the then-living persons who are then determined
to be the settlor's or testator's distributees as though the
settlor or testator had died at that time, intestate, a
resident of New Mexico and owning the property so
distributable. For the purposes of this paragraph, "settlor"
means a person who creates or contributes property to a
trust.

C. A trust shall not become void or subject to termination under this section or Section 45-2-901 NMSA 1978 if:

(1) a trust holds an interest in a corporation, a limited liability company, a partnership, a statutory trust, a business trust or another business entity;

(2) the entity is the owner of an interest in real property;

(3) the entity terminates; and

(4) the trust becomes the holder of an interest in real property.

D. Except as otherwise provided in the trust instrument, the trustee of a trust that becomes the holder of an interest in real property through the sequence outlined in Subsection C of this section may:

(1) distribute the interest in real property in accordance with this subsection; or

(2) convey the interest in real property to another business entity in exchange for an interest in that entity to be held by the trustee.

E. For the purposes of this section, "real property" does not include:

(1) intangible personal property; or

(2) an interest in a corporation, a limited
liability company, a partnership, a statutory trust, a business trust or another business entity, regardless of whether the entity is the owner of an interest in real property."

SECTION 3-101. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 2-101 of this act is July 1, 2016.

B. The effective date of the provisions of Sections 1-101 through 1-129 of this act is January 1, 2017.
Enrolled

House Bill 4094

Sponsored by Representatives READ, WILSON, HOYLE, OLSON; Representatives HELM, HOLVEY, KENY-GUYER, LININGER, WILLIAMSON (Presession filed.)

CHAPTER ..................................................

AN ACT

Relating to cannabis; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2016 Act:
(1) “Deliver” has the meaning given that term in ORS 475.005.
(2) “Financial institution” means:
(a) A financial institution as defined in ORS 706.008.
(b) A trust company as defined in ORS 706.008.
(c) A money transmission business licensed under ORS 717.200 to 717.320, 717.900 and 717.905.
(d) An affiliate of an entity described in paragraph (a), (b) or (c) of this subsection.
(e) An employee or agent of an entity described in paragraph (a), (b) or (c) of this subsection.
(3) “Manufacture” has the meaning given that term in ORS 475.005.
(4) “Marijuana” has the meaning given that term in ORS 475.005.
(5) “Marijuana-derived product” means cannabinoid products, cannabinoid concentrates and cannabinoid extracts, all as defined in ORS 475B.015.

SECTION 2. A financial institution that provides financial services customarily provided by financial institutions pursuant to powers granted by ORS 717.200 to 717.320, 717.900 and 717.905, the Bank Act or by ORS chapter 723 to a marijuana processing site registered under ORS 475B.435, a medical marijuana dispensary registered under ORS 475B.450, a marijuana producer that holds a license under ORS 475B.070, a marijuana processor that holds a license under ORS 475B.090, a marijuana wholesaler that holds a license under ORS 475B.100, a marijuana retailer that holds a license under ORS 475B.110, a laboratory that holds a license under ORS 475B.560 or a person to whom a permit has been issued under ORS 475B.218 is exempt from any criminal law of this state an element of which may be proven by substantiating that a person provides financial services customarily provided by financial institutions pursuant to powers granted by ORS 717.200 to 717.320, 717.900 and 717.905, the Bank Act or ORS chapter 723 to a person who possesses, delivers or manufactures marijuana or marijuana derived products.

SECTION 3. (1) Notwithstanding any law relating to the exemption of information from public disclosure under ORS 475B.010 to 475B.395 or 475B.550 to 475B.590, upon the request of a financial institution, the Oregon Liquor Control Commission shall provide to the financial institution the following information:
Whether a person with whom the financial institution is doing business holds a license under ORS 475B.070, 475B.090, 475B.100, 475B.110 or 475B.560 or a permit under ORS 475B.218;
(b) The name of any other business or individual affiliated with the person;
(c) A copy of the application, and any supporting documentation submitted with the application, for a license or a permit submitted by the person;
(d) If applicable, data relating to sales and the volume of product sold by the person;
(e) Whether the person is currently compliant with the provisions of ORS 475B.010 to 475B.395, 475B.550 to 475B.590 and 475B.600 to 475B.655 and rules adopted under ORS 475B.010 to 475B.395, 475B.550 to 475B.590 and 475B.600 to 475B.655;
(f) Any past or pending violation by the person of a provision of ORS 475B.010 to 475B.395, 475B.550 to 475B.590 or 475B.600 to 475B.655 or a rule adopted under ORS 475B.010 to 475B.395, 475B.550 to 475B.590 or 475B.600 to 475B.655; and
(g) Any penalty imposed upon the person for violating a provision of ORS 475B.010 to 475B.395, 475B.550 to 475B.590 or 475B.600 to 475B.655 or a rule adopted under ORS 475B.010 to 475B.395, 475B.550 to 475B.590 or 475B.600 to 475B.655.
(2) Upon receiving a request under subsection (1) of this section, the commission shall provide the requesting financial institution with the requested information.
(3) The commission may charge a financial institution a reasonable fee to cover the administrative costs of providing information under this section.

SECTION 4. (1) Notwithstanding any law relating to the exemption of information from public disclosure under ORS 475B.400 to 475B.525, upon the request of a financial institution, the Oregon Health Authority shall provide to the financial institution the following information:
(a) Whether a person with whom the financial institution is doing business is registered under ORS 475B.435 or 475B.450;
(b) The name of any other business or individual affiliated with the person;
(c) A copy of the application, and any supporting documentation submitted with that application, for registration submitted by the person;
(d) Data relating to the volume of product transferred by the person;
(e) Whether the person is currently compliant with the provisions of ORS 475B.400 to 475B.525, 475B.550 to 475B.590 and 475B.600 to 475B.655 and rules adopted under ORS 475B.400 to 475B.525, 475B.550 to 475B.590 and 475B.600 to 475B.655;
(f) Any past or pending violation by the person of a provision of ORS 475B.400 to 475B.525, 475B.550 to 475B.590 or 475B.600 to 475B.655 or a rule adopted under ORS 475B.400 to 475B.525, 475B.550 to 475B.590 or 475B.600 to 475B.655; and
(g) Any penalty imposed upon the person for violating a provision of ORS 475B.400 to 475B.525, 475B.550 to 475B.590 or 475B.600 to 475B.655 or a rule adopted under ORS 475B.400 to 475B.525, 475B.550 to 475B.590 or 475B.600 to 475B.655.
(2) Upon receiving a request under subsection (1) of this section, the authority shall provide the requesting financial institution with the requested information.
(3) The authority may charge a financial institution a reasonable fee to cover the administrative costs of providing information under this section.

SECTION 5. (1) Notwithstanding any law relating to the exemption of information from public disclosure under ORS 475B.700 to 475B.760, or relating to the confidentiality of tax return information, upon the request of a financial institution, the Department of Revenue shall provide to the financial institution the following information:
(a) Whether the person is currently compliant with the provisions of ORS 475B.700 to 475B.760 and rules adopted under ORS 475B.700 to 475B.760;
(b) Any past or pending violation by the person of a provision of ORS 475B.700 to 475B.760 or a rule adopted under ORS 475B.700 to 475B.760; and
(c) Any penalty imposed upon the person for violating a provision of ORS 475B.700 to 475B.760 or a rule adopted under ORS 475B.700 to 475B.760.

(2) Upon receiving a request under subsection (1) of this section, the department shall provide the requesting financial institution with the requested information.

(3) The department may charge a financial institution a reasonable fee to cover the administrative costs of providing information under this section.

SECTION 6. Information received by a financial institution under section 3, 4 or 5 of this 2016 Act is confidential for purposes of ORS 717.200 to 717.320, 717.900 and 717.905, the Bank Act and ORS chapter 723. Except as otherwise required or permitted by the provisions of ORS 192.583 to 192.607, 717.200 to 717.320, 717.900 and 717.905, or the Bank Act or ORS chapter 723, or by other state law or rule or federal law or regulation, a financial institution may not make the information available to any person other than:

(1) The customer to whom the information applies; and

(2) A trustee, conservator, guardian, personal representative or agent of the customer to whom the information applies.

SECTION 7. (1) The Department of Consumer and Business Services shall conduct a study on:

(a) The provision of depository and related financial services to businesses that engage in the lawful production, processing or sale of marijuana and marijuana derived products; and

(b) State laws and rules, federal laws and regulations and administrative acts related to providing depository and related financial services and how those laws, rules, regulations and acts apply to businesses that engage in the production, processing or sale of marijuana and marijuana derived products.

(2) As part of the study, the Department of Consumer and Business Services shall evaluate the BSA Expectations Regarding Marijuana-Related Businesses memorandum published by the federal Department of the Treasury on February 14, 2014.

(3) As part of the study, the Department of Consumer and Business Services may evaluate methods of providing depository and related financial services to businesses that engage in the production, processing or sale of marijuana and marijuana derived products that do not involve financial institutions.

(4) The Department of Consumer and Business Services shall make a report on the study that the department conducts under this section. As part of that report, the department shall identify any legislation or administrative action required to facilitate the provision of depository and related financial services to businesses that engage in the production, processing or sale of marijuana and marijuana derived products.

(5) On or before January 1, 2017, the Department of Consumer and Business Services shall provide the report required by subsection (4) of this section to the interim legislative committees related to business and any interim legislative committee specifically related to businesses that engage in the production, processing or sale of marijuana and marijuana derived products. The report shall be provided in the manner described in ORS 192.245.

SECTION 8. Section 7 of this 2016 Act is repealed on January 1, 2018.

SECTION 9. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.
An act relating to individuals with disabilities; creating s. 17.68, F.S.; providing legislative findings; establishing the Financial Literacy Program for Individuals with Developmental Disabilities within the Department of Financial Services; requiring the department to develop and implement the program in consultation with specified stakeholders; providing for the participation of banks, credit unions, savings associations, and savings banks; requiring the program to provide information, resources, outreach, and education on specified issues to individuals with developmental disabilities and employers in this state; requiring the department to establish on its website a clearinghouse for information regarding the program and to publish a brochure describing the program; requiring, by a specified date, qualified public depositories to make copies of the department's brochure available and provide a hyperlink on their websites to the department's website for the program; providing that qualified public depositories are not subject to civil liability arising from the distribution and contents of the brochure and the program website information; amending s. 20.60, F.S.; revising requirements for the Department of Economic Opportunity's annual report to conform to changes made
by the act; reordering and amending s. 110.107, F.S.;
revising definitions and defining the term "individual
who has a disability"; amending s. 110.112, F.S.;
revising the state's equal employment opportunity
policy to include individuals who have a disability;
requiring each executive agency to annually report to
the Department of Management Services regarding the
agency's progress in increasing employment among
certain underrepresented groups; revising the required
content of the department's annual workforce report;
requiring the department to develop and implement
certain programs geared toward individuals who have a
disability; requiring the department to develop
training programs by a specified date; requiring each
executive agency to develop a plan regarding the
employment of individuals who have a disability by a
specified date; requiring the department to report to
the Governor and the Legislature regarding
implementation; requiring the department to compile
and post data regarding the hiring practices of
executive agencies regarding the employment of
individuals who have a disability; requiring the
department to assist executive agencies in identifying
strategies to retain employees who have a disability;
requiring the department to adopt certain rules;
specifying that the act does not create any
enforceable right or benefit; amending s. 280.16, F.S.; requiring a qualified public depository to participate in the Financial Literacy Program for Individuals with Developmental Disabilities; amending s. 393.063, F.S.; revising the definition of the term "developmental disability" to include Down syndrome; creating the "Employment First Act"; providing legislative findings and intent; providing a purpose; requiring specified state agencies and organizations to develop and implement an interagency cooperative agreement; requiring the interagency cooperative agreement to provide the roles, responsibilities, and objectives of state agencies and organizations; requiring the Department of Economic Opportunity, in consultation with other entities, to create the Florida Unique Abilities Partner Program; defining terms; authorizing a business entity to apply to the department for designation; requiring the department to consider nominations of business entities for designation; requiring the department to adopt procedures for application, nomination, and designation processes; establishing criteria for a business entity to be designated as a Florida Unique Abilities Partner; requiring a business entity to certify that it continues to meet the established criteria for designation each year; requiring the
department to remove the designation if a business entity does not submit yearly certification of continued eligibility; authorizing a business entity to discontinue its designated status; requiring the department, in consultation with the disability community, to develop a logo for business entities designated as Florida Unique Abilities Partners; requiring the department to adopt guidelines and requirements for the use of the logo; authorizing the department to allow a designated business entity to display a logo; prohibiting the use of a logo if a business entity does not have a current designation; requiring the department to maintain a website with specified information; requiring the Agency for Persons with Disabilities to provide a link on its website to the department's website for the Florida Unique Abilities Partner Program; requiring the department to provide the Florida Tourism Industry Marketing Corporation with certain information; requiring the department and CareerSource Florida, Inc., to identify employment opportunities posted by business entities that receive the Florida Unique Abilities Partner designation on the workforce information system; requiring a report to the Legislature; providing report requirements; requiring the department to adopt rules; providing

CODING: Words struck are deletions; words underlined are additions.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 17.68, Florida Statutes, is created to read:

17.68 Financial Literacy Program for Individuals with Developmental Disabilities.—

(1) The Legislature finds that the state has a compelling interest in promoting the economic independence and successful employment of individuals with developmental disabilities as defined in s. 393.063. In comparison with the general population, individuals with developmental disabilities experience lower rates of educational achievement, employment, and annual earnings and are more likely to live in poverty. Additionally, such individuals must navigate a complex network of federal and state programs in order to be eligible for financial and health benefits. Thus, it is essential that these individuals have sufficient financial management knowledge and skills to effectively participate in benefit eligibility determination processes and make informed decisions regarding financial services and products provided by financial institutions. Enhancing the financial literacy of such individuals will provide a pathway for economic independence and successful employment.

(2) The Financial Literacy Program for Individuals with
Developmental Disabilities is established within the Department of Financial Services. The department, in consultation with public and private stakeholders, shall develop and implement the program, which must be designed to promote the economic independence and successful employment of individuals with developmental disabilities. Banks, credit unions, savings associations, and savings banks will be key participants in the development and promotion of the program, which must provide information, resources, outreach, and education in the following areas:

(a) For individuals with developmental disabilities:

1. Financial education, including instruction on money management skills and the effective use of financial services and products, to promote income preservation and asset development.

2. Identification of available financial and health benefit programs and services.

3. Job training programs and employment opportunities, including work incentives and state and local workforce development programs.

4. The impact of earnings and assets on eligibility for federal and state financial and health benefit programs, and options to manage such impact.

(b) For employers in this state, strategies to make program information and educational materials available to their employees with developmental disabilities.
(3) Effective October 1, 2016, the department shall:
   (a) Establish on its website a clearinghouse for information regarding the program and other resources available for individuals with developmental disabilities and their employers.
   (b) Publish a brochure describing the program, which is also accessible on its website.

(4) Within 90 days after the department establishes the website clearinghouse and publishes the brochure, each bank, savings association, and savings bank that is a qualified public depository as defined in s. 280.02 shall:
   (a) Make copies of the department's brochures available, upon the request of the consumer, at its principal place of business and each branch office located in this state which has in-person teller services by having copies of the brochure available or having the capability to print a copy of the brochure from the department's website. Upon request, the department shall provide copies of the brochure to a bank, savings association, or savings bank.
   (b) Provide on its website a hyperlink to the department's website clearinghouse. If the department changes the website address for the clearinghouse, the bank, savings association, or savings bank must update the hyperlink within 90 days after notification by the department of such change.

(5) A participating qualified public depository is not subject to civil liability arising from the distribution or
nondistribution of the brochure or program website information.
The contents of the brochure or the program website information may not be attributed to a participating qualified public depository by virtue of its distribution, and do not constitute financial or investment advice by, nor create a fiduciary duty on, the participating qualified public depository to the recipient.

Section 2. Effective January 1, 2017, paragraph (b) of subsection (10) of section 20.60, Florida Statutes, is amended to read:

20.60  Department of Economic Opportunity; creation; powers and duties.—

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(b) The report must incorporate annual reports of other programs, including:

1. The displaced homemaker program established under s. 446.50.

2. Information provided by the Department of Revenue under s. 290.014.

3. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.
4. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

5. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

6. The Rural Economic Development Initiative established under s. 288.0656.

7. The Florida Unique Abilities Partner Program.

Section 3. Section 110.107, Florida Statutes, is reordered and amended to read:

110.107 Definitions.—As used in this chapter, the term:

(5) "Department" means the Department of Management Services.

(28) "Secretary" means the Secretary of Management Services.

(11) "Furlough" means a temporary reduction in the regular hours of employment in a pay period, or temporary leave without pay for one or more pay periods, with a commensurate reduction in pay, which is necessitated by a projected deficit in any fund that supports salary and benefit appropriations. The deficit must be projected by the Revenue Estimating Conference pursuant to s. 216.136(3).

(30) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or
department of the executive branch or the judicial branch of state government as defined in chapter 216.

(21) "Position" means the work, consisting of duties and responsibilities, assigned to be performed by an officer or employee.

(10) "Full-time position" means a position authorized for the entire normally established work period, whether daily, weekly, monthly, or annually.

(18) "Part-time position" means a position authorized for less than the entire normally established work period, whether daily, weekly, monthly, or annually.

(16) "Occupation" means all positions that are sufficiently similar in knowledge, skills, and abilities, and the sufficiently similar as to kind or subject matter of work.

(17) "Occupational group" means a group of occupations that are sufficiently similar in the kind of work performed to warrant the use of the same performance factors in determining the level of complexity for all occupations in that occupational group.

(3) "Classification plan" means a formal description of the concepts, rules, job family definitions, occupational group characteristics, and occupational profiles used in the classification of positions.

(20) "Pay plan" means a formal description of the philosophy, methods, procedures, and salary schedules for competitively compensating employees at market-based rates for
work performed.

(27)(12) "Salary schedule" means an official document that contains a complete list of occupation titles, broadband level codes, and pay bands.

(1)(13) "Authorized position" means a position included in an approved budget. In counting the number of authorized positions, part-time positions may be converted to full-time equivalents.

(8)(14) "Established position" means an authorized position that has been classified in accordance with a classification and pay plan as provided by law.

(22)(15) "Position number" means the identification number assigned to an established position.

(26)(16) "Reclassification" means the changing of an established position in one broadband level in an occupational group to a higher or lower broadband level in the same occupational group or to a broadband level in a different occupational group.

(24)(17) "Promotion" means the changing of the classification of an employee to a broadband level having a higher maximum salary; or the changing of the classification of an employee to a broadband level having the same or a lower maximum salary but a higher level of responsibility.

(4)(18) "Demotion" means the changing of the classification of an employee to a broadband level having a lower maximum salary; or the changing of the classification of

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an employee to a broadband level having the same or a higher maximum salary but a lower level of responsibility.

(32) "Transfer" means moving an employee from one geographic location of the state to a different geographic location more than in excess of 50 miles from the employee's current work location.

(25) "Reassignment" means moving an employee from a position in one broadband level to a different position in the same broadband level or to a different broadband level having the same maximum salary.

(6) "Dismissal" means a disciplinary action taken by an agency pursuant to s. 110.227 against an employee which results in the termination of his or her employment.

(31) "Suspension" means a disciplinary action taken by an agency pursuant to s. 110.227 against an employee which temporarily relieves the employee of his or her duties and places him or her on leave without pay.

(15) "Layoff" means termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by career service employees.

(7) "Employing agency" means any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of chapter 20 or other statutory authority.
(29) "Shared employment" means part-time career employment in which the duties and responsibilities of a full-time position in the career service are divided among part-time employees who are eligible for the position and who receive career service benefits and wages pro rata. The term does not include the employment of persons paid from other-personal-services funds.

(9) "Firefighter" means a firefighter certified under chapter 633.

(14) "Law enforcement or correctional officer" means a law enforcement officer, special agent, correctional officer, correctional probation officer, or institutional security specialist required to be certified under chapter 943.

(23) "Professional health care provider" means registered nurses, physician's assistants, dentists, psychologists, nutritionists or dietitians, pharmacists, psychological specialists, physical therapists, and speech and hearing therapists.

(13) "Job family" means a defined grouping of one or more occupational groups.

(19) "Pay band" means the minimum salary, the maximum salary, and intermediate rates that are payable for work in a specific broadband level.

(2) "Broadband level" means all positions which are sufficiently similar in knowledge, skills, and abilities; and sufficiently similar as to kind or subject matter of
work; the level of difficulty or the level of responsibilities; and the qualification requirements of the work so as to warrant the same treatment with respect to title, pay band, and other personnel transactions.

(12) "Individual who has a disability" means a person who has a physical or intellectual impairment that substantially limits one or more major life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment.

Section 4. Subsections (1) and (2) of section 110.112, Florida Statutes, are amended, present subsections (3) through (6) of that section are redesignated as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

110.112 Affirmative action; equal employment opportunity.—

(1) It is shall be the policy of this the state to assist in providing the assurance of equal employment opportunity through programs of affirmative and positive action that will allow full utilization of women, and minorities, and individuals who have a disability.

(2)(a) The head of each executive agency shall develop and implement an affirmative action plan in accordance with rules adopted by the department and approved by a majority vote of the Administration Commission before their adoption.

(b) Each executive agency shall establish annual goals for ensuring full utilization of groups underrepresented in the
agency's workforce, including women, minorities, and individuals who have a disability, as compared to the relevant labor market, as defined by the agency. Each executive agency shall design its affirmative action plan to meet its established goals.

- (c) Each executive agency shall annually report to the department regarding the agency's progress toward increasing employment among women, minorities, and individuals who have a disability.
- (d) An affirmative action-equal employment opportunity officer shall be appointed by the head of each executive agency. The affirmative action-equal employment opportunity officer's responsibilities must include determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action.
- (e) The department shall report information in its annual workforce report relating to the implementation, continuance, updating, and results of each executive agency's affirmative action plan for the previous fiscal year. The annual workforce report must also include data for each executive agency relating to employment levels among women, minorities, and individuals who have a disability.
- (f) The department shall provide to all supervisory personnel of the executive agencies training in the principles of equal employment opportunity and affirmative action, the
development and implementation of affirmative action plans, and
the establishment of annual affirmative action goals. The
department may contract for training services, and each
participating agency shall reimburse the department for costs
incurred through such contract. After the department approves
the contents of the training program for the agencies, the
department may delegate this training to the executive agencies.

(3)(a) The department, in consultation with the Agency for
Persons with Disabilities, the Division of Vocational
Rehabilitation and the Division of Blind Services of the
Department of Education, the Department of Economic Opportunity,
and the Executive Office of the Governor, shall develop and
implement programs that incorporate internships, mentoring, on-
the-job training, unpaid work experience, situational
assessments, and other innovative strategies that are
specifically geared toward individuals who have a disability.

(b) By January 1, 2017, the department shall develop
mandatory training programs for human resources personnel and
hiring managers of executive agencies which support the
employment of individuals who have a disability.

(c)1. By January 1, 2017, each executive agency shall
develop an agency-specific plan that addresses how to promote
employment opportunities for individuals who have a disability.

2. The department shall assist executive agencies in the
implementation of agency-specific plans. The department shall
regularly report to the Governor, the President of the Senate,
and the Speaker of the House of Representatives the progress of executive agencies in implementing these plans. Such reports shall be made at least biannually.

   (d) The department shall compile data regarding the hiring practices of executive agencies with regard to individuals who have a disability and make such data available on its website.

   (e) The department shall assist executive agencies in identifying and implementing strategies for retaining employees who have a disability which include, but are not limited to, training programs, funding reasonable accommodations, increasing access to appropriate technologies, and ensuring accessibility of physical and virtual workplaces.

   (f) The department shall adopt rules relating to forms that provide for the voluntary self-identification of individuals who have a disability and are employed by an executive agency.

   (g) This subsection does not create any substantive or procedural right or benefit enforceable at law or in equity against the state or a state agency, or an officer, employee, or agent thereof.

Section 5. Paragraph (e) is added to subsection (1) of section 280.16, Florida Statutes, to read:

280.16 Requirements of qualified public depositories; confidentiality.—

(1) In addition to any other requirements specified in this chapter, qualified public depositories shall:
(e) Participate in the Financial Literacy Program for Individuals with Developmental Disabilities as required under s. 17.68.

Section 6. Subsection (9) of section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.—For the purposes of this chapter, the term:

(9) "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, Down syndrome, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Section 7. Employment First Act.—

(1) SHORT TITLE.—This section may be cited as the "Employment First Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that employment is the most direct and cost-effective means to assist an individual in achieving independence and fulfillment; however, individuals with disabilities are confronted by unique barriers to employment which inhibit their opportunities to compete fairly in the labor force. It is the intent of the Legislature to provide a framework for a long-term commitment to improving employment outcomes for individuals with disabilities in this state through the implementation of this act.

(3) PURPOSE.—The purpose of this act is to prioritize
employment of individuals with disabilities and to change the
employment system to better integrate individuals with
disabilities into the workforce. This act encourages a
collaborative effort between state agencies and organizations to
achieve better employment outcomes for individuals with
disabilities.

(4) INTERAGENCY COOPERATIVE AGREEMENT.—The following state
agencies and organizations, and others, as appropriate, shall
develop an interagency cooperative agreement to implement this
act:

(a) The Division of Vocational Rehabilitation of the
Department of Education.

(b) The Division of Blind Services of the Department of
Education.

(c) The Bureau of Exceptional Education and Student
Services of the Department of Education.

(d) The Agency for Persons with Disabilities.

(e) The Substance Abuse and Mental Health Program Office
of the Department of Children and Families.

(f) The Department of Economic Opportunity.

(g) CareerSource Florida, Inc.

(h) The Florida Developmental Disabilities Council.

(i) The Florida Association of Rehabilitation Facilities.

(j) Other appropriate organizations.

(5) ROLES, RESPONSIBILITIES, AND OBJECTIVES.—The
interagency cooperative agreement must identify the roles and
responsibilities of the state agencies and organizations identified in subsection (4) and the objectives of the interagency cooperative agreement, which must include all of the following:

(a) Establishing a commitment by leadership of the state agencies and organizations to maximize resources and coordination to improve employment outcomes for individuals with disabilities who seek publicly funded services.

(b) Developing strategic goals and benchmarks to assist the state agencies and organizations in the implementation of this agreement.

(c) Identifying financing and contracting methods that will help to prioritize employment for individuals with disabilities by state agencies and organizations.

(d) Establishing training methods to better integrate individuals with disabilities into the workforce.

(e) Ensuring collaborative efforts between multiple agencies to achieve the purposes of this act.

(f) Promoting service innovations to better assist individuals with disabilities in the workplace.

(g) Identifying accountability measures to ensure the sustainability of this agreement.

Section 8. Florida Unique Abilities Partner Program.—

(1) CREATION AND PURPOSE.—The Department of Economic Opportunity shall establish the Florida Unique Abilities Partner Program to designate a business entity as a Florida Unique
Abilities Partner if the business entity demonstrates commitment, through employment or support, to the independence of individuals who have a disability. The department shall consult with the Agency for Persons with Disabilities, the Division of Vocational Rehabilitation of the Department of Education, the Division of Blind Services of the Department of Education, and CareerSource Florida, Inc., in creating the program.

(2) DEFINITIONS.—As used in this section, the term:
(a) "Department" means the Department of Economic Opportunity.
(b) "Individuals who have a disability" means persons who have a physical or intellectual impairment that substantially limits one or more major life activities, persons who have a history or record of such an impairment, or persons who are perceived by others as having such an impairment.

(3) DESIGNATION.—
(a) A business entity may apply to the department to be designated as a Florida Unique Abilities Partner, based on the business entity's achievements in at least one of the following categories:
1. Employment of individuals who have a disability.
2. Contributions to local or national disability organizations.
3. Contributions to, or the establishment of, a program that contributes to the independence of individuals who have a
(b) As an alternative to application by a business entity, the department must consider nominations from members of the community where the business entity is located. The nomination must identify the business entity's achievements in at least one of the categories provided in paragraph (a).

(c) The name, location, and contact information of the business entity must be included in the business entity's application or nomination.

(d) The department shall adopt procedures for the application, nomination, and designation processes for the Florida Unique Abilities Partner Program. Designation as a Florida Unique Abilities Partner does not establish or involve licensure, does not affect the substantial interests of a party, and does not constitute a final agency action. The Florida Unique Abilities Partner Program and designation are not subject to chapter 120, Florida Statutes.

(4) ELIGIBILITY AND AWARD.—In determining the eligibility for the designation of a business entity as a Florida Unique Abilities Partner, the department shall consider, at a minimum, the following criteria:

(a) For a designation based on an application by a business entity, the business entity must certify that:

1. It employs at least one individual who has a disability. Such employees must be residents of this state and must have been employed by the business entity for at least 9
months before the business entity's application for the
designation. The department may not require the employer to
provide personally identifiable information about its employees;

2. It has made contributions to local and national
disability organizations or contributions in support of
individuals who have a disability. Contributions may be
accomplished through financial or in-kind contributions,
including employee volunteer hours. Contributions must be
documented by providing copies of written receipts or letters of
acknowledgment from recipients or donees. A business entity with
100 or fewer employees must make a financial or in-kind
contribution of at least $1,000, and a business entity with more
than 100 employees must make a financial or in-kind contribution
of at least $5,000; or

3. It has established, or has contributed to the
establishment of, a program that contributes to the independence
of individuals who have a disability. Contributions must be
documented by providing copies of written receipts, a summary of
the program, program materials, or letters of acknowledgment
from program participants or volunteers. A business entity with
100 or fewer employees must make a financial or in-kind
contribution of at least $1,000 in the program, and a business
entity with more than 100 employees must make a financial or in-
kind contribution of at least $5,000.

A business entity that applies to the department to be

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designated as a Florida Unique Abilities Partner shall be awarded the designation upon meeting the requirements of this section.

(b) For a designation based upon receipt of a nomination of a business entity:

1. The department shall determine whether the nominee, based on the information provided by the nominating person or entity, meets the requirements of paragraph (a). The department may request additional information from the nominee.

2. If the nominee meets the requirements, the department shall provide notice, including the qualification criteria provided in the nomination, to the nominee regarding the nominee's eligibility to be awarded a designation as a Florida Unique Abilities Partner.

3. The nominee shall be provided 30 days after receipt of the notice to certify that the information in the notice is true and accurate and accept the nomination, to provide corrected information for consideration by the department and indicate an intention to accept the nomination, or to decline the nomination. If the nominee accepts the nomination, the department shall award the designation. The department may not award the designation if the nominee declines the nomination or has not accepted the nomination within 30 days after receiving notice.

(5) ANNUAL CERTIFICATION.—After an initial designation as a Florida Unique Abilities Partner, a business entity must
certify each year that it continues to meet the criteria for the
designation. If the business entity does not submit the yearly
certification of continued eligibility, the department shall
remove the designation. The business entity may elect to
discontinue its designation status at any time by notifying the
department of such decision.

(6) LOGO DEVELOPMENT.—

(a) The department, in consultation with members of the
disability community, shall develop a logo that identifies a
business entity that is designated as a Florida Unique Abilities
Partner.

(b) The department shall adopt guidelines and requirements
for the use of the logo, including how the logo may be used in
advertising. The department may allow a business entity to
display a Florida Unique Abilities Partner logo upon
designation. A business entity that has not been designated as a
Florida Unique Abilities Partner or has elected to discontinue
its designated status may not display the logo.

(7) WEBSITE.—The department shall maintain a website for
the program. At a minimum, the website must provide a list of
business entities, by county, which currently have the Florida
Unique Abilities Partner designation, updated quarterly;
information regarding the eligibility requirements for the
designation and the method of application or nomination; and
best practices for business entities to facilitate the inclusion
of individuals who have a disability, updated annually. The
website may provide links to the websites of organizations or
other resources that will aid business entities to employ or
support individuals who have a disability.

(8) INTERAGENCY COLLABORATION.—
(a) The Agency for Persons with Disabilities shall provide
a link on its website to the department's website for the
Florida Unique Abilities Partner Program.
(b) On a quarterly basis, the department shall provide the
Florida Tourism Industry Marketing Corporation with a current
list of all businesses that are designated as Florida Unique
Abilities Partners. The Florida Tourism Industry Marketing
Corporation must consider the Florida Unique Abilities Partner
Program in the development of marketing campaigns, and
specifically in any targeted marketing campaign for individuals
who have a disability or their families.
(c) The department and CareerSource Florida, Inc., shall
identify employment opportunities posted by business entities
that currently have the Florida Unique Abilities Partner
designation in the workforce information system under s.
445.011, Florida Statutes.

(9) REPORT.—
(a) By January 1, 2017, the department shall provide a
report to the President of the Senate and the Speaker of the
House of Representatives on the status of the implementation of
this section, including the adoption of rules, development of
the logo, and development of application procedures.
(b) Beginning in 2017 and each year thereafter, the department's annual report required under s. 20.60, Florida Statutes, must describe in detail the progress and use of the program. At a minimum, the report must include, for the most recent year: the number of applications and nominations received; the number of nominations accepted and declined; the number of designations awarded; annual certifications; the use of information provided under subsection (8); and any other information deemed necessary to evaluate the program.

(10) RULES.—The department shall adopt rules to administer this section.

Section 9. For the 2016-2017 fiscal year, the sums of $100,000 in recurring funds and $100,000 in nonrecurring funds from the Special Employment Security Administration Trust Fund are appropriated to the Department of Economic Opportunity, for the purpose of funding the development, implementation, and administration of the Florida Unique Abilities Partner Program created by this act.

Section 10. For the 2016-2017 fiscal year, the sum of $69,570 in recurring funds from the Insurance Regulatory Trust Fund is appropriated to the Consumer Assistance Program within the Department of Financial Services for the purpose of implementing the Financial Literacy Program for Individuals with Developmental Disabilities created by this act.

Section 11. For the 2016-2017 fiscal year, the following sums are appropriated for the purpose of implementing the
amendments made by this act to s. 110.112, Florida Statutes,
relating to the employment of individuals who have a disability:

(1) The sums of $138,692 in recurring funds and $26,264 in
nonrecurring funds are appropriated from the State Personnel
System Trust Fund to the Department of Management Services, and
two full-time equivalent positions with associated salary rate
of 92,762 are authorized.

(2) The recurring sums of $74,234 from the General Revenue
Fund and $64,458 from trust funds and the nonrecurring sums of
$14,051 from the General Revenue Fund and $12,213 from trust
funds are appropriated to Administered Funds for distribution
among agencies for the increase in the human resource
assessment.

Section 12. Except as otherwise expressly provided in this
act, this act shall take effect July 1, 2016.
A BILL FOR AN ACT

RELATING TO MOVIE THEATERS.

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

SECTION 1. Chapter 489, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§489- Motion picture theater accommodation. (a) A public accommodation that owns, leases, leases to, or operates a motion picture theater in more than two locations in the State shall provide open movie captioning during at least two showings per week of each motion picture that is produced and offered with open movie captioning.

(b) A public accommodation that owns, leases, leases to, or operates a motion picture theater in the State shall provide, upon request, audio description of any motion picture that is produced and offered with audio description.

(c) A violation of this section shall be a discriminatory practice.

(d) This section shall apply to motion pictures that are produced and distributed with the necessary auxiliary aids and services, including captioning and audio description. This
section shall not prohibit the showing of a motion picture that is produced and distributed without captioning and audio description; provided that a public accommodation that owns, leases, leases to, or operates a motion picture theater shall provide notice to the public if a motion picture offered for viewing is produced and distributed without captioning or audio description.

(e) For the purposes of this section, "motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2016, and shall be repealed on January 1, 2018.
HOUSE ENROLLED ACT No. 1312

AN ACT to amend the Indiana Code concerning veterans.

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

SECTION 1. IC 5-22-14-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 0.5. As used in this chapter, "NGB-22" means the National Guard Report of Separation form or its predecessor or successor form.

SECTION 2. IC 5-22-14-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.5. As used in this chapter, "veteran" means an individual who:

(1) has previously:
   (A) served on active duty in any branch of the armed forces of the United States or their reserves, in the national guard, or in the Indiana National Guard; and
   (B) received an honorable discharge from service; or

(2) is currently serving in:
   (A) any branch of the armed forces of the United States or their reserves;
   (B) the national guard; or
   (C) the Indiana National Guard.

SECTION 3. IC 5-22-14-3.5, AS ADDED BY P.L.90-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3.5. (a) A business qualifies as a small business
for purposes of this chapter if the business is an Indiana small business concern owned and controlled by veterans, as defined in 15 U.S.C. 632(q)(3) as in effect January 1, 2013, or is an Indiana small business owned and operated by veterans (as defined in section 2.5 of this chapter) and the business:

(1) has:

(A) a current verification as a veteran owned small business concern under 38 CFR 74, et seq., by the Center of Veterans Enterprise of the United States Department of Veterans Affairs; or

(B) a current certification as a veteran owned small business by the Indiana department of administration;

(2) is owned and controlled by one (1) or more veterans who have been residents of Indiana for at least one (1) year before making an offer or, in the case of a corporation, have at least fifty-one percent (51%) of the corporation's stock owned by one (1) or more veterans who have been residents of Indiana for at least one (1) year before making an offer; and

(3) has its principal place of business located in Indiana.

(b) The Indiana economic development corporation may assist the Indiana department of administration in doing any of the following:

(1) Compiling and maintaining a comprehensive list of veteran owned small businesses.

(2) Assisting veteran owned small businesses in complying with the procedures for bidding on state contracts.

(3) Examining requests from the Indiana department of administration for the purchase of supplies or services to help determine which purchases may be consistent with the goal described in section 11(a) of this chapter.

(4) Simplifying specifications and contract terms to increase the opportunities for veteran owned small businesses to participate in state contracts.

(c) The Indiana economic development corporation, in consultation with the Indiana department of administration, may develop programs to encourage cities, counties, towns, townships, and private businesses to adopt the goal for contracts with veteran owned small businesses described in section 11(a) of this chapter.

(d) For purposes of this chapter, information submitted by an applicant for certification as a veteran owned small business that contains:

(1) personal financial information; or

(2) confidential business information;

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is confidential.

(e) For purposes of this chapter, the following forms submitted by an applicant for certification as a veteran owned small business are confidential:

- (1) DD 214 (as defined in IC 10-17-15-1).
- (2) NGB-22 (as defined in section 0.5 of this chapter).
- (3) All forms submitted to verify current military or naval service status.

SECTION 4. IC 5-22-14-11, AS AMENDED BY P.L.53-2014, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) The Indiana department of administration shall adopt rules under IC 4-22-2 to do the following:

1. Increase contracting opportunities for Indiana veteran owned small businesses described in section 3.5 of this chapter with a goal to procure in each state fiscal year at least three percent (3%) of state contracts with Indiana veteran owned small businesses.
2. Develop procurement policies and procedures to accomplish the goal described in subdivision (1), including guidelines to be followed by the Indiana department of administration in conducting the department's procurement efforts.

3. Implement IC 5-22-14-3.5.

These procurement policies do not apply to a procurement of supplies and services to address immediate and serious government needs at a time of emergency, including a threat to the public health, welfare, or safety that may arise by reason of floods, epidemics, riots, acts of terrorism, major power failures, a threat proclaimed by the President of the United States or the governor, or a threat declared by the commissioner of the Indiana department of administration.

(b) The Indiana department of administration shall annually evaluate its progress in meeting the goal described in this section for the previous state fiscal year. Beginning in 2014, after June 30 and before November 1 of each year, the Indiana department of administration shall submit a report to the governor, the Indiana department of veterans' affairs, and the interim study committee on public safety and military affairs established by IC 2-5-1.3-4 and the legislative council in an electronic format under IC 5-14-6. The report must include:

- (1) the percentage goal obtained by the Indiana department of administration during the previous state fiscal year; and
- (2) a summary of why the Indiana department of administration failed to meet the goal and what actions are being taken by the Indiana department of administration to meet the goal in the
current state fiscal year.

(c) The Indiana department of administration shall post the report described in subsection (b) on the department's Internet web site not later than thirty (30) days after the report is submitted. The Indiana department of veterans' affairs shall post the report described in subsection (b) on the department's Internet web site not later than thirty (30) days after the report is submitted by the Indiana department of administration.
SENATE ENROLLED ACT No. 80

AN ACT to amend the Indiana Code concerning professions and occupations.

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

SECTION 1. IC 25-26-13-4, AS AMENDED BY P.L.182-2009(ss), SECTION 371, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2016]: Sec. 4. (a) The board may:

1. promulgate rules and regulations under IC 4-22-2 for implementing and enforcing this chapter;

2. establish requirements and tests to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications for applicants for pharmacists' licenses;

3. refuse to issue, deny, suspend, or revoke a license or permit or place on probation or fine any licensee or permittee under this chapter;

4. regulate the sale of drugs and devices in the state of Indiana;

5. impound, embargo, confiscate, or otherwise prevent from disposition any drugs, medicines, chemicals, poisons, or devices which by inspection are deemed unfit for use or would be dangerous to the health and welfare of the citizens of the state of Indiana; the board shall follow those embargo procedures found in IC 16-42-1-18 through IC 16-42-1-31, and persons may not refuse to permit or otherwise prevent members of the board or their representatives from entering such places and making such

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inspections;
(6) prescribe minimum standards with respect to physical characteristics of pharmacies, as may be necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public;
(7) subject to IC 25-1-7, investigate complaints, subpoena witnesses, schedule and conduct hearings on behalf of the public interest on any matter under the jurisdiction of the board;
(8) prescribe the time, place, method, manner, scope, and subjects of licensing examinations which shall be given at least twice annually; and
(9) perform such other duties and functions and exercise such other powers as may be necessary to implement and enforce this chapter.

(b) The board shall adopt rules under IC 4-22-2 for the following:
(1) Establishing standards for the competent practice of pharmacy.
(2) Establishing the standards for a pharmacist to counsel individuals regarding the proper use of drugs.
(3) Establishing standards and procedures before January 1, 2006, to ensure that a pharmacist:
   (A) has entered into a contract that accepts the return of expired drugs with; or
   (B) is subject to a policy that accepts the return of expired drugs of;
   a wholesaler, manufacturer, or agent of a wholesaler or manufacturer concerning the return by the pharmacist to the wholesaler, the manufacturer, or the agent of expired legend drugs or controlled drugs. In determining the standards and procedures, the board may not interfere with negotiated terms related to cost, expenses, or reimbursement charges contained in contracts between parties, but may consider what is a reasonable quantity of a drug to be purchased by a pharmacy. The standards and procedures do not apply to vaccines that prevent influenza, medicine used for the treatment of malignant hyperthermia, and other drugs determined by the board to not be subject to a return policy. An agent of a wholesaler or manufacturer must be appointed in writing and have policies, personnel, and facilities to handle properly returns of expired legend drugs and controlled substances.

(c) The board may grant or deny a temporary variance to a rule it has adopted if:

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(1) the board has adopted rules which set forth the procedures and standards governing the grant or denial of a temporary variance; and
(2) the board sets forth in writing the reasons for a grant or denial of a temporary variance.
(d) The board shall adopt rules and procedures, in consultation with the medical licensing board, concerning the electronic transmission of prescriptions. The rules adopted under this subsection must address the following:
   (1) Privacy protection for the practitioner and the practitioner's patient.
   (2) Security of the electronic transmission.
   (3) A process for approving electronic data intermediaries for the electronic transmission of prescriptions.
   (4) Use of a practitioner's United States Drug Enforcement Agency registration number.
   (5) Protection of the practitioner from identity theft or fraudulent use of the practitioner's prescribing authority.
(e) The governor may direct the board to develop:
   (1) a prescription drug program that includes the establishment of criteria to eliminate or significantly reduce prescription fraud; and
   (2) a standard format for an official tamper resistant prescription drug form for prescriptions (as defined in IC 16-42-19-7(1)). The board may adopt rules under IC 4-22-2 necessary to implement this subsection.
(f) The standard format for a prescription drug form described in subsection (e)(2) must include the following:
   (1) A counterfeit protection bar code with human readable representation of the data in the bar code.
   (2) A thermochromic mark on the front and the back of the prescription that:
      (A) is at least one-fourth (1/4) of one (1) inch in height and width; and
      (B) changes from blue to clear when exposed to heat.
(g) The board may contract with a supplier to implement and manage the prescription drug program described in subsection (e). The supplier must:
   (1) have been audited by a third party auditor using the SAS 70 audit or an equivalent audit for at least the three (3) previous years; and
   (2) be audited by a third party auditor using the SAS 70 audit or an equivalent audit throughout the duration of the contract;
in order to be considered to implement and manage the program.

(h) The board shall adopt rules under IC 4-22-2, or emergency rules in the manner provided under IC 4-22-2-37.1 that take effect on July 1, 2016, concerning:

(1) professional determinations made under IC 35-48-4-14.7(d); and
(2) the determination of a relationship on record with the pharmacy under IC 35-48-4-14.7.

(i) The board shall:
(1) review professional determinations made by a pharmacist; and
(2) take appropriate disciplinary action against a pharmacist who violates a rule adopted under subsection (h) concerning a professional determination made;
under IC 35-48-4-14.7 concerning the sale of ephedrine and pseudoephedrine.

SECTION 2. IC 34-30-2-152.3, AS AMENDED BY P.L.193-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2016]: Sec. 152.3.

(a) IC 35-48-4-14.7 IC 35-48-4-14.7(d) and IC 35-48-4-14.7(k) (Concerning a pharmacy or NPLEX retailer who discloses information concerning the sale of a product containing ephedrine or pseudoephedrine).

(b) IC 35-48-4-14.7(d)(3) (Concerning a pharmacist's professional judgment not to sell ephedrine or pseudoephedrine to an individual).

SECTION 3. IC 35-48-4-14.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2016]: Sec. 14.3. (a) The board may adopt:

(1) a rule under IC 4-22-2; or
(2) an emergency rule in the manner provided under IC 4-22-2-37.1;
to declare that a product is an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine.

(b) The board, in consultation with the state police, shall find that a product is an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine if the board determines that the product does not pose a significant risk of being used in the manufacture of methamphetamine.

SECTION 4. IC 35-48-4-14.7, AS AMENDED BY P.L.193-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14.7. (a) This section does not apply to the following:

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(1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription. **Nothing in this section prohibits a person who is denied the sale of a nonprescription product containing pseudoephedrine or ephedrine from obtaining pseudoephedrine or ephedrine pursuant to a prescription.**

(2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (g).

(3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (g).

(b) The following definitions apply throughout this section:

(1) "Constant video monitoring" means the surveillance by an automated camera that:

   (A) records at least one (1) photograph or digital image every ten (10) seconds;
   (B) retains a photograph or digital image for at least seventy-two (72) hours;
   (C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and
   (D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.

(2) "Convenience package" means a package that contains a drug having as an active ingredient not more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pharmacy or NPLEx retailer" means:

   (A) a pharmacy, as defined in IC 25-26-13-2;
   (B) a retailer containing a pharmacy, as defined in IC 25-26-13-2; or
   (C) a retailer that electronically submits the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI).

(5) "Pseudoephedrine" means pure or adulterated
pseudoephedrine.

(6) "Retailer" means a grocery store, general merchandise store, or other similar establishment. The term does not include a pharmacy or NPLEx retailer.

(7) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:
   (A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;
   (B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or
   (C) is for cash or a money order in a total amount of at least two hundred dollars ($200).

(8) "Unusual theft" means the theft or unexplained disappearance from a particular pharmacy or NPLEx retailer of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) A drug containing ephedrine or pseudoephedrine may be sold only by a pharmacy or NPLEx retailer. Except as provided in subsection (f), a retailer may not sell a drug containing ephedrine or pseudoephedrine.

(d) A pharmacy or NPLEx retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the pharmacy or NPLEx retailer complies with the following conditions:
   (1) The pharmacy or NPLEx retailer does not sell the drug to a person less than eighteen (18) years of age.
   (2) The pharmacy or NPLEx retailer does not sell drugs containing more than:
      (A) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day;
      (B) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period; or
      (C) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a three hundred sixty-five (365) day period.

(3) Except as provided in subsection (f), before the sale occurs the pharmacist or the pharmacy technician (as defined by IC 25-26-19-2) has determined that the purchaser has a
relationship on record with the pharmacy, in compliance with rules adopted by the board under IC 25-26-13-4. If it has been determined that the purchaser does not have a relationship on record with the pharmacy, the pharmacist shall make a professional determination as to whether there is a legitimate medical or pharmaceutical need for ephedrine or pseudoephedrine before selling ephedrine or pseudoephedrine to an individual. The pharmacist’s professional determination must comply with the rules adopted under IC 25-26-13-4 and may include the following:

(A) Prior medication filling history of the individual.
(B) Consulting with the individual.
(C) Other tools that provide professional reassurance to the pharmacist that a legitimate medical or pharmaceutical need for ephedrine or pseudoephedrine exists.

A pharmacist who in good faith does not sell ephedrine or pseudoephedrine to an individual under this subdivision is immune from civil liability unless the refusal to sell constitutes gross negligence or intentional, wanton, or willful misconduct.

(3) (4) The pharmacy or NPLEx retailer requires:

(A) the purchaser to produce a valid government issued photo identification card showing the date of birth of the person;
(B) the purchaser to sign a written or electronic log attesting to the validity of the information; and
(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log.

Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A pharmacy or NPLEx retailer may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A pharmacy or NPLEx retailer that in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

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The pharmacy or NPLex retailer maintains a record of information for each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:

(A) the name and address of each purchaser;
(B) the type of identification presented;
(C) the governmental entity that issued the identification;
(D) the identification number; and
(E) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.

Beginning January 1, 2012, a pharmacy or NPLex retailer shall, except as provided in subdivision (6), before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEx system is available to pharmacies or NPLEx retailers in the state without a charge for accessing the system. The pharmacy or NPLEx retailer may not complete the sale if the system generates a stop sale alert.

If a pharmacy or NPLEx retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or NPLEx retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the pharmacy or NPLEx retailer is able to comply with the electronic sales tracking requirement.

The pharmacy or NPLEx retailer stores the drug behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.

A person may not purchase drugs containing more than:

1. three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day;
2. seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period; or
3. sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, in a three hundred sixty-five (365) day period.

These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall

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weight of the products.

(f) This subsection only applies to convenience packages. A retailer may sell convenience packages under this section without complying with the conditions listed in subsection (d):

(1) after June 30, 2013; and
(2) before January 1, 2014.

A retailer may not sell drugs containing more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction. A retailer who sells convenience packages must secure the convenience packages behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee. A retailer may not sell a drug containing ephedrine or pseudoephedrine after December 31, 2013.

(f) If a purchaser does not have a relationship on record with the pharmacy, as determined by rules adopted by the board under IC 25-26-13-4, or the pharmacist has made a professional determination that there is not a legitimate medical or pharmaceutical need for ephedrine or pseudoephedrine under subsection (d), the purchaser may, at the pharmacist's discretion, purchase only the following:

(1) A product that has been determined under section 14.3 of this chapter to be an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine.
(2) A product that contains not more than:
   (A) a total of seven hundred twenty (720) milligrams of ephedrine or pseudoephedrine per package; and
   (B) thirty (30) milligrams of ephedrine or pseudoephedrine per tablet.

The pharmacist may not sell more than one (1) package of ephedrine or pseudoephedrine to a purchaser under this subdivision per day.

However, if the pharmacist believes that the ephedrine or pseudoephedrine purchase will be used to manufacture methamphetamine, the pharmacist may refuse to sell ephedrine or pseudoephedrine to the purchaser.

(g) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(h) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the pharmacy or NPLEx retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular
pharmacy or NPLEx retailer, the pharmacy or NPLEx retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular pharmacy or NPLEx retailer behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(i) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(j) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(k) A pharmacy or NPLEx retailer that uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness, or deliberate or wanton misconduct. A pharmacy or NPLEx retailer is immune from liability to a third party unless the pharmacy or NPLEx retailer has violated a provision of this section and the third party brings an action based on the pharmacy's or NPLEx retailer's violation of this section.

(l) The following requirements apply to the NPLEx:

(1) Information contained in the NPLEx may be shared only with law enforcement officials.

(2) A law enforcement official may access Indiana transaction information maintained in the NPLEx for investigative purposes.

(3) NADDI may not modify sales transaction data that is shared with law enforcement officials.

(4) At least one (1) time per week, NADDI shall forward Indiana data contained in the NPLEx, including data concerning a transaction that could not be completed due to the issuance of a stop sale alert, to the state police department.

SECTION 5. IC 35-48-7-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.7. As used in this chapter, "controlled substance" has the meaning set forth in IC 35-48-1-9 and includes pure or adulterated ephedrine or pseudoephedrine.

SECTION 6. An emergency is declared for this act.
SENATE ENROLLED ACT No. 161

AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

SECTION 1. IC 25-26-13-4, AS AMENDED BY SEA 80-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 2016]: Sec. 4. (a) The board may:
(1) adopt rules under IC 4-22-2 for implementing and enforcing this chapter;
(2) establish requirements and tests to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications for applicants for pharmacists' licenses;
(3) refuse to issue, deny, suspend, or revoke a license or permit or place on probation or fine any licensee or permittee under this chapter;
(4) regulate the sale of drugs and devices in the state of Indiana;
(5) impound, embargo, confiscate, or otherwise prevent from disposition any drugs, medicines, chemicals, poisons, or devices which by inspection are deemed unfit for use or would be dangerous to the health and welfare of the citizens of the state of Indiana; the board shall follow those embargo procedures found in IC 16-42-1-18 through IC 16-42-1-31, and persons may not refuse to permit or otherwise prevent members of the board or their representatives from entering such places and making such
inspections;
(6) prescribe minimum standards with respect to physical characteristics of pharmacies, as may be necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public;
(7) subject to IC 25-1-7, investigate complaints, subpoena witnesses, schedule and conduct hearings on behalf of the public interest on any matter under the jurisdiction of the board;
(8) prescribe the time, place, method, manner, scope, and subjects of licensing examinations which shall be given at least twice annually; and
(9) perform such other duties and functions and exercise such other powers as may be necessary to implement and enforce this chapter.

(b) The board shall adopt rules under IC 4-22-2 for the following:
(1) Establishing standards for the competent practice of pharmacy.
(2) Establishing the standards for a pharmacist to counsel individuals regarding the proper use of drugs.
(3) Establishing standards and procedures before January 1, 2006, to ensure that a pharmacist:
   (A) has entered into a contract that accepts the return of expired drugs with; or
   (B) is subject to a policy that accepts the return of expired drugs of;
a wholesaler, manufacturer, or agent of a wholesaler or manufacturer concerning the return by the pharmacist to the wholesaler, the manufacturer, or the agent of expired legend drugs or controlled drugs. In determining the standards and procedures, the board may not interfere with negotiated terms related to cost, expenses, or reimbursement charges contained in contracts between parties, but may consider what is a reasonable quantity of a drug to be purchased by a pharmacy. The standards and procedures do not apply to vaccines that prevent influenza, medicine used for the treatment of malignant hyperthermia, and other drugs determined by the board to not be subject to a return policy. An agent of a wholesaler or manufacturer must be appointed in writing and have policies, personnel, and facilities to handle properly returns of expired legend drugs and controlled substances.

(c) The board may grant or deny a temporary variance to a rule it has adopted if:

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(1) the board has adopted rules which set forth the procedures and standards governing the grant or denial of a temporary variance; and
(2) the board sets forth in writing the reasons for a grant or denial of a temporary variance.
(d) The board shall adopt rules and procedures, in consultation with the medical licensing board, concerning the electronic transmission of prescriptions. The rules adopted under this subsection must address the following:
(1) Privacy protection for the practitioner and the practitioner's patient.
(2) Security of the electronic transmission.
(3) A process for approving electronic data intermediaries for the electronic transmission of prescriptions.
(4) Use of a practitioner's United States Drug Enforcement Agency registration number.
(5) Protection of the practitioner from identity theft or fraudulent use of the practitioner's prescribing authority.
(e) The governor may direct the board to develop:
(1) a prescription drug program that includes the establishment of criteria to eliminate or significantly reduce prescription fraud; and
(2) a standard format for an official tamper resistant prescription drug form for prescriptions (as defined in IC 16-42-19-7(1)).
The board may adopt rules under IC 4-22-2 necessary to implement this subsection.
(f) The standard format for a prescription drug form described in subsection (e)(2) must include the following:
(1) A counterfeit protection bar code with human readable representation of the data in the bar code.
(2) A thermochromic mark on the front and the back of the prescription that:
   (A) is at least one-fourth (1/4) of one (1) inch in height and width; and
   (B) changes from blue to clear when exposed to heat.
(g) The board may contract with a supplier to implement and manage the prescription drug program described in subsection (e). The supplier must:
(1) have been audited by a third party auditor using the SAS 70 audit or an equivalent audit for at least the three (3) previous years; and
(2) be audited by a third party auditor using the SAS 70 audit or an equivalent audit throughout the duration of the contract;
in order to be considered to implement and manage the program.

(h) The board shall adopt rules under IC 4-22-2, or emergency rules in the manner provided under IC 4-22-2-37.1 that take effect on July 1, 2016, concerning:

   (1) professional determinations made under IC 35-48-4-14.7(d); and
   (2) the determination of a relationship on record with the pharmacy under IC 35-48-4-14.7.

(i) The board shall may:

   (1) review professional determinations made by a pharmacist; and
   (2) take appropriate disciplinary action against a pharmacist who violates a rule adopted under subsection (h) concerning a professional determination made;

under IC 35-48-4-14.7 concerning the sale of ephedrine and pseudoephedrine.

SECTION 2. IC 33-23-1-9.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.7. "NPLEx" refers to the National Precursor Log Exchange.

SECTION 3. IC 33-24-6-3, AS AMENDED BY P.L.284-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The division of state court administration shall do the following:

   (1) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.

   (2) Collect and compile statistical data and other information on the judicial work of the courts in Indiana. All justices of the supreme court, judges of the court of appeals, judges of all trial courts, and any city or town courts, whether having general or special jurisdiction, court clerks, court reporters, and other officers and employees of the courts shall, upon notice by the executive director and in compliance with procedures prescribed by the executive director, furnish the executive director the information as is requested concerning the nature and volume of judicial business. The information must include the following:

      (A) The volume, condition, and type of business conducted by the courts.
      (B) The methods of procedure in the courts.
      (C) The work accomplished by the courts.
      (D) The receipt and expenditure of public money by and for
the operation of the courts.

(E) The methods of disposition or termination of cases.

(3) Prepare and publish reports, not less than one (1) or more than two (2) times per year, on the nature and volume of judicial work performed by the courts as determined by the information required in subdivision (2).

(4) Serve the judicial nominating commission and the judicial qualifications commission in the performance by the commissions of their statutory and constitutional functions.

(5) Administer the civil legal aid fund as required by IC 33-24-12.

(6) Administer the judicial technology and automation project fund established by section 12 of this chapter.

(7) By December 31, 2013, develop and implement a standard protocol for sending and receiving court data:

(A) between the protective order registry, established by IC 5-2-9-5.5, and county court case management systems;

(B) at the option of the county prosecuting attorney, for:
   (i) a prosecuting attorney's case management system;
   (ii) a county court case management system; and
   (iii) a county court case management system developed and operated by the division of state court administration;

   to interface with the electronic traffic tickets, as defined by IC 9-30-3-2.5; and

(C) between county court case management systems and the case management system developed and operated by the division of state court administration.

The standard protocol developed and implemented under this subdivision shall permit private sector vendors, including vendors providing service to a local system and vendors accessing the system for information, to send and receive court information on an equitable basis and at an equitable cost.

(8) Establish and administer an electronic system for receiving information that relates to certain individuals who may be prohibited from possessing a firearm and transmitting this information to the Federal Bureau of Investigation for inclusion in the NICS.

(9) Establish and administer an electronic system for receiving felony conviction information for each felony described in IC 35-48-4-14.5(h)(1) from courts. The division shall notify NPLEX of each felony described in IC 35-48-4-14.5(h)(1) entered after June 30, 2012, and do the following:
(A) Provide NPLEx with the following information:
   (i) The convicted individual's full name.
   (ii) The convicted individual's date of birth.
   (iii) The convicted individual's driver's license number,
        state personal identification number, or other unique
        number, if available.
   (iv) The date the individual was convicted of the felony.

   Upon receipt of the information from the division, a stop
   sale alert must be generated through NPLEx for each
   individual reported under this clause.

(B) Notify NPLEx if the felony of an individual reported
under clause (A) has been:
   (i) set aside;
   (ii) reversed;
   (iii) expunged; or
   (iv) vacated.

   Upon receipt of information under this clause, NPLEx
shall remove the stop sale alert issued under clause (A) for
the individual.

(9) (10) Staff the judicial technology oversight committee
established by IC 33-23-17-2.

   (b) All forms to be used in gathering data must be approved by the
   supreme court and shall be distributed to all judges and clerks before
   the start of each period for which reports are required.
   (c) The division may adopt rules to implement this section.

SECTION 4. IC 34-30-2-152.3, AS AMENDED BY P.L.193-2013,
SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2016]: Sec. 152.3. (a) IC 35-48-4-14.7 IC 35-48-4-14.7(d)
and IC 35-48-4-14.7(k) (Concerning a pharmacy or NPLEx retailer
who that discloses information concerning the sale of a product
containing ephedrine or pseudoephedrine).

   (b) IC 35-48-4-14.7(d)(3) (Concerning a pharmacist's
   professional judgment not to sell ephedrine or pseudoephedrine to
   an individual).

SECTION 5. IC 35-48-4-14.3, AS ADDED BY SEA 80-2016,
SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JUNE 1, 2016]: Sec. 14.3. (a) The board may shall adopt:
   (1) a rule under IC 4-22-2-2; or
   (2) an emergency rule in the manner provided under
       IC 4-22-2-37.1;

to declare that a product is an extraction resistant or a conversion
resistant form of ephedrine or pseudoephedrine.
(b) The board, in consultation with the state police, shall find that a product is an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine if the board determines that the product does not pose a significant risk of being used in the manufacture of methamphetamine. **In making its determination under this subsection, the board may receive information from the federal Drug Enforcement Administration (DEA) as to whether a product is extraction resistant or conversion resistant.**

SECTION 6. IC 35-48-4-14.7, AS AMENDED BY SEA 80-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14.7. (a) This section does not apply to the following:

1. Ephedrine or pseudoephedrine dispensed pursuant to a prescription. Nothing in this section prohibits a person who is denied the sale of a nonprescription product containing pseudoephedrine or ephedrine from obtaining pseudoephedrine or ephedrine pursuant to a prescription.
2. The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (g).
3. The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (g).

(b) The following definitions apply throughout this section:
1. "Constant video monitoring" means the surveillance by an automated camera that:
   A. records at least one (1) photograph or digital image every ten (10) seconds;
   B. retains a photograph or digital image for at least seventy-two (72) hours;
   C. has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and
   D. stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.
2. "Convenience package" means a package that contains a drug
having as an active ingredient not more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both.

(3) "Ephedrine" means pure or adulterated ephedrine.

(4) "Pharmacy or NPLEx retailer" means:
   (A) a pharmacy, as defined in IC 25-26-13-2;
   (B) a retailer containing a pharmacy, as defined in IC 25-26-13-2; or
   (C) a retailer that electronically submits the required information to the National Precursor Log Exchange (NPLEx), administered by the National Association of Drug Diversion Investigators (NADDI);

(5) "Pseudoephedrine" means pure or adulterated pseudoephedrine.

(6) "Retailer" means a grocery store, general merchandise store, or other similar establishment. The term does not include a pharmacy or NPLEx retailer.

(7) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:
   (A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;
   (B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or
   (C) is for cash or a money order in a total amount of at least two hundred dollars ($200).

(8) "Unusual theft" means the theft or unexplained disappearance from a particular pharmacy or NPLEx retailer of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) A drug containing ephedrine or pseudoephedrine may be sold only by a pharmacy or NPLEx retailer.

(d) A pharmacy or NPLEx retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the pharmacy or NPLEx retailer complies with the following conditions:
   (1) The pharmacy or NPLEx retailer does not sell the drug to a person less than eighteen (18) years of age.
   (2) The pharmacy or NPLEx retailer does not sell drugs containing more than:
      (A) three and six-tenths (3.6) grams of ephedrine or
pseudoephedrine, or both, to one (1) individual on one (1) day;
(B) seven and two-tenths (7.2) grams of ephedrine or
pseudoephedrine, or both, to one (1) individual in a thirty (30)
day period; or
(C) sixty-one and two-tenths (61.2) grams of ephedrine or
pseudoephedrine, or both, to one (1) individual in a three
hundred sixty-five (365) day period.
(3) Except as provided in subsection (f), before the sale occurs the
pharmacist or the pharmacy technician (as defined by
IC 25-26-19-2) has determined that the purchaser has a
relationship on record with the pharmacy, in compliance with
rules adopted by the board under IC 25-26-13-4. If it has been
determined that the purchaser does not have a relationship on
record with the pharmacy, the pharmacist shall make a
professional determination as to whether there is a legitimate
medical or pharmaceutical need for ephedrine or pseudoephedrine
before selling ephedrine or pseudoephedrine to an individual. The
pharmacist's professional determination must comply with the
rules adopted under IC 25-26-13-4 and may include the
following:
(A) Prior medication filling history of the individual.
(B) Consulting with the individual.
(C) Other tools that provide professional reassurance to the
pharmacist that a legitimate medical or pharmaceutical need
for ephedrine or pseudoephedrine exists.
A pharmacist who in good faith does not sell ephedrine or
pseudoephedrine to an individual under this subdivision is
immune from civil liability unless the refusal to sell constitutes
gross negligence or intentional, wanton, or willful misconduct.
(4) The pharmacy or NPLEX retailer requires:
(A) the purchaser to produce a valid government issued photo
identification card showing the date of birth of the person;
(B) the purchaser to sign a written or electronic log attesting
to the validity of the information; and
(C) the clerk who is conducting the transaction to initial or
electronically record the clerk's identification on the log.
Records from the completion of a log must be retained for at least
two (2) years. A law enforcement officer has the right to inspect
and copy a log or the records from the completion of a log in
accordance with state and federal law. A pharmacy or NPLEX
retailer may not sell or release a log or the records from the
completion of a log for a commercial purpose. The Indiana
criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A pharmacy or NPLEx retailer that in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(5) The pharmacy or NPLEx retailer maintains a record of information for each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:
   (A) the name and address of each purchaser;
   (B) the type of identification presented;
   (C) the governmental entity that issued the identification;
   (D) the identification number; and
   (E) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.

(6) A pharmacy or NPLEx retailer shall, except as provided in subdivision (7), before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEx), administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEx system is available to pharmacies or NPLEx retailers in the state without a charge for accessing the system. The pharmacy or NPLEx retailer may not complete the sale if the system generates a stop sale alert, including a stop sale alert for a person convicted of a felony reported under IC 33-24-6-3.

(7) If a pharmacy or NPLEx retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or NPLEx retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the pharmacy or NPLEx retailer is able to comply with the electronic sales tracking requirement.

(8) The pharmacy or NPLEx retailer stores the drug behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.

(e) A person may not purchase drugs containing more than:
(1) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day;
(2) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period; or
(3) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, in a three hundred sixty-five (365) day period.

These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.

(f) If a purchaser does not have a relationship on record with the pharmacy, as determined by rules adopted by the board under IC 25-26-13-4, or the pharmacist has made a professional determination that there is not a legitimate medical or pharmaceutical need for ephedrine or pseudoephedrine under subsection (d), the purchaser may, at the pharmacist's discretion, purchase only the following:

(1) A product that has been determined under section 14.3 of this chapter to be an extraction resistant or a conversion resistant form of ephedrine or pseudoephedrine.
(2) A product that contains not more than:
   (A) a total of seven hundred twenty (720) milligrams of ephedrine or pseudoephedrine per package; and
   (B) thirty (30) milligrams of ephedrine or pseudoephedrine per tablet.

The pharmacist may not sell more than one (1) package of ephedrine or pseudoephedrine to a purchaser under this subdivision per day.

However, if the pharmacist believes that the ephedrine or pseudoephedrine purchase will be used to manufacture methamphetamine, the pharmacist may refuse to sell ephedrine or pseudoephedrine to the purchaser.

(g) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(h) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the pharmacy or NPLEx retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular pharmacy or NPLEx retailer, the pharmacy or NPLEx retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing ephedrine or pseudoephedrine at that particular pharmacy or NPLEx retailer behind a counter in an area.
inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(i) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(j) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(k) A pharmacy or NPLEx retailer that uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness or deliberate or wanton misconduct. A pharmacy or NPLEx retailer is immune from liability to a third party unless the pharmacy or NPLEx retailer has violated a provision of this section and the third party brings an action based on the pharmacy's or NPLEx retailer's violation of this section.

(l) The following requirements apply to the NPLEx:

(1) Information contained in the NPLEx may be shared only with law enforcement officials.

(2) A law enforcement official may access Indiana transaction information maintained in the NPLEx for investigative purposes.

(3) NADDI may not modify sales transaction data that is shared with law enforcement officials.

(4) At least once per week, NADDI shall forward data concerning a transaction that could not be completed due to the issuance of a stop sale alert, for the previous calendar day shall be forwarded to the state police department.

(m) A person or corporate entity may not mandate a protocol or procedure that interferes with the pharmacist's ability to exercise the pharmacist's independent professional judgment under this section, including whether to deny the sale of ephedrine or pseudoephedrine under subsection (f).

SECTION 7. IC 35-48-7-2.7, AS ADDED BY SEA 80-2016, SECTION 5, IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 2.7.

As used in this chapter, "controlled substance" has the meaning set forth in IC 35-48-1-9 and includes pure or adulterated ephedrine or pseudoephedrine.

SECTION 8. IC 35-48-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3.5. As used in this chapter, "ephedrine" includes
only ephedrine that is dispensed pursuant to a prescription or drug order.

SECTION 9. IC 35-48-7-5.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5.9. As used in this chapter, "pseudoephedrine" includes only pseudoephedrine that is dispensed pursuant to a prescription or drug order.

SECTION 10. IC 35-48-7-8.1, AS AMENDED BY P.L.89-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8.1. (a) The board shall provide for an ephedrine, pseudoephedrine, and controlled substance prescription monitoring program that includes the following components:

(1) Each time ephedrine, pseudoephedrine, or a controlled substance designated by the board under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the dispenser shall transmit to the INSPECT program the following information:

(A) The ephedrine, pseudoephedrine, or controlled substance recipient's name.
(B) The ephedrine, pseudoephedrine, or controlled substance recipient's or the recipient representative's identification number or the identification number or phrase designated by the INSPECT program.
(C) The ephedrine, pseudoephedrine, or controlled substance recipient's date of birth.
(D) The national drug code number of the ephedrine, pseudoephedrine, or controlled substance dispensed.
(E) The date the ephedrine, pseudoephedrine, or controlled substance is dispensed.
(F) The quantity of the ephedrine, pseudoephedrine, or controlled substance dispensed.
(G) The number of days of supply dispensed.
(H) The dispenser's United States Drug Enforcement Agency registration number.
(I) The prescriber's United States Drug Enforcement Agency registration number.
(J) An indication as to whether the prescription was transmitted to the pharmacist orally or in writing.
(K) Other data required by the board.

(2) The information required to be transmitted under this section must be transmitted as follows:

(A) Before July 1, 2015, not more than seven (7) days after the date on which ephedrine, pseudoephedrine, or a controlled
substance is dispensed.
(B) Beginning July 1, 2015, and until December 31, 2015, not
more than three (3) days after the date on which ephedrine,
pseudoephedrine, or a controlled substance is dispensed.
(C) Beginning January 1, 2016, and thereafter, not more than
twenty-four (24) hours after the date on which ephedrine,
pseudoephedrine, or a controlled substance is dispensed.
However, if the dispenser's pharmacy is closed the day
following the dispensing, the information must be transmitted
by the end of the next business day.
(3) A dispenser shall transmit the information required under this
section by:
   (A) uploading to the INSPECT web site;
   (B) a computer diskette; or
   (C) a CD-ROM disk;
that meets specifications prescribed by the board.
(4) The board may require that prescriptions for ephedrine,
pseudoephedrine, or controlled substances be written on a one
(1) part form that cannot be duplicated. However, the board may
not apply such a requirement to prescriptions filled at a pharmacy
with a Category II permit (as described in IC 25-26-13-17) and
operated by a hospital licensed under IC 16-21, or prescriptions
ordered for and dispensed to bona fide enrolled patients in
facilities licensed under IC 16-28. The board may not require
multiple copy prescription forms for any prescriptions written.
The board may not require different prescription forms for any
individual drug or group of drugs. Prescription forms required
under this subdivision must be approved by the Indiana board of
pharmacy established by IC 25-26-13-3.
(5) The costs of the program.
(b) The board shall consider the recommendations of the committee
concerning the INSPECT program.
(c) This subsection applies only to a retail pharmacy. A pharmacist,
pharmacy technician, or person authorized by a pharmacist to dispense
ephedrine, pseudoephedrine, or a controlled substance may not
dispense ephedrine, pseudoephedrine, or a controlled substance to a
person who is not personally known to the pharmacist, pharmacy
technician, or person authorized by a pharmacist to dispense a
controlled substance unless the person taking possession of the
ephedrine, pseudoephedrine, or controlled substance provides
documented proof of the person's identification to the pharmacist,
pharmacy technician, or person authorized by a pharmacist to dispense
ephedrine, pseudoephedrine, or a controlled substance.

SECTION 11. IC 35-48-7-10.1, AS AMENDED BY P.L.89-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 10.1. (a) The INSPECT program must do the following:

1. Create a data base for information required to be transmitted under section 8.1 of this chapter in the form required under rules adopted by the board, including search capability for the following:

   A. An ephedrine, pseudoephedrine, or a controlled substance recipient's name.

   B. An ephedrine, pseudoephedrine, or a controlled substance recipient's or recipient representative's identification number.

   C. An ephedrine, pseudoephedrine, or a controlled substance recipient's date of birth.

   D. The national drug code number of ephedrine, pseudoephedrine, or a controlled substance dispensed.

   E. The dates ephedrine, pseudoephedrine, or a controlled substance is are dispensed.

   F. The quantities of ephedrine, pseudoephedrine, or a controlled substance dispensed.

   G. The number of days of supply dispensed.

   H. A dispenser's United States Drug Enforcement Agency registration number.

   I. A prescriber's United States Drug Enforcement Agency registration number.

   J. Whether a prescription was transmitted to the pharmacist orally or in writing.

   K. An ephedrine, pseudoephedrine, or a controlled substance recipient's method of payment for the ephedrine, pseudoephedrine, or controlled substance dispensed.

2. Provide the board with continuing twenty-four (24) hour a day online access to the data base.

3. Secure the information collected and the data base maintained against access by unauthorized persons.

(b) The board may not execute a contract with a vendor designated by the board to perform any function associated with the administration of the INSPECT program, unless the contract has been approved by the committee.

(c) The INSPECT program may gather prescription data from the Medicaid retrospective drug utilization review (DUR) program.
established under IC 12-15-35.  
(d) The board may accept and designate grants, public and private financial assistance, and licensure fees to provide funding for the INSPECT program.

SECTION 12. IC 35-48-7-11.1, AS AMENDED BY P.L.201-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11.1. (a) Information received by the INSPECT program under section 8.1 of this chapter is confidential.
(b) The board shall carry out a program to protect the confidentiality of the information described in subsection (a). The board may disclose the information to another person only under subsection (c), (d), or (g).
(c) The board may disclose confidential information described in subsection (a) to any person who is authorized to engage in receiving, processing, or storing the information.
(d) Except as provided in subsections (e) and (f), the board may release confidential information described in subsection (a) to the following persons:
(1) A member of the board or another governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves ephedrine, pseudoephedrine, or a controlled substance.
(2) An investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general, who is engaged in:
   (A) an investigation;
   (B) an adjudication; or
   (C) a prosecution;
of a violation under any state or federal law that involves ephedrine, pseudoephedrine, or a controlled substance.
(3) A law enforcement officer who is an employee of:
   (A) a local, state, or federal law enforcement agency; or
   (B) an entity that regulates ephedrine, pseudoephedrine, or controlled substances or enforces ephedrine, pseudoephedrine, or controlled substances rules or laws in another state;
that is certified to receive ephedrine, pseudoephedrine, or controlled substance prescription drug information from the INSPECT program.
(4) A practitioner or practitioner's agent certified to receive information from the INSPECT program.

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(5) An ephedrine, pseudoephedrine, or a controlled substance monitoring program in another state with which Indiana has established an interoperability agreement.

(6) The state toxicologist.

(7) A certified representative of the Medicaid retrospective and prospective drug utilization review program.

(8) A substance abuse assistance program for a licensed health care provider who:
   (A) has prescriptive authority under IC 25; and
   (B) is participating in the assistance program.

(9) An individual who holds a valid temporary medical permit issued under IC 25-22.5-5-4 or a temporary fellowship permit under IC 25-22.5-5-4.6.

(e) Information provided to an individual under:
   (1) subsection (d)(3) is limited to information:
       (A) concerning an individual or proceeding involving the unlawful diversion or misuse of a schedule II, III, IV, or V controlled substance; and
       (B) that will assist in an investigation or proceeding; and
   (2) subsection (d)(4) may be released only for the purpose of:
       (A) providing medical or pharmaceutical treatment; or
       (B) evaluating the need for providing medical or pharmaceutical treatment to a patient.

(f) Before the board releases confidential information under subsection (d), the applicant must be approved by the INSPECT program in a manner prescribed by the board.

(g) The board may release to:
   (1) a member of the board or another governing body that licenses practitioners;
   (2) an investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general; or
   (3) a law enforcement officer who is:
       (A) authorized by the state police department to receive ephedrine, pseudoephedrine, or controlled substance prescription drug information; and
       (B) approved by the board to receive the type of information released;

confidential information generated from computer records that identifies practitioners who are prescribing or dispensing large quantities of a controlled substance.

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(h) The information described in subsection (g) may not be released until it has been reviewed by:

(1) a member of the board who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data; or
(2) the board's designee;

and until that member or the designee has certified that further investigation is warranted. However, failure to comply with this subsection does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (i).

(i) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (g) may disclose the information to a law enforcement officer or an attorney for the office of the attorney general for use as evidence in the following:

(1) A proceeding under IC 16-42-20.
(2) A proceeding under any state or federal law that involves ephedrine, pseudoephedrine, or a controlled substance.
(3) A criminal proceeding or a proceeding in juvenile court that involves ephedrine, pseudoephedrine, or a controlled substance.

(j) The board may compile statistical reports from the information described in subsection (a). The reports must not include information that identifies any practitioner, ultimate user, or other person administering ephedrine, pseudoephedrine, or a controlled substance. Statistical reports compiled under this subsection are public records.

(k) Except as provided in IC 25-22.5-13, this section may not be construed to require a practitioner to obtain information about a patient from the data base.

(l) A practitioner is immune from civil liability for an injury, death, or loss to a person solely due to a practitioner seeking or not seeking information from the INSPECT program. The civil immunity described in this subsection does not extend to a practitioner if the practitioner receives information directly from the INSPECT program and then negligently misuses this information. This subsection does not apply to an act or omission that is a result of gross negligence or intentional misconduct.

(m) The board may review the records of the INSPECT program. If the board determines that a violation of the law may have occurred, the board shall notify the appropriate law enforcement agency or the relevant government body responsible for the licensure, regulation, or discipline of practitioners authorized by law to prescribe controlled substances.

(n) A practitioner who in good faith discloses information based on
a report from the INSPECT program to a law enforcement agency is
immune from criminal or civil liability. A practitioner that discloses
information to a law enforcement agency under this subsection is
presumed to have acted in good faith.

SECTION 13. IC 35-48-7-12.1, AS AMENDED BY P.L.89-2015,
SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2016]: Sec. 12.1. (a) The board shall adopt rules under
IC 4-22-2 to implement this chapter, including the following:

(1) Information collection and retrieval procedures for the
INSPECT program, including the controlled substances to be
included in the program required under section 8.1 of this chapter.

(2) Design for the creation of the data base required under section
10.1 of this chapter.

(3) Requirements for the development and installation of online
electronic access by the board to information collected by the
INSPECT program.

(4) Identification of emergency situations or other circumstances
in which a practitioner may prescribe, dispense, and administer a
prescription drug specified in section 8.1 of this chapter without
a written prescription or on a form other than a form specified in
section 8.1(a)(4) of this chapter.

(5) Requirements for a practitioner providing treatment for a
patient at an opioid treatment program operating under
IC 12-23-18 to check the INSPECT program:

A) before initially prescribing ephedrine, pseudoephedrine,
or a controlled substance to a patient; and

B) periodically during the course of treatment that uses
ephedrine, pseudoephedrine, or a controlled substance.

(b) The board may:

(1) set standards for education courses for individuals authorized
to use the INSPECT program;

(2) identify treatment programs for individuals addicted to
controlled substances monitored by the INSPECT program; and

(3) work with impaired practitioner associations to provide
intervention and treatment.

(c) The executive director of the Indiana professional licensing
agency may hire a person to serve as the director of the INSPECT
program, with the approval of the chairperson of the board.

SECTION 14. [EFFECTIVE UPON PASSAGE] (a) The general
assembly recognizes that SEA 80-2016 adds IC35-48-7-2.7 and that
SECTION 5 of this act repeals IC 35-48-7-2.7. The general
assembly intends to repeal IC 35-48-7-2.7 effective July 1, 2016.

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(b) This SECTION expires January 1, 2018.
SECTION 15. An emergency is declared for this act.
No. 188. An act relating to the regulation of toxic substances.

(S.239)

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) There are more than 84,000 chemicals used commercially in the United States, and each year approximately 1,000 chemicals are added to the list of registered chemicals.

(2) More than 90 percent of the chemicals in commercial use in the United States have never been fully tested for potential impacts on human health or the environment.

(3) In 1976, the federal government passed the Toxic Substances Control Act (TSCA) in an attempt to improve the regulation of chemicals in the United States. However, TSCA grandfathered approximately 62,000 chemicals from regulation under the Act. Consequently, the U.S. Environmental Protection Agency (EPA) is not required to assess the risk of these chemicals. Since TSCA became law, EPA only has required testing for approximately 200 chemicals, and has banned or restricted the use of five of those chemicals. No chemicals have been banned in over 20 years.

(4) Biomonitoring studies reveal that toxic chemicals are in the bodies of people, including chemicals linked to cancer, brain and nervous damage, birth defects, developmental delays, and reproductive harm. Even newborn babies have chemical body burdens, proving that they are being polluted while in the womb.
Vermont has regulated the use of individual chemicals of concern, including lead, mercury, bisphenol A, phthalates, decabromodiphenyl ether, tris(1,3-dichloro-2-propyl) phosphate, and tris(2-chloroethyl) phosphate, but reviewing chemicals individually, one at a time, is inefficient and inadequate for addressing the issues posed by chemicals of concern.

Other states and countries, including Maine, Washington, California, and the European Union, are already taking a more comprehensive approach to chemical regulation in consumer products, and chemical regulation in Vermont should harmonize with these efforts.

The State has experience monitoring and regulating chemical use through the toxic use and hazardous waste reduction programs.

In order to ensure that the regulation of toxic chemicals is robust and protective, parties affected by the regulation of chemical use shall have ample opportunity to comment on proposed regulation so that the legal and financial risks of regulation are minimized.

Sec. 2. 18 V.S.A. chapter 38A is added to read:

CHAPTER 38A. CHEMICALS OF HIGH CONCERN TO CHILDREN

§ 1771. POLICY

It is the policy of the State of Vermont:

(1) to protect public health and the environment by reducing exposure of its citizens and vulnerable populations, such as children, to toxic chemicals, particularly when safer alternatives exist; and
(2) that the State attempt, when possible, to regulate toxic chemicals in a manner that is consistent with regulation of toxic chemicals in other states.

§ 1772. DEFINITIONS

As used in this chapter:

(1) “Aircraft” shall have the same meaning as in 5 V.S.A. § 202.

(2) “Chemical” means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation, or metabolism. “Chemical” shall not mean crystalline silica in any form, as derived from ordinary sand or as present as a naturally occurring component of any other mineral raw material, including granite, gravel, limestone, marble, slate, soapstone, and talc.

(3) “Chemical of high concern to children” means a chemical listed under section 1773 or designated by the Department as a chemical of high concern by rule under section 1776 of this title.

(4) “Child” or “children” means an individual or individuals under 12 years of age.

(5) “Children’s cosmetics” means cosmetics that are made for, marketed for use by, or marketed to children. “Children’s cosmetics” includes cosmetics that meet any of the following conditions:

(A) are represented in its packaging, display, or advertising as appropriate for use by children;
(B) are sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(C) are sold in any of the following:

(i) a retail store, catalogue, or online website, in which a person exclusively offers for sale consumer products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) a discrete portion of a retail store, catalogue, or online website, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(6) “Children’s jewelry” means jewelry that is made for, marketed for use by, or marketed to children and shall include jewelry that meets any of the following conditions:

(A) is represented in its packaging, display, or advertising as appropriate for use by children;

(B) is sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(C) is sized for children and not intended for use by adults; or

(D) is sold in any of the following:

(i) a vending machine;
(ii) a retail store, catalogue, or online website, in which a person
exclusively offers for sale products that are packaged, displayed, or advertised
as appropriate for use by children; or

(iii) a discrete portion of a retail store, catalogue, or online
website, in which a person offers for sale products that are packaged,
displayed, or advertised as appropriate for use by children.

(7)(A) “Children’s product” means any consumer product, marketed for
use by, marketed to, sold, offered for sale, or distributed to children in the State
of Vermont, including:

(i) toys;

(ii) children’s cosmetics;

(iii) children’s jewelry;

(iv) a product designed or intended by the manufacturer to help a
child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a
child, or to be worn as clothing by children; or

(v) child car seats.

(B) “Children’s product” shall not mean or include the following:

(i) batteries;

(ii) snow sporting equipment, including skis, poles, boots, snow
boards, sleds, and bindings;
(iii) inaccessible components of a consumer product that during reasonably foreseeable use and abuse of the consumer product would not come into direct contact with a child’s skin or mouth; and

(iv) used consumer products that are sold in second-hand product markets.

(8) “Consumer product” means any product that is regularly used or purchased to be used for personal, family, or household purposes. “Consumer product” shall not mean:

(A) a product primarily used or purchased for industrial or business use that does not enter the consumer product market or is not otherwise sold at retail;

(B) a food or beverage or an additive to a food or beverage;

(C) a tobacco product;

(D) a pesticide regulated by the U.S. Environmental Protection Agency;

(E) a drug, or biologic regulated by the U.S. Food and Drug Administration (FDA), or the packaging of a drug, or biologic that is regulated by the FDA, including over the counter drugs, prescription drugs, dietary supplements, medical devices, or products that are both a cosmetic and a drug regulated by the FDA;

(F) ammunition or components thereof, firearms, air rifles, hunting or fishing equipment or components thereof;
(G) an aircraft, motor vehicle, vessel;

(H) consumer electronic products, including personal computers, audio and video equipment, calculators, wireless telephones, game consoles, and hand-held devices incorporating a video screen used to access interactive software intended for leisure and entertainment and their associated peripherals;

(I) interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs; or

(J) the packaging in which a product is sold, offered for sale, or distributed.

(9) “Contaminant” means a trace amount of a chemical or chemicals that is incidental to manufacturing and serves no intended function in the children’s product or component of the children’s product, including an unintended by-product of chemical reactions during the manufacture of the children’s product, a trace impurity in feed-stock, an incompletely reacted chemical mixture, and a degradation product.

(10) “Cosmetics” means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering appearance, and articles intended for use as a component of such an article. “Cosmetics” shall not mean soap, dietary supplements, or food and drugs approved by the U.S. Food and Drug Administration.
(11) “Intentionally added” means the addition of a chemical in a product that serves an intended function in the product component.

(12) “Manufacturer” means:

(A) any person who manufactures a children’s product or whose name is affixed to a children’s product or its packaging or advertising, and the children’s product is sold or offered for sale in Vermont; or

(B) any person who sells a children’s product to a retailer in Vermont when the person who manufactures the children’s product or whose name is affixed to the children’s product or its packaging or advertising does not have a presence in the United States other than the sale or offer for sale of the manufacturer’s products.

(13) “Motor vehicle” means every vehicle intended primarily for use and operation on the public highways and shall include snowmobiles, all-terrain vehicles, and farm tractors and other machinery used in the production, harvesting, and care of farm products.

(14) “Persistent bioaccumulative toxic” means a chemical or chemical group that, based on credible scientific information, meets each of the following criteria:

(A) the chemical can persist in the environment as demonstrated by the fact that:

(i) the half-life of the chemical in water is greater than or equal to 60 days:
(ii) the half-life of the chemical in soil is greater than or equal to 60 days; or

(iii) the half-life of the chemical in sediments is greater than or equal to 60 days; and

(B) the chemical has a high potential to bioaccumulate based on credible scientific information that the bioconcentration factor or bioaccumulation factor in aquatic species for the chemical is greater than 1,000 or, in the absence of such data, that the log-octanol water partition coefficient (log Kow) is greater than five; and

(C) the chemical has the potential to be toxic to children as demonstrated by the fact that:

(i) the chemical or chemical group is a carcinogen, a developmental or reproductive toxicant, or a neurotoxicant;

(ii) the chemical or chemical group has a reference dose or equivalent toxicity measure that is less than 0.003 mg/kg/day; or

(iii) the chemical or chemical group has a chronic no observed effect concentration (NOEC) or equivalent toxicity measure that is less than 0.1 mg/L or an acute NOEC or equivalent toxicity measure that is less than 1.0 mg/L.

(15) “Practical quantification limit (PQL)” means the lowest concentration that can be reliably measured within specified limits of
precision, accuracy, representativeness, completeness, and comparability
during routine laboratory operating conditions.

(16) “Toy” means a consumer product designed or intended by the
manufacturer to be used by a child at play.

(17) “Vessel” means every description of watercraft used or capable of
being used as a means of transportation on water.

§ 1773. CHEMICALS OF HIGH CONCERN TO CHILDREN

(a) List of chemicals of high concern to children. The following chemicals
are designated as chemicals of high concern to children for the purposes of the
requirements of this chapter:

(1) Formaldehyde.

(2) Aniline.

(3) N-Nitrosodimethylamine.

(4) Benzene.

(5) Vinyl chloride.

(6) Acetaldehyde.

(7) Methylene chloride.

(8) Carbon disulfide.

(9) Methyl ethyl ketone.

(10) 1,1,2,2-Tetrachloroethane.

(11) Tetrabromobisphenol A.

(12) Bisphenol A.
(13) Diethyl phthalate.
(14) Dibutyl phthalate.
(15) Di-n-hexyl phthalate.
(16) Phthalic anhydride.
(17) Butyl benzyl phthalate (BBP).
(18) N-Nitrosodiphenylamine.
(19) Hexachlorobutadiene.
(20) Propyl paraben.
(21) Butyl paraben.
(22) 2-Aminotoluene.
(23) 2,4-Diaminotoluene.
(24) Methyl paraben.
(25) p-Hydroxybenzoic acid.
(26) Ethylbenzene.
(27) Styrene.
(28) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3.
(29) para-Chloroaniline.
(30) Acrylonitrile.
(31) Ethylene glycol.
(32) Toluene.
(33) Phenol.
(34) 2-Methoxyethanol.

(35) Ethylene glycol monoethyl ester.

(36) Tris(2-chloroethyl) phosphate.

(37) Di-2-ethylhexyl phthalate.

(38) Di-n-octyl phthalate (DnOP).

(39) Hexachlorobenzene.

(40) 3,3′-Dimethylbenzidine and Dyes Metabolized to 3,3′-Dimethylbenzidine.

(41) Ethyl paraben.

(42) 1,4-Dioxane.

(43) Perchloroethylene.

(44) Benzophenone-2 (Bp-2); 2,2′,4,4′-Tetrahydroxybenzophenone.

(45) 4-tert-Octylphenol; 4(1,1,3,3-Tetramethylbutyl) phenol.

(46) Estragole.

(47) 2-Ethylhexanoic acid.

(48) Octamethylcyclotetrasiloxane.

(49) Benzene, Pentachloro.

(50) C.I. Solvent yellow 14.

(51) N-Methylpyrrolidone.

(52) 2,2′,3,3′,4,4′,5,5′,6,6′-Decabromodiphenyl ether; BDE-209.

(53) Perfluorooctanyl sulphonic acid and its salts; PFOS.

(54) Phenol, 4-octyl.
(55) 2-Ethyl-hexyl-4-methoxycinnamate.

(56) Mercury and mercury compounds including methyl mercury (22967-92-6).

(57) Molybdenum and molybdenum compounds.

(58) Antimony and Antimony compounds.

(59) Arsenic and Arsenic compounds, including arsenic trioxide (1327-53-3) and dimethyl arsenic (75-60-5).

(60) Cadmium and cadmium compounds.

(61) Cobalt and cobalt compounds.

(62) Tris(1,3-dichloro-2-propyl)phosphate.

(63) Butylated hydroxyanisole; BHA.

(64) Hexabromocyclododecane.

(65) Diisodecyl phthalate (DIDP).

(66) Diisononyl phthalate (DINP).

(67) any other chemical designated by the Commissioner as a chemical of high concern to children by rule under section 1776 of this title.

(b) Beginning on July 1, 2017, and biennially thereafter, the Commissioner of Health shall review the list of chemicals of high concern to children to determine if additional chemicals should be added to the list under subsection 1776(b) of this title. In reviewing the list of chemicals of high concern to children, the Commissioner of Health may consider designations made by
other states, the federal government, other countries, or other governmental agencies.

(c) Publication of list. The Commissioner shall post the list of chemicals of high concern to children on the Department of Health website by chemical name and Chemical Abstracts Service number.

(d) Addition or removal from list. Under 3 V.S.A. § 806, any person may request that the Commissioner add or remove a chemical from the list of chemicals of high concern to children.

(e) PQL value. A PQL value established under this chapter for individual chemicals shall depend on the analytical method used for each chemical. The PQL value shall be based on scientifically defensible, standard analytical methods as advised by guidance published by the Department.

§ 1774. CHEMICALS OF HIGH CONCERN TO CHILDREN WORKING GROUP

(a) Creation. A Chemicals of High Concern to Children Working Group (Working Group) is created within the Department of Health for the purpose of providing the Commissioner of Health advice and recommendations regarding implementation of the requirements of this chapter.

(b) Membership.

(1) The Working Group shall be composed of the following members who, except for ex officio members, shall be appointed by the Governor after consultation with the Commissioner of Health:
(A) the Commissioner of Health or designee, who shall be the chair of the Working Group;

(B) the Commissioner of Environmental Conservation or designee;

(C) the State toxicologist or designee;

(D) a representative of a public interest group in the State with experience in advocating for the regulation of toxic substances;

(E) a representative of an organization within the State with expertise in issues related to the health of children or pregnant women;

(F) one representative of businesses in the State that use chemicals in a manufacturing or production process or use chemicals that are used in a children’s product manufactured in the State;

(G) a scientist with expertise regarding the toxicity of chemicals; and

(H) a representative of the children’s products industry with expertise in existing state and national policies impacting children’s products.

(2)(A) In addition to the members of the Working Group appointed under subdivision (1) of this subsection, the Governor may appoint up to three additional adjunct members.

(B) An adjunct member appointed under this subdivision (2) shall have expertise or knowledge of the chemical or children’s product under review or shall have expertise or knowledge in the potential health effects of the chemical at issue.
(C) Adjunct members appointed under this subdivision (2) shall have the same authority and powers as a member of the Working Group appointed under subdivision (1) of this subsection (b).

(3) The members of the Working Group appointed under subdivision (1) of this subsection shall serve staggered three-year terms. The Governor may remove members of the Working Group who fail to attend three consecutive meetings and may appoint replacements. The Governor may reappoint members to serve more than one term.

(c) Powers and duties. The Working Group shall:

(1) upon the request of the Chair of the Working Group, review proposed chemicals for listing as a chemical of high concern to children under section 1773 of this title; and

(2) recommend to the Commissioner of Health whether rules should be adopted under section 1776 of this title to regulate the sale or distribution of a children’s product containing a chemical of high concern to children.

(d) Commissioner of Health recommendation; assistance.

(1) Beginning on July 1, 2017, and biennially thereafter, the Commissioner of Health shall recommend at least two chemicals of high concern to children in children’s products for review by the Working Group. The Commissioner’s recommendations shall be based on the degree of human health risks, exposure pathways, and impact on sensitive populations presented by a chemical of high concern to children.
(2) The Working Group shall have the administrative, technical, and legal assistance of the Department of Health and the Agency of Natural Resources.

(e) Meetings.

(1) The Chair of the Working Group may convene the Working Group at any time, but no less frequently than at least once every other year.

(2) A majority of the members of the Working Group, including adjunct members when appointed, shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.

(f) Reimbursement. Members of the Working Group, including adjunct members, whose participation is not supported through their employment or association shall receive per diem compensation pursuant to 32 V.S.A. § 1010 and reimbursement of travel expenses. A per diem authorized by this section shall be paid from the budget of the Department of Health.

§ 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH CONCERN

(a) Notice of chemical of high concern to children. Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776, beginning on July 1, 2016, and biennially thereafter, a manufacturer of a children’s product or a trade association representing a manufacturer of children’s products shall submit to the Department the notice described in
subsection (b) of this section for each chemical of high concern to children in a
children’s product if a chemical of high concern to children is:

(1) intentionally added to a children’s product at a level above the PQL
produced by the manufacturer; or

(2) present in a children’s product produced by the manufacturer as a
contaminant at a concentration of 100 parts per million or greater.

(b) Format for notice. The Commissioner shall specify the format for
submission of the notice required by subsection (a) of this section, provided
that the required format shall be generally consistent with the format for
submission of notice in other states with requirements substantially similar to
the requirements of this section. Any notice submitted under subsection (a)
shall contain the following information:

(1) the name of the chemical used or produced and its chemical abstracts
service registry number;

(2) a description of the product or product component containing the
chemical;

(3) the amount of the chemical contained in each unit of the product or
product component, reported by weight or parts per million as authorized by
the Commissioner;

(4) the name and address of the manufacturer of the children’s product
and the name, address, and telephone number of a contact person for the
manufacturer;
(5) any other information the manufacturer deems relevant to the appropriate use of the product; and

(6) any other information required by the Commissioner under rules adopted pursuant to 3 V.S.A. chapter 25.

(c) Reciprocal data-sharing. In order for the Department to obtain the information required in the notice described in subsection (b) of this section, the Department may enter into reciprocal data-sharing agreements with other states in which a manufacturer of children’s products is also required to disclose information related to chemicals of high concern to children in children’s products. The Department shall not disclose trade secret information, confidential business information, or other information designated as confidential by law under a reciprocal data-sharing agreement.

(d) Waiver of format. Upon application of a manufacturer on a form provided by the Department, the Commissioner may waive the requirement under subsection (b) of this section that a manufacturer provide notice in a format specified by the Commissioner. The waiver may be granted, provided that:

(1) the manufacturer submitted the information required in a notice under this section to:

(A) a state with which the Department has entered a reciprocal data-sharing agreement; or
(B) a trade association, the Interstate Chemicals Clearinghouse, a federal governmental agency, or other independent third party;

(2) the information required to be reported in a notice under this section is provided to the Department in an alternate format, including reference to information publicly available in other states or by independent third parties; and

(3) the information required to be reported in a notice under this section is available on or accessible from the Department of Health website.

(e) Chemical control program. A manufacturer shall be exempt from the requirements of notice under this section for any chemical of high concern to children that is present in a children’s product or component of a children’s product only as a contaminant if, during manufacture of the children’s product, the manufacturer was implementing a manufacturing control program and exercised due diligence to minimize the presence of the contaminant in the children’s product.

(f) Notice of removal of chemical. A manufacturer who submitted the notice required by subsection (a) of this section may at any time submit to the Department notice that a chemical of high concern to children has been removed from the manufacturer’s children’s product or that the manufacturer no longer sells, offers for sale, or distributes in the State the children’s product containing the chemical of high concern to children. Upon verification of a manufacturer’s notice under this subsection, the Commissioner shall promptly
remove from the Department website any reference to the relevant children’s product of the manufacturer.

(g) Certificate of compliance. A manufacturer required to submit notice under this section to the Commissioner may rely on a certificate of compliance from suppliers for determining reporting obligations. A certificate of compliance provided by a supplier under this subsection shall be solely for the purpose of compliance with the requirements of this chapter.

(h) Products for sale out of State. A manufacturer shall not be required to submit notice under this section for a children’s product manufactured, stored in, or transported through Vermont solely for use or sale outside of the State of Vermont.

(i) Publication of information; disclaimer. The Commissioner shall post on the Department of Health website information submitted under this section by a manufacturer. When the Commissioner posts on the Department of Health website information submitted under this section by a manufacturer, the Commissioner shall provide the following notice:

“The reports on this website are based on data provided to the Department. The presence of a chemical in a children’s product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws. The reporting triggers are not health-based values.”
(j) Fee. A manufacturer shall pay a fee of $200.00 for each notice required under subsection (a) of this section. If, under subsection (d) of this section, the Commissioner waives the required format for reporting, the fee shall not be waived. Fees collected under this subsection shall be deposited in the Chemicals of High Concern Fund for the purposes of that Fund.

(k) Application of section. The requirements of this section shall apply unless a manufacturer is exempt or unless notice according to the requirements of this section is specifically preempted by federal law. In the event of conflict between the requirements of this section and federal law, federal law shall control.

§ 1776. RULEMAKING; ADDITIONAL CHEMICALS OF CONCERN TO CHILDREN; PROHIBITION OF SALE

(a) Rulemaking authority. The Commissioner shall, after consultation with the Secretary of Natural Resources, adopt rules as necessary for the purposes of implementing, administering, or enforcing the requirements of this chapter.

(b) Additional chemicals of concern to children. The Commissioner may by rule add additional chemicals to the list of chemicals of high concern to children, provided that the Commissioner of Health, on the basis of the weight of credible, scientific evidence, has determined that a chemical proposed for addition to the list meets both of the following criteria in subdivisions (1) and (2) of this subsection:
(1) The Commissioner of Health has determined that an authoritative governmental entity or accredited research university has demonstrated that the chemical:

   (A) harms the normal development of a fetus or child or causes other developmental toxicity;

   (B) causes cancer, genetic damage, or reproductive harm;

   (C) disrupts the endocrine system;

   (D) damages the nervous system, immune system, or organs or causes other systemic toxicity; or

   (E) is a persistent bioaccumulative toxic.

(2) The chemical has been found through:

   (A) biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine, or other bodily tissues or fluids;

   (B) sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or

   (C) monitoring to be present in fish, wildlife, or the natural environment.

(c) Removal of chemical from list. The Commissioner may by rule remove a chemical from the list of chemicals of high concern to children established under section 1773 of this title or rules adopted under this section if the Commissioner determines that the chemical no longer meets both of the criteria of subdivisions (b)(1) and (2) of this section.
(d) Rule to regulate sale or distribution.

(1) The Commissioner, upon the recommendation of the Chemicals of High Concern to Children Working Group, may adopt a rule to regulate the sale or distribution of a children’s product containing a chemical of high concern to children upon a determination that:

(A) children will be exposed to a chemical of high concern to children in the children’s product; and

(B) there is a probability that, due to the degree of exposure or frequency of exposure of a child to a chemical of high concern to children in a children’s product, exposure could cause or contribute to one or more of the adverse health impacts listed under subdivision (b)(1) of this section.

(2) In determining whether children will be exposed to a chemical of high concern in a children’s product, the Commissioner shall review available, credible information regarding:

(A) the market presence of the children’s product in the State;

(B) the type or occurrence of exposures to the relevant chemical of high concern to children in the children’s product;

(C) the household and workplace presence of the children’s product; or

(D) the potential and frequency of exposure of children to the chemical of high concern to children in the children’s product.
(3) A rule adopted under this section may:

(A) prohibit the children’s product containing the chemical of high concern to children from sale, offer for sale, or distribution in the State; or

(B) require that the children’s product containing the chemical of high concern to children be labeled prior to sale, offer for sale, or distribution in the State.

(4) In any rule adopted under this subsection, the Commissioner shall adopt reasonable time frames for manufacturers, distributors, and retailers to comply with the requirements of the rules. No prohibition on sale or manufacture of a children’s product in the State shall take effect sooner than two years after the adoption of a rule adopted under this section unless the Commissioner determines that an earlier effective date is required to protect human health and the new effective date is established by rule.

(e) Exemption for chemical management strategy. In adopting a rule under this section, the Commissioner may exempt from regulation a children’s product containing a chemical of high concern to children if the manufacturer of the children’s product is implementing a comprehensive chemical management strategy designed to eliminate harmful substances or chemicals from the manufacturing process.

(f) Additional rules.

(1) On or before July 1, 2017, the Commissioner of Health shall adopt by rule the process and procedure to be required when the Commissioner of
Health adopts a rule under subsection (b), (c), or (d) of this section. The rule shall provide:

(A) all relevant criteria for evaluation of the chemical;

(B) criteria by which a chemical, due to its presence in the environment or risk of harm, shall be prioritized for addition or removal from the list of chemicals of high concern to children or for regulation under subsection (d) of this section;

(C) time frames for labeling or phasing out sale or distribution; and

(D) other information or process determined as necessary by the Commissioner for implementation of this chapter.

(2) The Commissioner may, by rule, authorize a manufacturer to report ranges of the amount of a chemical in a children’s product, rather than the exact amount, provided that if there are multiple chemical values for a given component in a particular product category, the manufacturer shall use the largest value for reporting.

(3) Notwithstanding the required reporting dates under section 1774 of this title, the Commissioner may adopt by rule phased-in reporting requirements for chemicals of high concern to children in children’s products based on the size of the manufacturer, aggregate sales of children’s products, or the exposure profile of the chemical of high concern to children in the children’s product.
(g) Additional public participation. In addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a rule authorized under this section to the Secretary of State under 3 V.S.A. § 838, the Commissioner shall make reasonable efforts to consult with interested parties within the State regarding any proposed prohibition of a chemical of high concern to children. The Commissioner may satisfy the consultation requirement of this section through the use of one or more workshops, focused work groups, dockets, meetings, or other forms of communication.

§ 1777. CHEMICALS OF HIGH CONCERN TO CHILDREN FUND

(a) The Chemicals of High Concern to Children Fund is established in the State Treasury, separate and distinct from the General Fund, to be administered by the Commissioner of Health. Interest earned by the Fund shall be credited to the Fund. Monies in the Fund shall be made available to the Department of Health and the Agency of Natural Resources to pay costs incurred in administration of the requirements of this chapter.

(b) The Chemicals of High Concern to Children Fund shall consist of:

(1) fees and charges collected under section 1775 of this chapter;

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

(3) such sums as may be appropriated by the General Assembly.
§ 1778. CONFIDENTIALITY

Information submitted to or acquired by the Department or the Chemicals of High Concern to Children Working Group under this chapter may be subject to public inspection or copying or may be published on the Department website, provided that trade secret information and confidential business information shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9) and information otherwise designated confidential by law shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(1). It shall be the burden of the manufacturer to assert that information submitted under this chapter is a trade secret, confidential business information, or is otherwise designated confidential by law. When a manufacturer asserts under this section that the specific identity of a chemical of high concern to children in a children’s product is a trade secret, the Commissioner shall, in place of the specific chemical identity, post on the Department’s website the generic class or category of the chemical in the children’s product and the potential health effect of the specific chemical of high concern to children.

§ 1779. VIOLATIONS; ENFORCEMENT

A violation of this chapter shall be considered a violation of the Consumer Protection Act in 9 V.S.A. chapter 63. The Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions under 9 V.S.A. chapter 63.
subchapter 1. Private parties shall not have a private right of action under this chapter.

Sec. 3. REPORT TO GENERAL ASSEMBLY; CHEMICALS OF HIGH CONCERN TO CHILDREN

On or before January 15, 2015, and biennially thereafter, the Commissioner of Health, after consultation with the Secretary of Natural Resources, shall submit to the Senate Committee on Health and Welfare, the House Committee on Human Services, the House Committee on Ways and Means, the Senate Committee on Finance, and the Senate and House Committees on Appropriations, a report concerning implementation, administration, and financing by the Department of Health of the requirements of 18 V.S.A. chapter 38A regarding the chemicals of high concern to children. The report shall include:

(1) Any updates to the list of chemicals of high concern to children required under 18 V.S.A. § 1773.

(2) The number of manufacturers providing notice under 18 V.S.A. § 1775 regarding whether a children’s product includes a chemical of high concern to children.

(3) The number of chemicals of high concern to children for which manufacturers asserted trade secret protection for the specific identity of the chemical, and a recommendation of whether a process should be established to review the validity of asserted trade secrets.
(4) An estimate of the annual cost to the Department of Health to implement the chemicals of high concern to children program.

(5) The number of Department of Health employees needed to implement the chemicals of high concern to children program.

(6) An estimate of additional funding that the Department may require to implement the chemicals of high concern to children program.

(7) A recommendation of how the State should collaborate with other states in implementing the requirements of the chemicals of high concern to children program.

(8) A recommendation as to whether the requirements of this chapter should be expanded to consumer products other than children’s products.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: June 10, 2014
HD : KL : TEH:1031480024
LC : BCG : RAY:5351480016


HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 5
AS AMENDED BY
HOUSE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE ADDITION OF ELECTRONIC SMOKING DEVICES TO THE CLEAN INDOOR AIR ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 2901, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2901 Legislative intent.

The General Assembly finds that it is in the best interest of the people of this State to protect nonsmokers from involuntary exposure to environmental tobacco smoke and emissions produced by electronic smoking devices in most indoor areas open to the public, public meetings, foods service establishments and places of employment.

The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke and emissions produced by electronic smoking devices.

Section 2. Amend Section 2902, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2902 Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(3) “Electronic smoking device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(11) "Smoking" means:
   a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
   b. The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

(13) “Vapor establishment” means a business that: 1) generates at least 80% of its revenue from the sale of electronic smoking devices and substances for use within electronic smoking devices; and 2) does not share indoor common space with other businesses unless there are doors from the vapor establishment to the indoor common space that remain closed other than for ingress and egress.

Section 3. Amend Section 2903, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2903 Smoking restrictions.

Except as is provided in § 2904 of this title, and in order to reduce the levels of exposure to environmental tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be permitted and no person shall smoke in any indoor enclosed area to which the general public is invited or in which the general public is permitted, including, but not limited to:

(1) Public meetings;
(2) Elevators;
(3) Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines;
(4) Grocery stores;
(5) Gymnasiums;
(6) Jury waiting and deliberation rooms;
(7) Courtrooms;
(8) Child day care facilities;
(9) Health care facilities including hospitals, health care clinics, doctor's offices or other health-care-related facilities;

(10) Any workplace not exempted;

(11) Restrooms, lobbies, reception areas, hallways and other common-use areas;

(12) Restaurants as licensed by the Division of Public Health or defined by Title 4;

(13) Gaming facilities that are open to the public;

(14) Any indoor sports arena;

(15) Lobbies, hallways and other common areas in apartment buildings, condominiums and other multiple-unit residential facilities;

(16) Lobbies, hallways and other common areas in hotels and motels, and in no less than 75% of the sleeping quarters within a hotel or motel that are rented to guests;

(17) Bowling alleys;

(18) Billiard or pool halls;

(19) Retirement facilities and nursing homes not including any private residence;

(20) Public buildings;

(21) Auditoria;

(22) Theaters;

(23) Museums;

(24) Libraries;

(25) Public and nonpublic schools;

(26) Other educational and vocational institutions.

(27) Establishments defined as a motorsports speedway, tavern or taproom by Title 4.

Section 4. This Act shall take effect 90 days after its enactment into law.

Section 5. Amend Chapter 29, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§2908 Vapor establishments

(a) Vapor establishments are permitted to have emissions produced by electronic smoking devices within their places of business.
(b) Any vapor establishment permitted to have emissions produced by electronic smoking devices in such vapor establishment pursuant to this section, and which permits such emissions, shall prohibit anyone under the age of 18 from entering and shall display a sign at all entrances stating that no one under the age of 18 is allowed in such vapor establishment.
A BILL FOR AN ACT

RELATING TO HEALTH.

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

SECTION 1. The legislature finds that the use of electronic smoking devices is prevalent among adolescents in Hawaii. According to recent figures from six Hawaii high schools, among the ninth and tenth grade students, twenty-nine percent have used electronic smoking devices at least once and eighteen percent use them regularly. This sample's rate of electronic smoking device use by adolescents is considerably higher than rates in current studies of adolescents in other areas of the United States.

The legislature further finds that electronic smoking devices are popular among adolescents and the majority regard electronic smoking devices as healthier than cigarettes. However, using electronic smoking devices in most instances exposes adolescents to nicotine, which is a highly addictive substance. Therefore, in addition to preventing electronic smoking device use by adolescents, more research is needed to test why electronic smoking devices appeal to adolescents and
whether using electronic smoking devices carries more benefits than risks.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . TOBACCO PRODUCTS

§321-A Definitions. As used in this part:

"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling the device, an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

"Possession" means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, including the actual use of the tobacco product.

"Tobacco product" means tobacco in any form, including an electronic smoking device, cigarettes, cigars, snuff, and chewing tobacco, that is prepared or intended for consumption by, or the personal use of, humans.
§321-B Tobacco products; possession or consumption prohibited. Possession or consumption of a tobacco product by a person under twenty-one years of age in a public place shall be prohibited.

§321-C Exemptions. This part shall not apply to:

(1) Any person under twenty-one years of age, with parental authorization, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco sales to persons under twenty-one years of age; or

(2) Possession of tobacco products by a person under twenty-one years of age in the course of delivery, pursuant to the direction of the person's employer lawfully engaged in business necessitating the delivery.

§321-D Enforcement; rules. Any person under twenty-one years of age who violates section 321-B shall be fined $10 for the first offense. Any subsequent offense shall subject the violator to a fine of $50, no part of which shall be suspended,
or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school."

SECTION 3. Section 709-908, Hawaii Revised Statutes, is amended to read as follows:

"§709-908 Tobacco products and electronic smoking devices [prohibited; minor.]; persons under twenty-one years of age.

(1) [It] Effective January 1, 2016, it shall be unlawful to sell or furnish a tobacco product in any shape or form including chewing tobacco and snuff or an electronic smoking device to a [minor] person under [eighteen] twenty-one years of age.

(2) [Signs] Effective January 1, 2016, signs using the statement, "The sale of tobacco products or electronic smoking devices to persons under [eighteen] twenty-one is prohibited", shall be posted on or near any vending machine in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products or electronic smoking devices are sold in letters at least one-half inch high.
(3) It shall be unlawful for a minor person under twenty-one years of age to purchase any tobacco product, as described under subsection (1), or an electronic smoking device, as described under those terms are defined in subsection (5). This provision does not apply if a person under the age of twenty-one, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco or electronic smoking devices sales to minor persons under twenty-one years of age.

(4) Any person who violates subsection (1) or (2), or both, shall be fined $500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than $500 nor more than $2,000. Any person under eighteen years of age who violates subsection (3) shall be fined $10 for the first offense. Any subsequent offense shall subject the violator to a fine of $50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of
community service during hours when the person is not employed
and is not attending school.

(5) For the purposes of this section:

"Electronic smoking device" means any electronic product
that can be used to [simulate smoking in the delivery of]
aerosolize and deliver nicotine or other substances to the
person inhaling from the device, including but not limited to an
electronic cigarette, electronic cigar, electronic cigarillo, or
electronic pipe, and any cartridge or other component of the
device or related product.

"Tobacco product" means any product made or derived from
tobacco that contains nicotine or other substances and is
intended for human consumption or is likely to be consumed,
whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
ingested by other means. "Tobacco product" includes but is not
limited to a cigarette, cigar, pipe tobacco, chewing tobacco,
snuff, snus, or an electronic smoking device. "Tobacco product"
does not include drugs, devices, or combination products
approved for sale by the United States Food and Drug
Administration, as those terms are defined in the Federal Food,
Drug and Cosmetic Act."
SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2016.
CHAPTER ...................................................

AN ACT

Relating to physical therapy; creating new provisions; amending ORS 676.177, 688.020, 688.110, 688.160 and 688.201; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The provisions of the Physical Therapy Licensure Compact are as follows:

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE
The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:
1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2. DEFINITIONS
As used in this Compact, and except as otherwise provided, the following definitions shall apply:
1. “Active Duty Military” means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.
2. “Adverse Action” means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. “Alternative Program” means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. “Compact privilege” means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. “Continuing competence” means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. “Data system” means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. “Encumbered license” means a license that a physical therapy licensing board has limited in any way.

8. “Executive Board” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. “Home state” means the member state that is the licensee’s primary state of residence.

10. “Investigative information” means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. “Jurisprudence Requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state.

12. “Licensee” means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. “Member state” means a state that has enacted the Compact.

14. “Party state” means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. “Physical therapist” means an individual who is licensed by a state to practice physical therapy.

16. “Physical therapist assistant” means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. “Physical therapy,” “physical therapy practice,” and “the practice of physical therapy” mean the care and services provided by or under the direction and supervision of a licensed physical therapist. The “practice of physical therapy” also has the meaning given that term in ORS 688.010.

18. “Physical Therapy Compact Commission” or “Commission” means the national administrative body whose membership consists of all states that have enacted the Compact.

19. “Physical therapy licensing board” or “licensing board” means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. “Remote State” means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. “Rule” means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT
A. To participate in the Compact, a state must:
1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;
2. Have a mechanism in place for receiving and investigating complaints about licensees;
3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3.B.4.;
5. Comply with the rules of the Commission;
6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and
7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. §534 and 42 U.S.C. §14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE
A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:
1. Hold a license in the home state;
2. Have no encumbrance on any state license;
3. Be eligible for a compact privilege in any member state in accordance with Section 4D, G and H;
4. Have not had any adverse action against any license or compact privilege within the previous 2 years;
5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);
6. Pay any applicable fees, including any state fee, for the compact privilege;
7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and
8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:
1. The home state license is no longer encumbered; and
2. Two years have elapsed from the date of the adverse action.
F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:
   1. The specific period of time for which the compact privilege was removed has ended;
   2. All fines have been paid; and
   3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

A. Home of record;
B. Permanent Change of Station (PCS); or
C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:
   1. Take adverse actions as set forth in Section 4D against a licensee's compact privilege in the state;
   2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state 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 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 where the witnesses and/or evidence are located; and
   3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations
   1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.
   2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION
A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact 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 member state shall have and be limited to one (1) delegate selected by that member state's licensing board.
2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.
3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
4. The member state board shall fill any vacancy occurring in the Commission.
5. Each delegate 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.
6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;
2. Establish bylaws;
3. Maintain its financial records in accordance with the bylaws;
4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;
5. 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 member states;
6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;
7. Purchase and maintain insurance and bonds;
8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
10. Accept any and all appropriate donations and grants 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 and/or conflict of interest;
11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;
12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
13. Establish a budget and make expenditures;
14. Borrow money;
15. Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;
16. Provide and receive information from, and cooperate with, law enforcement agencies;
17. Establish and elect an Executive Board; and
18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board
The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.
1. The Executive Board shall be comprised of nine members:
   a. Seven voting members who are elected by the Commission from the current membership of the Commission;
   b. One ex-officio, nonvoting member from the recognized national physical therapy professional association; and
   c. One ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
2. The ex-officio members will be selected by their respective organizations.
3. The Commission may remove any member of the Executive Board as provided in bylaws.
4. The Executive Board shall meet at least annually.
5. The Executive Board shall have the following Duties and responsibilities:
   a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;
   b. Ensure Compact administration services are appropriately provided, contractual or otherwise;
   c. Prepare and recommend the budget;
   d. Maintain financial records on behalf of the Commission;
   e. Monitor Compact compliance of member states and provide compliance reports to the Commission;
   f. Establish additional committees as necessary; and
   g. Other duties as provided in rules or bylaws.
E. Meetings of the Commission
1. 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 Section 9.
2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:
   a. Non-compliance of a member state with its obligations under the Compact;
   b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
   c. Current, threatened, or reasonably anticipated litigation;
   d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
   e. Accusing any person of a crime or formally censuring any person;
   f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. 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.

4. 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 therefore, 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.

F. 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 accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. 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 member states, except by and with the authority of the member state.

5. 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.

6. An assessment levied, or any other financial obligation imposed, under this Compact is effective against the State of Oregon only to the extent that moneys necessary to pay the assessment or meet the financial obligations have been deposited in an account established under ORS 182.470 by the Physical Therapist Licensing Board pursuant to ORS 688.201.

G. Qualified Immunity, Defense, and Indemnification

1. The members, 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 or willful or wanton misconduct of that person.

2. The Commission shall defend any member, 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 or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, 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 or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. 1. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

2. Notwithstanding Section 9.A.1., the Physical Therapist Licensing Board shall review the rules of the Commission. The licensing board may approve and adopt the rules of the Commission as rules of the licensing board. The State of Oregon is subject to a rule of the Commission only if the rule of the Commission is adopted by the licensing board.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. 1. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

2. Notwithstanding Section 9.A.1., the Physical Therapist Licensing Board shall review the rules of the Commission. The licensing board may approve and adopt the rules of the Commission as rules of the licensing board. The State of Oregon is subject to a rule of the Commission only if the rule of the Commission is adopted by the licensing board.
B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) 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 or other publicly accessible platform; and
2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. 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.

F. 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.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.
2. 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.
3. All hearings will be recorded. A copy of the recording will be made available on request.
4. 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.

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. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, 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.

L. 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 the 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 member state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of 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 chair of 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.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight
1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder and adopted by the Physical Therapist Licensing Board shall have standing as statutory law.

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 Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, 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 member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other member 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

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may 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 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 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 Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that 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 that has been terminated from the Compact, 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 where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

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 where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include injunctive relief. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's 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.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. 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 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 contrary to the constitution of any party state, the 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.

SECTION 2. The Legislative Assembly of the State of Oregon hereby ratifies the Physical Therapy Licensure Compact set forth in section 1 of this 2016 Act.

SECTION 3. ORS 676.177 is amended to read:

676.177. (1) Notwithstanding any other provision of ORS 676.165 to 676.180, a health professional regulatory board, upon a determination by the board that it possesses otherwise confidential information that reasonably relates to the regulatory or enforcement function of another public entity, may disclose that information to the other public entity.

(2) Any public entity that receives information pursuant to subsection (1) of this section shall agree to take all reasonable steps to maintain the confidentiality of the information, except that the public entity may use or disclose the information to the extent necessary to carry out the regulatory or enforcement functions of the public entity.

(3) For purposes of this section, “public entity” means:

(a) A board or agency of this state, or a board or agency of another state with regulatory or enforcement functions similar to the functions of a health professional regulatory board of this state;

(b) A district attorney;

(c) The Department of Justice;

(d) A state or local public body of this state that licenses, franchises or provides emergency medical services; or

(e) A law enforcement agency of this state, another state or the federal government.

(4) Notwithstanding subsections (1) to (3) of this section, the Physical Therapist Licensing Board may disclose information described in subsection (1) of this section to the Physical Therapy Compact Commission established in section 1 of this 2016 Act.

SECTION 4. ORS 688.020 is amended to read:

688.020. (1) Unless a person is a licensed physical therapist or holds a permit issued under ORS 688.110, a person shall not:

(a) Practice physical therapy; or

(b) Use in connection with the name of the person the words or letters, “P.T.”, “R.P.T.”, “L.P.T.”, “physical therapist”, “physiotherapist” or any other letters, words, abbreviations or insignia indicating that the person is a physical therapist, or purports to be a physical therapist.

(2) Unless a person holds a license as a physical therapist assistant, a person shall not:

(a) Practice as a physical therapist assistant; or

(b) Use in connection with the name of the person the words or letters, “L.P.T.A.”, “P.T.A.”, “physical therapist assistant”, “licensed physical therapist assistant”, or any other letters, words, abbreviations or insignia indicating that the person is a physical therapist assistant or purports to be a physical therapist assistant.

(3) Subsections (1) and (2) of this section do not apply to an individual who is authorized to practice as a physical therapist, or work as a physical therapist assistant, by compact privilege as defined in section 1 of this 2016 Act.

SECTION 5. ORS 688.110 is amended to read:

688.110. (1) The Physical Therapist Licensing Board, in its discretion, may issue without examination a temporary permit to a person to practice as a physical therapist or to work as a physical therapist assistant in this state if the person files an application for license as provided in ORS
688.040 or 688.080, and pays to the board at the time of filing the application the temporary permit fee.

(2) A person holding a temporary permit may practice physical therapy only under the direction of a physical therapist licensed under ORS 688.010 to 688.201.

(3) The temporary permit shall be granted for a period not to exceed three months. The board may renew the temporary permit at its discretion for [an additional three months, but no longer] no more than 90 days.

SECTION 6. ORS 688.160 is amended to read:

688.160. (1) The Physical Therapist Licensing Board operates as a semi-independent state agency subject to ORS 182.456 to 182.472, for purposes of carrying out the provisions of ORS 688.010 to 688.201 and 688.990. The Physical Therapist Licensing Board consists of eight members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

(a) Five must be physical therapists who are Oregon residents, possess unrestricted licenses to practice physical therapy in this state, have been practicing in this state for at least two years immediately preceding their appointments and have been practicing in the field of physical therapy for at least five years.

(b) One must be a licensed physical therapist assistant.

(c) Two must be public members who have an interest in consumer rights and who are not:

(A) Otherwise eligible for appointment to the board; or

(B) The spouse, domestic partner, child, parent or sibling of a physical therapist or physical therapist assistant.

(2)(a) Board members required to be physical therapists or physical therapist assistants may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by the Oregon Physical Therapy Association.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3)(a) The term of office of each member is four years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. A member is eligible for reappointment.

(b) In the event of a vacancy in the office of a member of the board other than by reason of the expiration of a term, the Governor, not later than 90 days after the occurrence of the vacancy, shall appoint a person to fill the vacancy for the unexpired term.

(c) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused;

(C) Is not a licensed physical therapist or a retired physical therapist who was a licensed physical therapist in good standing at the time of retirement, if the board member was appointed to serve on the board as a physical therapist; or

(D) Is not a licensed physical therapist assistant or a retired physical therapist assistant who was a licensed physical therapist assistant in good standing at the time of retirement, if the board member was appointed to serve on the board as a retired physical therapist assistant.

(4) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(5) A board member who acts within the scope of board duties, without malice and in reasonable belief that the member's action is warranted by law, is immune from civil liability.

(6) The board shall have power to:
(a) Establish matters of policy affecting administration of ORS 688.010 to 688.201;
(b) Provide for examinations for physical therapists and physical therapist assistants and adopt passing scores for the examinations;
(c) Adopt rules necessary to carry out and enforce the provisions of ORS 688.010 to 688.201;
(d) Establish standards and tests to determine the qualifications of applicants for licenses to practice physical therapy in this state;
(e) Issue licenses to persons who meet the requirements of ORS 688.010 to 688.201;
(f) Adopt rules relating to the supervision and the duties of physical therapist aides who assist in performing routine work under supervision;
(g) Adopt rules establishing minimum continuing education competency requirements for all licensees;
(h) Exercise general supervision over the practice of physical therapy within this state;
(i) Establish and collect fees for the application or examination for, or the renewal, reinstatement or duplication of, a license under ORS 688.040, 688.080 or 688.100 or for the issuance of a temporary permit under ORS 688.110; and
(j) Establish and collect fees to carry out and enforce the provisions of ORS 688.010 to 688.201.
(7) The board shall meet as determined by the board and at any other time at the call of the board chairperson, who shall be elected by the members of the board. All members have equal voting privileges.
(8) The board may appoint and fix the compensation of staff as necessary to carry out the operations of the board.
(9) The board shall:
(a) Maintain a current list of all persons regulated under ORS 688.010 to 688.201, including the persons' names, current business and residential addresses, telephone numbers, electronic mail addresses and license numbers.
(b) Provide information to the public regarding the procedure for filing a complaint against a physical therapist or physical therapist assistant.
(c) Publish at least annually, and in a format or place determined by the board, final disciplinary actions taken against physical therapists and physical therapist assistants and other information, including rules, in order to guide physical therapists and physical therapist assistants regulated pursuant to ORS 688.010 to 688.201.

SECTION 7. ORS 688.201 is amended to read:
688.201. (1) All moneys received under ORS 688.010 to 688.201 shall be paid into the account established by the Physical Therapist Licensing Board under ORS 182.470. The board may establish an additional account under ORS 182.470 for the purpose of meeting financial obligations imposed on the State of Oregon as a result of this state's participation in the Physical Therapy Licensure Compact established under section 1 of this 2016 Act.
(2) Those moneys hereby are appropriated continuously to the board and may be used only for the administration and enforcement of ORS 688.010 to 688.201 and for the purpose of meeting financial obligations imposed on the State of Oregon as a result of this state's participation in the Physical Therapy Licensure Compact established under section 1 of this 2016 Act.

SECTION 8. ORS 688.201, as amended by section 16, chapter 240, Oregon Laws 2013, is amended to read:
688.201. (1) All moneys received under ORS 688.010 to 688.201 shall be paid into the account established by the Physical Therapist Licensing Board under ORS 182.470. The board may establish an additional account under ORS 182.470 for the purpose of meeting financial obligations imposed on the State of Oregon as a result of this state's participation in the Physical Therapy Licensure Compact established under section 1 of this 2016 Act.
(2) Those moneys hereby are appropriated continuously to the board and
[shall] may be used only for the administration and enforcement of ORS 676.850 and 688.010 to 688.201 and for the purpose of meeting financial obligations imposed on the State of Oregon as a result of this state's participation in the Physical Therapy Licensure Compact established under section 1 of this 2016 Act.

SECTION 9. (1) The amendments to ORS 676.177 by section 3 of this 2016 Act apply to information disclosed on or after the effective date of this 2016 Act.

(2) The amendments to ORS 688.020 by section 4 of this 2016 Act apply to individuals authorized to practice as a physical therapist, or work as a physical therapist assistant, by compact privilege on or after the effective date of this 2016 Act.

(3) The amendments to ORS 688.110 and 688.160 by sections 5 and 6 of this 2016 Act apply to licenses and permits issued or renewed by the Physical Therapist Licensing Board on or after the effective date of this 2016 Act.

(4) The amendments to ORS 688.201 by sections 7 and 8 of this 2016 Act apply to moneys received by the board on or after the effective date of this 2016 Act.

SECTION 10. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Passed by Senate February 18, 2016

Lori L. Brocker, Secretary of Senate

Peter Courtney, President of Senate

Passed by House February 24, 2016

Tina Kotek, Speaker of House

Received by Governor:

M., 2016

Approved:

M., 2016

Kate Brown, Governor

Filed in Office of Secretary of State:

M., 2016

Jeanne P. Atkins, Secretary of State
AN ACT

RELATING TO HIGHER EDUCATION; DIRECTING THE SECRETARY OF HIGHER EDUCATION TO ESTABLISH A CONSISTENT POLICY AND ARTICULATION AGREEMENT REGARDING THE EVALUATION AND AWARD OF COLLEGE CREDIT BASED ON MILITARY TRAINING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. TEMPORARY PROVISION--COLLEGE CREDIT FOR MILITARY TRAINING--REPORTING.--The higher education department, in coordination with the institutions of higher education in New Mexico, shall study, create and implement a consistent policy and develop a single articulation agreement for the state, regarding the evaluation and award of academic credit based on an active duty member of the United States military or a veteran's military training and experience toward associate's, bachelor's, master's and doctoral degrees. The department shall present a report on the policy, its implementation and the articulation agreement to the military and veterans' affairs committee and the legislative education study committee by November 1, 2016.
An act relating to educational options; creating s. 1004.6495, F.S.; providing a short title; providing purposes and legislative intent; defining terms; establishing student eligibility requirements for enrollment in the Florida Postsecondary Comprehensive Transition Program; requiring eligible institutions to make student eligibility determinations; establishing the Florida Center for Students with Unique Abilities; specifying the responsibilities of the center and the center director; specifying amounts of funds to be used for start-up and enhancement grants; specifying application requirements for initial approval and renewal of approval; requiring an eligible institution with an approved program to submit an annual report to the center by a specified date; establishing a Florida Postsecondary Comprehensive Transition Program Scholarship for certain qualified students; specifying requirements for a student to maintain scholarship eligibility; providing for the distribution of scholarship funds; requiring an eligible institution to report certain data and information to the center; requiring an eligible institution to certify and report the amount of funds disbursed and undisbursed advances to the center by a specified date; specifying the amount of the scholarship for eligible students; authorizing awards to be prorated under certain circumstances; requiring the center, with the Board of Governors and the State Board of Education, to
identify program progress and performance indicators;
requiring an annual report to the Legislature, the
Chancellor of the State University System, and the
Commissioner of Education by a specified date;
requiring the center, in collaboration with the Board
of Governors, State Board of Education, Higher
Education Coordinating Council, and other
stakeholders, to submit to the Governor and
Legislature statutory and budgetary recommendations
for the program; requiring the Board of Governors and
the State Board of Education, in consultation with the
center, to adopt regulations and rules; creating s.
1011.78, F.S.; authorizing certain school districts
and charter schools to be eligible to receive
incentive payments for implementing a standard student
attire policy that meets certain criteria; providing a
short title and purpose; establishing the
qualifications for such a payment; providing for
funding, subject to availability in the General
Appropriations Act; requiring the district school
superintendent or charter school governing board to
certify certain information to the commissioner by a
specified date; providing for reversion of the funds
under certain circumstances; providing immunity from
civil liability to a school district board or charter
school governing board that establishes a standard
student attire policy; amending ss. 1001.43 and
1002.33, F.S.; authorizing a district school board or
charter school that implements a standard student
attire policy to be eligible to receive incentive payments; amending s. 1002.385, F.S.; changing the name of the “Florida Personal Learning Scholarship Account Program” to the “Gardiner Scholarship Program”; revising terms for purposes of the Gardiner Scholarship Program; revising program eligibility criteria and program prohibitions for such scholarships; authorizing a parent to submit a specified document to receive scholarship funds before confirmed eligibility; requiring that authorized program funds be used to support the student’s educational needs; authorizing program funds to be spent for specified fees and services; revising the terms of the program; providing for the reversion of certain funds to the state; revising the obligations of school districts, parents, and the Department of Education with respect to the program; revising the authority of the Commissioner of Education to deny, suspend, or revoke certain program participation and use of program funds; specifying maximum periods for certain suspensions and revocations; authorizing the commissioner to recover program funds through certain means; revising information that must be provided for the program by scholarship-funding organizations and parents of applicants; specifying priority for participation in the program; revising funding and payment provisions for the program; requiring the Auditor General to provide the commissioner with program annual operational audits by a specified time;
amending s. 1002.395, F.S.; prohibiting a scholarship-funding organization from charging an application fee; deleting a requirement that certain fees be returned to the General Revenue Fund; providing for the transfer of contributions in excess of the amount that may be carried forward; revising the surety bond or letter of credit requirements for nonprofit scholarship-funding organizations submitting initial or renewal scholarship program participation applications; providing for the deposit of certain transferred funds by certain scholarship-funding organizations; requiring that certain deposited funds be separately disclosed; amending s. 1009.971, F.S.; revising the duties of the Florida Prepaid College Board; amending ss. 1009.98 and 1009.981, F.S.; providing implementation procedures for the Stanley G. Tate Florida Prepaid College Program and the Florida College Savings Program relating to plans purchased through the Gardiner Scholarship Programs; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.6495, Florida Statutes, is created to read:

1004.6495 Florida Postsecondary Comprehensive Transition Program and Florida Center for Students with Unique Abilities.—

(1) SHORT TITLE.—This section may be cited as the “Florida Postsecondary Comprehensive Transition Program Act.”
(2) PURPOSE AND LEGISLATIVE INTENT.—The purpose of this section is to increase independent living, inclusive and experiential postsecondary education, and employment opportunities for students with intellectual disabilities through degree, certificate, or nondegree programs and to establish statewide coordination of the dissemination of information regarding programs and services for students with disabilities. It is the intent of the Legislature that students with intellectual disabilities and students with disabilities have access to meaningful postsecondary education credentials and be afforded the opportunity to have a meaningful campus experience.

(3) DEFINITIONS.—As used in this section, the term:

(a) “Center” means the Florida Center for Students with Unique Abilities established under subsection (5).

(b) “Director” means the director of the center.

(c) “Eligible institution” means a state university; a Florida College System institution; a career center; a charter technical career center; or an independent college or university that is located and chartered in this state, is not for profit, is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, and is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.

(d) “Florida Postsecondary Comprehensive Transition Program Scholarship” or “scholarship” means the scholarship established under this section to provide state financial assistance awards to students who meet the student eligibility requirements specified in subsection (4) and are enrolled in an FPCTP.
(e) “FPCTP” means a Florida Postsecondary Comprehensive Transition Program that is approved pursuant to paragraph (5)(c) and offered by an eligible institution.

(f) “Transitional student” means a student who is 18 to 26 years of age and meets the student eligibility requirements specified in subsection (4).

(4) STUDENT ELIGIBILITY.—To be eligible to enroll in an FPCTP at an eligible institution, a student must, as determined by the institution, based on guidelines established by the center:

(a) Be a “student with an intellectual disability” as that term is defined in 20 U.S.C. s. 1140(2), including, but not limited to, a transitional student.

(b) Physically attend the eligible institution.

(c) Submit to the eligible institution documentation regarding his or her intellectual disability. Such documentation may include, but need not be limited to, a current individualized plan for employment associated with a review completed pursuant to s. 413.20(3) or a diagnosis from a physician who is licensed under chapter 458 or chapter 459 or a psychologist licensed under chapter 490.

(5) CENTER RESPONSIBILITIES.—The Florida Center for Students with Unique Abilities is established within the University of Central Florida. At a minimum, the center shall:

(a) Disseminate information to students with disabilities and their parents, including, but not limited to:

1. Education programs, services, and resources that are available at eligible institutions.

2. Supports, accommodations, technical assistance, or
training provided by eligible institutions, the advisory council established pursuant to s. 383.141, and regional autism centers established pursuant to s. 1004.55.

3. Mentoring, networking, and employment opportunities.
   (b) Coordinate, facilitate, and oversee the statewide implementation of this section. At a minimum, the director shall:

   1. Consult and collaborate with the National Center and the Coordinating Center, as identified in 20 U.S.C. s. 1140q, regarding guidelines established by the center for the effective implementation of the programs for students with disabilities and for students with intellectual disabilities which align with the federal requirements and with standards, quality indicators, and benchmarks identified by the National Center and the Coordinating Center.

   2. Consult and collaborate with the Higher Education Coordinating Council to identify meaningful credentials for FPCTPs and to engage businesses and stakeholders to promote experiential training and employment opportunities for students with intellectual disabilities.

   3. Establish requirements and timelines for the:
      a. Submission and review of an application.
      b. Approval or disapproval of an initial or renewal application.
      c. Implementation of an FPCTP, which must begin no later than the academic year immediately following the academic year during which the approval is granted.

   4. Administer scholarship funds.

   5. Administer FPCTP start-up and enhancement grants. From
funds appropriated in the 2016-2017 fiscal year for the FPCTP, $3 million shall be used for such grants. Thereafter, funds appropriated for the FPCTP may only be used for such grants if specifically authorized in the General Appropriations Act. The maximum annual start-up and enhancement grant award shall be $300,000 per institution.

6. Report on the implementation and administration of this section by planning, advising, and evaluating approved degree, certificate, and nondegree programs and the performance of students and programs pursuant to subsection (8).

(c) Create the application for the initial approval and renewal of approval as an FPCTP for use by an eligible institution which, at a minimum, must align with the federal comprehensive transition and postsecondary program application requirements. Notwithstanding the program approval requirements of s. 1004.03, the director shall review applications for the initial approval of an application for, or renewal of approval of, an FPCTP.

1. Within 30 days after receipt of an application, the director shall issue his or her recommendation regarding approval to the Chancellor of the State University System or the Commissioner of Education, as applicable, or shall give written notice to the applicant of any deficiencies in the application, which the eligible institution must be given an opportunity to correct. Within 15 days after receipt of a notice of deficiencies, an eligible institution that chooses to continue to seek program approval shall correct the application deficiencies and return the application to the center. Within 30 days after receipt of a revised application, the director shall
recommend approval or disapproval of the revised application to
the chancellor or the commissioner, as applicable. Within 15
days after receipt of the director’s recommendation, the
chancellor or the commissioner shall approve or disapprove the
recommendation. If the chancellor or the commissioner does not
act on the director’s recommendation within 15 days after
receipt of such recommendation, the comprehensive transition
program proposed by the institution shall be considered
approved.

2. Initial approval of an application for an FPCTP that
meets the requirements of this section is valid for the 3
academic years immediately following the academic year during
which the approval is granted. An eligible institution may
submit an application to the center requesting that the initial
approval be renewed. If the approval is granted and the FPCTP
continues to meet the requirements of this section, including,
but not limited to, program and student performance outcomes,
and federal requirements, a renewal is valid for the 5 academic
years immediately following the academic year during which the
renewal is granted.

3. An application must, at a minimum:
   a. Identify a credential associated with the proposed
      program which will be awarded to eligible students upon
      completion of the FPCTP.
   b. Outline the program length and design, including, at a
      minimum, inclusive and successful experiential education
      practices relating to curricular, assessment, and advising
      structure and internship and employment opportunities, which
      must support students with intellectual disabilities who are
seeking to continue academic, career and technical, and independent living instruction at an eligible institution, including, but not limited to, opportunities to earn industry certifications, to prepare students for gainful employment. If an eligible institution offers a credit-bearing degree program, the institution is responsible for maintaining the rigor and effectiveness of a comprehensive transition degree program at the same level as other comparable degree programs offered by the institution pursuant to applicable accreditation standards.

c. Outline a plan for students with intellectual disabilities to be integrated socially and academically with nondisabled students, to the maximum extent possible, and to participate on not less than a half-time basis, as determined by the eligible institution, with such participation focusing on academic components and occurring through one or more of the following activities with nondisabled students:

   (I) Regular enrollment in credit-bearing courses offered by the institution.

   (II) Auditing or participating in courses offered by the institution for which the student does not receive academic credit.

   (III) Enrollment in noncredit-bearing, nondegree courses.

   (IV) Participation in internships or work-based training.

d. Outline a plan for partnerships with businesses to promote experiential training and employment opportunities for students with intellectual disabilities.

e. Identify performance indicators pursuant to subsection (8) and other requirements identified by the center.

   f. Outline a 5-year plan incorporating enrollment and
operational expectations for the program.

(d) Provide technical assistance regarding programs and services for students with intellectual disabilities to administrators, instructors, staff, and others, as applicable, at eligible institutions by:

1. Holding meetings and annual workshops to share successful practices and to address issues or concerns.

2. Facilitating collaboration between eligible institutions and school districts, private schools operating pursuant to s. 1002.42, and parents of students enrolled in home education programs operating pursuant to s. 1002.41 in assisting students with intellectual disabilities and their parents to plan for the transition of such students into an FPCTP or another program at an eligible institution.

3. Assisting eligible institutions with FPCTP and federal comprehensive transition and postsecondary program applications.

4. Assisting eligible institutions with the identification of funding sources for an FPCTP and for student financial assistance for students enrolled in an FPCTP.

5. Monitoring federal and state law relating to the comprehensive transition program and notifying the Legislature, the Governor, the Board of Governors, and the State Board of Education of any change in law which may impact the implementation of this section.

(6) INSTITUTION ELIGIBILITY AND RESPONSIBILITIES.—

(a) To offer an FPCTP, the president or executive director of an eligible institution, as applicable, must submit to the center, by a date established by the center, the following:

1. An application for approval of a comprehensive
transition program proposed by the eligible institution, which
must be approved by the institution’s governing board and must
address the requirements of the federal comprehensive transition
and postsecondary program under 20 U.S.C. s. 1140 and the
requirements of this section.

2. Documented evidence that the institution currently
offers a federally approved comprehensive transition and
postsecondary program that is eligible for federal student aid
programs, documented evidence of the submission of an
application for such federal approval of a program proposed by
the institution, or documentation demonstrating the commitment
of the institution’s governing board to submit an application
within the subsequent academic year for federal approval of a
program pursuant to 20 U.S.C. s. 1140.

(b) An eligible institution may submit an application to
the center for approval pursuant to the requirements of this
section for implementation of the FPCTP no later than the
academic year immediately following the academic year during
which the approval is granted. An eligible institution must
submit a renewal application to the center no later than 3 years
following the year during which the approval is initially
granted.

(c) By August 1 of each year, an eligible institution that
has an FPCTP shall submit an annual report to the center which,
at a minimum, for the prior academic year, addresses the
following performance indicators:

1. Efforts to recruit students in the FPCTP and the number
of students enrolled in the program.

2. Efforts to retain students in the FPCTP and the
retention rate of students in the program.

3. The completion rate of students enrolled in the FPCTP and related courses, as applicable.

4. Transition success of students who complete the FPCTP, as measured by employment rates and salary levels at 1 year and 5 years after completion.

5. Other performance indicators identified by the center pursuant to subsection (8).

(d) An eligible institution shall notify students with intellectual disabilities and their parents of the student eligibility requirements specified in subsection (4) and the scholarship requirements and eligibility requirements specified in subsection (7).

(7) FLORIDA POSTSECONDARY COMPREHENSIVE TRANSITION PROGRAM SCHOLARSHIP.—

(a) Beginning in the 2016-2017 academic year, the Florida Postsecondary Comprehensive Transition Program Scholarship is established for students who meet the student eligibility requirements specified in subsection (4), are enrolled in an FPCTP, and are not receiving services that are funded through the Florida Education Finance Program or a scholarship under part III of chapter 1002.

(b) To maintain eligibility to receive a scholarship, a student must continue to meet the requirements of paragraph (a) and must demonstrate satisfactory academic progress in the FPCTP, as determined by the eligible institution that the student attends, based on the indicators identified by the center pursuant to subsection (8).

(c) Payment of scholarship funds shall be transmitted to
the director of the center or his or her designee in advance of
the registration period. The director or his or her designee
shall disburse the scholarship funds to the eligible
institutions that are responsible for awarding the scholarship
to students who meet the requirements of paragraphs (a) and (b).

(d) During each academic term, by a date established by the
center, an eligible institution shall report to the center the
number and value of all scholarships awarded under this
subsection. Each eligible institution shall also report to the
center necessary demographic and eligibility data and other data
requested by the center for students who received the
scholarship awards.

(e) By a date annually established by the center, each
eligible institution shall certify to the center the amount of
funds disbursed to each student and shall remit to the center
any undisbursed advances by June 1 of each year.

(f) For the 2016-2017 academic year, the amount of the
annual scholarship shall be $7,000 for each student who meets
the eligibility requirements of subsection (4). Beginning in the
2017-2018 fiscal year, the funding for the program and the
annual amount of the scholarship to be provided to a student who
meets the eligibility requirements of subsection (4) shall be
the amounts specified in the General Appropriations Act. If
appropriated funds in any fiscal year are not adequate to
provide the maximum allowable award to each eligible student,
the awards may be prorated.

(8) ACCOUNTABILITY.—

(a) The center, in collaboration with the Board of
Governors and the State Board of Education, shall identify
indicators for the satisfactory progress of a student in an
FPCTP and for the performance of such programs. Each eligible
institution must address the indicators identified by the center
in its application for the approval of a proposed program and
for the renewal of an FPCTP and in the annual report that the
institution submits to the center.

(b) By October 1 of each year, the center shall provide to
the Governor, the President of the Senate, the Speaker of the
House of Representatives, the Chancellor of the State University
System, and the Commissioner of Education a report summarizing
information including, but not limited to:

1. The status of the statewide coordination of FPCTPs and
the implementation of FPCTPs at eligible institutions including,
but not limited to:
   a. The number of applications approved and disapproved and
      the reasons for each disapproval and no action taken by the
      chancellor or the commissioner.
   b. The number and value of all scholarships awarded to
      students and undisbursed advances remitted to the center
      pursuant to subsection (7).

2. Indicators identified by the center pursuant to
paragraph (a) and the performance of each eligible institution
based on the indicators identified in paragraph (6)(c).

3. The projected number of students with intellectual
disabilities who may be eligible to enroll in the FPCTPs within
the next academic year.

4. Education programs and services for students with
intellectual disabilities which are available at eligible
institutions.
(c) Beginning in the 2016-2017 fiscal year, the center, in collaboration with the Board of Governors, State Board of Education, Higher Education Coordinating Council, and other stakeholders, by December 1 of each year, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives statutory and budget recommendations for improving the implementation and delivery of FPCTPs and other education programs and services for students with disabilities.

(9) RULES.—The Board of Governors and the State Board of Education, in consultation with the center, shall expeditiously adopt any necessary regulations and rules, as applicable, to allow the center to perform its responsibilities pursuant to this section beginning in the 2016-2017 fiscal year.

Section 2. Section 1011.78, Florida Statutes, is created to read:

1011.78 Standard student attire incentive payments.—There is created an incentive payment for school districts and charter schools that implement a standard student attire policy for all students in kindergarten through grade 8 in accordance with this section.

(1) SHORT TITLE.—This section may be cited as the “Students Attired for Education (SAFE) Act.”

(2) PURPOSE.—The purpose of a standard student attire policy is to provide a safe environment for students which fosters learning and improves school safety and discipline by:

(a) Encouraging students to express their individuality through personality and academic achievements, rather than outward appearance.
(b) Enabling students to focus on academics, rather than fashion, because they are able to convey a neat, serious, and studious image.

(c) Minimizing disciplinary problems because students are not distracted by clothing.

(d) Reducing the time needed to correct dress code violations through a readily available inventory of compliant attire.

(e) Minimizing visible differences between students and eliminating social pressures to wear brand-name clothing or colors to show gang affiliation, thereby easing financial pressures on parents and enhancing school safety.

(f) Creating a sense of school pride and belonging.

(3) QUALIFICATIONS.—To qualify for the incentive payment, a school district or charter school must, at a minimum, implement a standard attire policy that:

(a) Applies to all students in kindergarten through grade 8 in the school district or charter school, regardless of individual school grade configurations.

(b) Prohibits certain types or styles of clothing and requires solid-colored clothing and fabrics for pants, skirts, shorts, or similar clothing and short- or long-sleeved shirts with collars.

(c) Allows reasonable accommodations based on a student’s religion, disability, or medical condition.

(4) AWARD.—Subject to the appropriation of funds by the Legislature, a qualified school district or charter school shall receive an annual award of not less than $10 per student in kindergarten through grade 8, as specified in the General
494 Appropriations Act. Before the release of funds, but no later than September 1 of each year, the district school superintendent or the charter school governing board shall certify to the commissioner that the school district or charter school has implemented a districtwide or schoolwide standard student attire policy, respectively, in accordance with this section. A charter school may also qualify by participating in its sponsor’s qualifying policy. The commissioner shall make payment of awards to school districts and charter schools in the order in which certifications are received. As of June 30 of each year, any funds provided pursuant to this section that have not been disbursed to qualified school districts and charter schools revert to the fund from which they were appropriated pursuant to s. 216.301.

(5) IMMUNITY.—A district school board or governing board of a charter school that implements a districtwide or schoolwide standard student attire policy, respectively, is immune from civil liability resulting from adoption of the policy in accordance with this section.

Section 3. Paragraph (b) of subsection (1) of section 1001.43, Florida Statutes, is amended to read:

1001.43 Supplemental powers and duties of district school board.—The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

(1) STUDENT MANAGEMENT.—The district school board may adopt programs and policies to ensure the safety and welfare of individuals, the student body, and school personnel, which programs and policies may:
(b) Require uniforms to be worn by the student body, or impose other dress-related requirements, if the district school board finds that those requirements are necessary for the safety or welfare of the student body or school personnel. However, students may wear sunglasses, hats, or other sun-protective wear while outdoors during school hours, such as when students are at recess. A district school board that implements a districtwide standard student attire policy pursuant to s. 1011.78 is eligible to receive incentive payments.

Section 4. Paragraph (g) is added to subsection (17) of section 1002.33, Florida Statutes, to read:

1002.33 Charter schools.—
(17) FUNDING.--Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(g) A charter school that implements a schoolwide standard student attire policy pursuant to s. 1011.78 is eligible to receive incentive payments.

Section 5. Section 1002.385, Florida Statutes, is amended to read:

1002.385 The Gardiner Scholarship Florida personal learning scholarship accounts.—
(1) ESTABLISHMENT OF PROGRAM.—The Gardiner Scholarship Florida Personal Learning Scholarship Accounts Program is established to provide the option for a parent to better meet the individual educational needs of his or her eligible child. All written explanatory materials, state websites, scholarship
organization materials, letters to parents, scholarship agreements, and any other information describing this program to the public shall refer to a scholarship under the program as the “Gardiner Scholarship.”

(2) DEFINITIONS.—As used in this section, the term:

(a) “Approved provider” means a provider approved by the Agency for Persons with Disabilities, a health care practitioner as defined in s. 456.001(4), or a provider approved by the department pursuant to s. 1002.66.

(b) “Curriculum” means a complete course of study for a particular content area or grade level, including any required supplemental materials and associated online instruction.

(c) “Department” means the Department of Education.

(d) “Disability” means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association s. 393.063(3); cerebral palsy, as defined in s. 393.063(4); Down syndrome, as defined in s. 393.063(13); an intellectual disability, as defined in s. 393.063(21); Prader-Willi syndrome, as defined in s. 393.063(25); or spina bifida, as defined in s. 393.063(36); for a student in kindergarten, being a high-risk child, as defined in s. 393.063(20)(a); muscular dystrophy; and Williams syndrome.

(e) “Eligible nonprofit scholarship-funding organization” or “organization” means a nonprofit scholarship-funding organization that is approved pursuant to s. 1002.395(16) has the same meaning as in s. 1002.395.

(f) “Eligible postsecondary educational institution” means
a Florida College System institution; a state university; a school district technical center; a school district adult general education center; an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program under s. 1009.89; or an accredited independent nonpublic postsecondary educational institution, as defined in s. 1005.02, which is licensed to operate in the state pursuant to requirements specified in part III of chapter 1005.

(g) “Eligible private school” means a private school, as defined in s. 1002.01, which is located in this state, which offers an education to students in any grade from kindergarten to grade 12, and which meets the requirements of:

1. Sections 1002.42 and 1002.421; and

2. A scholarship program under s. 1002.39 or s. 1002.395, as applicable, if the private school participates in a scholarship program under s. 1002.39 or s. 1002.395.

(h) “IEP” means individual education plan.

(i) “Parent” means a resident of this state who is a parent, as defined in s. 1000.21.

(j) “Program” means the Gardiner Scholarship Florida Personal Learning Scholarship Accounts Program established in this section.

(3) PROGRAM ELIGIBILITY.—A parent of a student with a disability may request and receive from the state a Gardiner Scholarship Florida personal learning scholarship account for the purposes specified in subsection (5) if:

(a) The student:

1. Is a resident of this state;
2. Is 3 or 4 years of age on or before September 1 of the year in which the student applies for program participation or is eligible to enroll in kindergarten through grade 12 in a public school in this state;

3. Has a disability as defined in paragraph (2)(d); and

4. Is the subject of an IEP written in accordance with rules of the State Board of Education or has received a diagnosis of a disability as defined in subsection (2) from a physician who is licensed under chapter 458 or chapter 459 or a psychologist who is licensed under chapter 490 in this state.

(b) Beginning January 2015, The parent has applied to an eligible nonprofit scholarship-funding organization to participate in the program by February 1 before the school year in which the student will participate or an alternative date as set by the organization for any vacant, funded slots. The request must be communicated directly to the organization in a manner that creates a written or electronic record of the request and the date of receipt of the request. In addition to the application and any documentation required by the organization or by State Board of Education rule, the parent may submit a final verification document pursuant to this paragraph to receive scholarship funds in the student’s account before the department confirms program eligibility pursuant to paragraph (9)(e). The final verification document must consist of one of the following items applicable to the student:

1. A completed withdrawal form from the school district, if the student was enrolled in a public school before the determination of program eligibility.

2. A letter of admission or enrollment from an eligible
private school for the fiscal year in which the student wishes
to participate and, if applicable, a copy of the notification
from the private school that the student has withdrawn from the
John M. McKay Scholarships for Students with Disabilities
Program or the Florida Tax Credit Scholarship Program.

3. A copy of the notice of the parent’s intent to establish
and maintain a home education program required by s.
1002.41(1)(a) or the annual educational evaluation of the
student in a home education program, which is required by s.
1002.41(2). The organization shall notify the district and the
department of the parent’s intent upon receipt of the parent’s
request.

(4) PROGRAM PROHIBITIONS.—
(a) A student is not eligible for the program if while he
or she is:

(a) Enrolled in a public school, including, but not
limited to, the Florida School for the Deaf and the Blind; the
Florida Virtual School; the College-Preparatory Boarding
Academy; a developmental research school authorized under s.
1002.32; a charter school authorized under s. 1002.33, s.
1002.331, or s. 1002.332; or a virtual education program
authorized under s. 1002.45. For purposes of this paragraph, a
3- or 4-year-old child who receives services funded through the
Florida Education Finance Program is considered to be a student
enrolled in a public school. Funding provided under this section
for a child eligible for enrollment in the Voluntary
Prekindergarten Education Program shall constitute funding for
the child under part V of this chapter, and no additional
funding shall be provided for the child under part V.
(b) 2. Enrolled in a school operating for the purpose of providing educational services to youth in the Department of Juvenile Justice commitment programs.

(c) 3. Receiving a scholarship pursuant to the Florida Tax Credit Scholarship Program under s. 1002.395 or the John M. McKay Scholarships for Students with Disabilities Program under s. 1002.39.

(d) 4. Receiving any other educational scholarship pursuant to this chapter.

(b) A student is not eligible for the program if:

1. The student or student’s parent has accepted any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5);

2. The student’s participation in the program has been denied or revoked by the commissioner of Education pursuant to subsection (10); or

3. The student’s parent has forfeited participation in the program for failure to comply with requirements pursuant to subsection (11).

(5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be used to meet the individual educational needs of an eligible student and may be spent for the following purposes:

(a) Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices.

(b) Curriculum as defined in paragraph (2)(b).

(c) Specialized services by approved providers that are
selected by the parent. These specialized services may include,
but are not limited to:

1. Applied behavior analysis services as provided in ss. 627.6686 and 641.31098.

2. Services provided by speech-language pathologists as defined in s. 468.1125.

3. Occupational therapy services as defined in s. 468.203.

4. Services provided by physical therapists as defined in s. 486.021.

5. Services provided by listening and spoken language specialists and an appropriate acoustical environment for a child who is deaf or hard of hearing and who has received an implant or assistive hearing device.

(d) Enrollment in, or tuition or fees associated with enrollment in, a home education program, an eligible private school, an eligible postsecondary educational institution or a program offered by the institution, a private tutoring program authorized under s. 1002.43, a virtual program offered by a department-approved private online provider that meets the provider qualifications specified in s. 1002.45(2)(a), the Florida Virtual School as a private paying student, or an approved online course offered pursuant to s. 1003.499 or s. 1004.0961.

(e) Fees for nationally standardized, norm-referenced achievement tests, Advanced Placement Examinations, industry certification examinations, assessments related to postsecondary education, or other assessments.

(f) Contributions to the Stanley G. Tate Florida Prepaid College Program pursuant to s. 1009.98 or the Florida College
Savings Program pursuant to s. 1009.981, for the benefit of the eligible student.

(g) Contracted services provided by a public school or school district, including classes. A student who receives services under a contract under this paragraph is not considered enrolled in a public school for eligibility purposes as specified in subsection (4).

(h) Tuition and fees for part-time tutoring services provided by a person who holds a valid Florida educator’s certificate pursuant to s. 1012.56; a person who holds an adjunct teaching certificate pursuant to s. 1012.57; or a person who has demonstrated a mastery of subject area knowledge pursuant to s. 1012.56(5). As used in this paragraph, the term “part-time tutoring services” does not qualify as regular school attendance as defined in s. 1003.01(13)(e).

(i) Fees for specialized summer education programs.

(j) Fees for specialized after-school education programs.

(k) Transition services provided by job coaches.

(l) Fees for an annual evaluation of educational progress by a state-certified teacher under s. 1002.41(1)(c), if this option is chosen for a home education student.

(m) Tuition and fees associated with programs offered by Voluntary Prekindergarten Education Program providers approved pursuant to s. 1002.55 and school readiness providers approved pursuant to s. 1002.88.

A provider of any services specialized service provider, eligible private school, eligible postsecondary educational institution, private tutoring program provider, online or
virtual program provider, public school, school district, or other entity receiving payments pursuant to this subsection may not share, refund, or rebate any moneys from the Gardiner Scholarship Florida personal learning scholarship account with the parent or participating student in any manner.

(6) TERM OF THE PROGRAM.—For purposes of continuity of educational choice and program integrity:

(a)1. The Program payments made by the state to an organization for a Gardiner Scholarship under this section shall continue remain in force until:

   a. The parent does not renew program eligibility;
   b. The organization determines that the student is not eligible for program renewal;
   c. The Commissioner of Education suspends or revokes program participation or use of funds;
   d. The student’s parent has forfeited participation in the program for failure to comply with subsection (11);
   e. The student enrolls in a public school; or
   f. The student graduates from high school or attains 22 years of age, whichever occurs first.

2. Reimbursements for program expenditures may continue
until the account balance is expended or the account is closed pursuant to paragraph (b).

(b)1. A student’s scholarship account must be closed and any remaining funds, including, but not limited to, contributions made to the Stanley G. Tate Florida Prepaid College Program or earnings from or contributions made to the Florida College Savings Program using program funds pursuant to paragraph (5)(f), shall revert to the state upon:

a. Denial or revocation of program eligibility by the commissioner for fraud or abuse, including, but not limited to, the student or student’s parent accepting any payment, refund, or rebate, in any manner, from a provider of any services received pursuant to subsection (5); or

b. After any period of 3 consecutive years after high school completion or graduation during which the student has not been enrolled in an eligible postsecondary educational institution or a program offered by the institution.

2. The commissioner must notify the parent and the organization when a Gardiner Scholarship account is closed and program funds revert to the state.

(7) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—

(a)1. The parent of a student with a disability who does not have an IEP in accordance with subparagraph (3)(a)4. or who seeks a reevaluation of an existing IEP may request an IEP meeting and evaluation from the school district in order to obtain or revise a matrix of services. The school district shall notify a parent who has made a request for an IEP that the district is required to complete the IEP and matrix of services within 30 days after receiving notice of the parent’s request.
The school district shall conduct a meeting and develop an IEP and a matrix of services within 30 days after receipt of the parent’s request in accordance with State Board of Education rules. A matrix of services under s. 1011.62(1)(e) and for whom the parent requests a matrix of services. The school district must complete a matrix that assigns the student to one of the levels of service as they existed before the 2000-2001 school year.

2.a. Within 10 school days after a school district receives notification of a parent’s request for completion of a matrix of services, the school district must notify the student’s parent if the matrix of services has not been completed and inform the parent that the district is required to complete the matrix within 30 days after receiving notice of the parent’s request for the matrix of services. This notice must include the required completion date for the matrix.

b. The school district shall complete the matrix of services for a student whose parent has made a request. The school district must provide the student’s parent and the department with the student’s matrix level within 10 calendar school days after its completion.

b.e. The department shall notify the parent and the eligible nonprofit scholarship funding organization of the amount of the funds awarded within 10 days after receiving the school district’s notification of the student’s matrix level.

c.d. A school district may change a matrix of services only if the change is a result of an IEP reevaluation or to correct a technical, typographical, or calculation error.

(b) For each student participating in the program who
chooses to participate in statewide, standardized assessments under s. 1008.22 or the Florida Alternate Assessment, the school district in which the student resides must notify the student and his or her parent about the locations and times to take all statewide, standardized assessments.

(c) For each student participating in the program, a school district shall notify the parent about the availability of a reevaluation at least every 3 years.

(8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An eligible private school may be sectarian or nonsectarian and shall:

(a) Comply with all requirements for private schools participating in state school choice scholarship programs pursuant to s. 1002.421.

(b) Provide to the eligible nonprofit scholarship funding organization, upon request, all documentation required for the student’s participation, including the private school’s and student’s fee schedules.

(c) Be academically accountable to the parent for meeting the educational needs of the student by:

1. At a minimum, annually providing to the parent a written explanation of the student’s progress.

2. Annually administering or making provision for students participating in the program in grades 3 through 10 to take one of the nationally norm-referenced tests identified by the Department of Education or the statewide assessments pursuant to s. 1008.22. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement. A participating private school shall report a student’s scores to the parent.
3. Cooperating with the scholarship student whose parent chooses to have the student participate in the statewide assessments pursuant to s. 1008.22 or, if a private school chooses to offer the statewide assessments, administering the assessments at the school.

   a. A participating private school may choose to offer and administer the statewide assessments to all students who attend the private school in grades 3 through 10.

   b. A participating private school shall submit a request in writing to the Department of Education by March 1 of each year in order to administer the statewide assessments in the subsequent school year.

   (d) Employ or contract with teachers who have regular and direct contact with each student receiving a scholarship under this section at the school’s physical location.

   (e) Annually contract with an independent certified public accountant to perform the agreed-upon procedures developed under s. 1002.395(6)(o) s. 1002.395(6)(n) and produce a report of the results if the private school receives more than $250,000 in funds from scholarships awarded under this section in the 2014-2015 state fiscal year or a state fiscal year thereafter. A private school subject to this paragraph must submit the report by September 15, 2015, and annually thereafter to the scholarship funding organization that awarded the majority of the school’s scholarship funds. The agreed-upon procedures must be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.
The inability of a private school to meet the requirements of this subsection constitutes a basis for the ineligibility of the private school to participate in the program as determined by the commissioner department.

(9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The department shall:

(a) Maintain on its website a list of approved providers as required in s. 1002.66, eligible postsecondary educational institutions, eligible private schools, and organizations and may identify or provide links to lists of other approved providers.

(b) Require each eligible nonprofit scholarship funding organization to verify eligible expenditures before the distribution of funds for any expenditures made pursuant to paragraphs (5)(a) and (b). Review of expenditures made for services specified in paragraphs (5)(c)-(m) may be completed after the purchase is payment has been made.

(c) Investigate any written complaint of a violation of this section by a parent, a student, a private school, a public school or a school district, an organization, a provider, or another appropriate party in accordance with the process established by s. 1002.395(9)(f).

(d) Require quarterly reports by an eligible nonprofit scholarship funding organization, which must, at a minimum, include regarding the number of students participating in the program; the demographics of program participants; the disability category of program participants; the matrix level of services, if known; the program award amount per student; the total expenditures for the purposes specified in subsection
(5); the types of providers of services to students; and any other information deemed necessary by the department.

(e) Compare the list of students participating in the program with the public school student enrollment lists, Voluntary Prekindergarten Education Program enrollment lists, and the list of students participating in school choice scholarship programs established pursuant to this chapter before each scholarship award is provided to the organization, and subsequently throughout the school year, each program payment to avoid duplicate payments and confirm program eligibility. A parent who files a final verification pursuant to paragraph (3)(b) shall receive scholarship funds before the department confirms program eligibility.

(10) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—

(a) The Commissioner of Education:

1. Shall deny, suspend, or revoke a student’s participation in the program if the health, safety, or welfare of the student is threatened or fraud is suspected.

2. Shall deny, suspend, or revoke an authorized use of program funds if the health, safety, or welfare of the student is threatened or fraud is suspected.

3. May deny, suspend, or revoke an authorized use of program funds for material failure to comply with this section and applicable department rules if the noncompliance is correctable within a reasonable period of time. Otherwise, the commissioner shall deny, suspend, or revoke an authorized use for failure to materially comply with the law and rules adopted under this section.

4. Shall require compliance by the appropriate party by a
date certain for all nonmaterial failures to comply with this section and applicable department rules. The commissioner may deny, suspend, or revoke program participation or use of program funds by the student or participation or eligibility of an organization, eligible private school, eligible postsecondary educational institution, approved provider, or other party for a violation of this section.

2. May determine the length of, and conditions for lifting, a suspension or revocation specified in this subsection.

3. May recover unexpended program funds or withhold payment of an equal amount of program funds to recover program funds that were not authorized for use.

4. Shall deny or terminate program participation upon a parent’s forfeiture of a Gardiner Scholarship pursuant to subsection (11) under this section thereafter.

(b) In determining whether to deny, suspend, or revoke participation or lift a suspension or revocation in accordance with this subsection, the commissioner may consider factors that include, but are not limited to, acts or omissions that by a participating entity which led to a previous suspension denial or revocation of participation in a state or federal program or an education scholarship program; failure to reimburse the eligible nonprofit scholarship funding organization for program funds improperly received or retained by the entity; failure to reimburse government funds improperly received or retained; imposition of a prior criminal sanction related to the person or entity or its officers or employees; imposition of a civil fine or administrative fine, license revocation or suspension, or program eligibility suspension, termination, or revocation.
related to a person's or an entity's management or operation; or
other types of criminal proceedings in which the person or
entity or its officers or employees were found guilty of,
regardless of adjudication, or entered a plea of nolo contendere
or guilty to, any offense involving fraud, deceit, dishonesty,
or moral turpitude.

(11) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
PARTICIPATION.—A parent who applies for program participation
under this section is exercising his or her parental option to
determine the appropriate placement or the services that best
meet the needs of his or her child. The scholarship award for a
student is based on a matrix that assigns the student to support
Level III services. If a parent chooses to request and
receive an IEP and a matrix of services from the school district
pursuant to subsection (7), the amount of the payment shall be
adjusted as needed, when the school district completes the
matrix.

(a) To satisfy or maintain program eligibility, including
eligibility to receive and spend program payments enroll an
eligible student in the program, the parent must sign an
agreement with the eligible nonprofit scholarship funding
organization and annually submit a notarized, sworn compliance
statement to the organization to:

1. Affirm that the student is enrolled in a program that
meets regular school attendance requirements as provided in s.
1003.01(13)(b)-(d).

2. Affirm that the program funds are used only for
authorized purposes serving the student’s educational needs, as
described in subsection (5).
3. Affirm that the parent is responsible for the education of his or her student by, as applicable: takes all appropriate standardized assessments as specified in this section.

   a. Requiring the student to If the parent enrolls the child in an eligible private school, the student must take an assessment in accordance with paragraph (8)(c); selected by the private school pursuant to s. 1002.395(7)(e).

   b. Providing an If the parent enrolls the child in a home education program, the parent may choose to participate in an assessment as part of the annual evaluation in accordance with provided for in s. 1002.41(1)(c); or-

   c. Requiring the child to take any pre- and post-assessments selected by the provider if the child is 4 years of age and is enrolled in a program provided by an eligible Voluntary Prekindergarten Education Program provider. A student with disabilities for whom a pre- and post-assessment is not appropriate is exempt from this requirement. A participating provider shall report a student’s scores to the parent.

4. Notify the school district that the student is participating in the Personal Learning Scholarship Accounts if the parent chooses to enroll in a home education program as provided in s. 1002.41.

5. Request participation in the program by the date established by the eligible nonprofit scholarship funding organization.

4.6. Affirm that the student remains in good standing with the provider or school if those options are selected by the parent.

7. Apply for admission of his or her child if the private
school option is selected by the parent.

8. Annually renew participation in the program.

Notwithstanding any changes to the student’s IEP, a student who was previously eligible for participation in the program shall remain eligible to apply for renewal as provided in subsection (6).

9. Affirm that the parent will not transfer any college savings funds to another beneficiary.

10. Affirm that the parent will not take possession of any funding provided by the state for the Florida Personal Learning Scholarship Accounts.

11. Maintain a portfolio of records and materials which must be preserved by the parent for 2 years and be made available for inspection by the district school superintendent or the superintendent’s designee upon 15 days’ written notice. This paragraph does not require the superintendent to inspect the portfolio. The portfolio of records and materials must consist of:

   a. A log of educational instruction and services which is made contemporaneously with delivery of the instruction and services and which designates by title any reading materials used; and

   b. Samples of any writings, worksheets, workbooks, or creative materials used or developed by the student.

   (b) The parent must file an application for initial program participation with an organization by the dates established pursuant to this section.

   (c) The parent must notify the school district that the student is participating in the Gardiner Scholarship Program if
the parent chooses to enroll the student in a home education program as provided in s. 1002.41. This notification is not in lieu of the required notification a parent must submit to the district when establishing a home education program pursuant to s. 1002.41(1)(a).

(d) The parent must enroll his or her child in a program from a Voluntary Prekindergarten Education Program provider authorized under s. 1002.55, a school readiness provider authorized under s. 1002.88, or an eligible private school if either option is selected by the parent.

(e) The parent must annually renew participation in the program. Notwithstanding any changes to the student’s IEP, a student who was previously eligible for participation in the program shall remain eligible to apply for renewal. However, for a high-risk child to continue to participate in the program in the school year after he or she reaches 6 years of age, the child’s application for renewal of program participation must contain documentation that the child has a disability defined in paragraph (2)(d) other than high-risk status.

(f) The parent is responsible for procuring the services necessary to educate the student. When the student receives a Gardiner Scholarship personal learning scholarship account, the district school board is not obligated to provide the student with a free appropriate public education. For purposes of s. 1003.57 and the Individuals with Disabilities in Education Act, a participating student has only those rights that apply to all other unilaterally parentally placed students, except that, when requested by the parent, school district personnel must develop an individual education plan or matrix level of services.
(g) (e) The parent is responsible for the payment of all eligible expenses in excess of the amount of the Gardiner Scholarship personal learning scholarship account in accordance with the terms agreed to between the parent and the providers.

(h) The parent may not transfer any prepaid college plan or college savings plan funds contributed pursuant to paragraph (5)(f) to another beneficiary while the plan contains funds contributed pursuant to this section.

(i) The parent may not receive a payment, refund, or rebate from an approved provider of any services under this program.

A parent who fails to comply with this subsection forfeits the Gardiner Scholarship personal learning scholarship account.

(12) OBLIGATIONS OF SCHOLARSHIP-FUNDING ORGANIZATIONS

ADMINISTRATION OF PERSONAL LEARNING SCHOLARSHIP ACCOUNTS.—An eligible nonprofit scholarship-funding organization participating in the Florida Tax Credit Scholarship Program established under s. 1002.395 may establish Gardiner Scholarships personal learning scholarship accounts for eligible students by:

(a) Receiving applications and determining student eligibility in accordance with the requirements of this section. The organization shall notify the department of the applicants for the program by March 1 before the school year in which the student intends to participate. When an application is approved received, the scholarship funding organization must provide the department with information on the student to enable the department to determine report the student for funding in accordance with subsection (13).
(b) Notifying parents of their receipt of a scholarship on a first-come, first-served basis, based upon the funds provided for this program in the General Appropriations Act.

(c) Establishing a date pursuant to paragraph (3)(b) by which a parent must confirm initial or continuing participation in the program and confirm the establishment or continuance of a personal learning scholarship account.

(d) Reviewing applications and awarding scholarship funds to approved applicants using the following priorities:

1. Renewing students from the previous school year;
2. Students retained on the previous school year’s wait list;
3. Newly approved applicants; and
4. Late-filed applicants.

An approved student who does not receive a scholarship must be placed on the wait list in the order in which his or her application is approved. The establishing a date and process by which students on the wait list or subsequent late-filing applicants may be allowed to participate in the program during the fiscal school year, within the amount of funds provided for this program in the General Appropriations Act. A student who does not receive a scholarship within the fiscal year shall be retained on the wait list for the subsequent year.

(e) Establishing and maintaining separate accounts for each eligible student. For each account, the organization must maintain a record of accrued interest that is retained in the student’s account and available only for authorized program expenditures.
(f) Verifying qualifying educational expenditures pursuant to the requirements of paragraph (9)(b) (8)(b).

(g) Returning any remaining program unused funds to the department pursuant to paragraph (6)(b) when the student is no longer eligible for a personal scholarship learning account.

(h) Notifying the parent about the availability of, and the requirements associated with, requesting an initial IEP or IEP reevaluation every 3 years for each student participating in the program.

(i) Notifying the department of any violation of this section.

(j) Documenting each scholarship student’s eligibility for a fiscal year before granting a scholarship for that fiscal year pursuant to paragraph (3)(b).

(13) FUNDING AND PAYMENT.—

(a)1. The maximum funding amount granted for an eligible student with a disability, pursuant to subsection (3), shall be equivalent to the base student allocation in the Florida Education Finance Program multiplied by the appropriate cost factor for the educational program which would have been provided for the student in the district school to which he or she would have been assigned, multiplied by the district cost differential.

2. In addition, an amount equivalent to a share of the guaranteed allocation for exceptional students in the Florida Education Finance Program shall be determined and added to the amount in subparagraph 1. The calculation shall be based on the methodology and the data used to calculate the guaranteed allocation for exceptional students for each district in chapter
2000-166, Laws of Florida. Except as provided in subparagraph
3., the calculation shall be based on the student’s grade, the
matrix level of services, and the difference between the 2000-
2001 basic program and the appropriate level of services cost
factor, multiplied by the 2000-2001 base student allocation and
the 2000-2001 district cost differential for the sending
district. The calculated amount must also include an amount
equivalent to the per-student share of supplemental academic
instruction funds, instructional materials funds, technology
funds, and other categorical funds as provided in the General
Appropriations Act.

3. Except as otherwise provided in subsection (7), the
calculation for all students participating in the program shall
be based on the matrix that assigns the student to support Level
III of services. If a parent chooses to request and receive a
matrix of services from the school district, when the school
district completes the matrix, the amount of the payment shall
be adjusted as needed.

(b) The amount of the awarded funds shall be 90 percent of
the calculated amount. One hundred percent of the funds
appropriated for the program shall be released to the department
at the beginning of the first quarter of each fiscal year.

(c) Upon notification from the organization that a parent
has filed a final verification document pursuant to paragraph
(3)(b) or upon notification from the organization that a 3- or
4-year-old child’s application has been approved for the
program, the department shall release the student’s scholarship
funds to the organization to be deposited into the student’s
account an eligible student’s graduation from an eligible
postsecondary educational institution or after any period of 4
consecutive years after high school graduation in which the
student is not enrolled in an eligible postsecondary educational
institution, the student’s personal learning scholarship account
shall be closed, and any remaining funds shall revert to the
state.

(d) For initial eligibility for the program, students
determined eligible by the organization for a Gardiner
Scholarship by:

1. September 1 shall receive 100 percent of the total
awarded funds.

2. November 1 shall receive 75 percent of the total awarded
funds.

3. February 1 shall receive 50 percent of the total awarded
funds.

4. April 1 shall receive 25 percent of the total awarded
funds.

(e) Accrued interest in the student’s account is in
addition to, and not part of, the awarded funds. Program funds
include both the awarded funds and accrued interest.

(f) (d) The eligible nonprofit scholarship-funding
organization may shall develop a system for payment of benefits
by electronic funds transfer, including, but not limited to,
debit cards, electronic payment cards, or any other means of
electronic payment that the department deems to be commercially
viable or cost-effective. A student’s scholarship award may not
be reduced for debit card or electronic payment fees.
Commodities or services related to the development of such a
system shall be procured by competitive solicitation unless they
are purchased from a state term contract pursuant to s. 287.056.

(g) In addition to funds appropriated for scholarship awards and subject to a separate, specific legislative appropriation, an organization may receive an amount equivalent to not more than 3 percent of the amount of each scholarship award from state funds for administrative expenses if the organization has operated as a nonprofit entity for at least the preceding 3 fiscal years and did not have any findings of material weakness or material noncompliance in its most recent audit under s. 1002.395(6)(m). Such administrative expenses must be reasonable and necessary for the organization’s management and distribution of scholarships under this section. Funds authorized under this paragraph may not be used for lobbying or political activity or expenses related to lobbying or political activity. An organization may not charge an application fee for a scholarship. Administrative expenses may not be deducted from funds appropriated for scholarship awards.

(h)(e) Moneys received pursuant to this section do not constitute taxable income to the qualified student or parent of the qualified student.

(14) OBLIGATIONS OF THE AUDITOR GENERAL.—

(a) The Auditor General shall conduct an annual financial and operational audit of accounts and records of each eligible scholarship funding organization that participates in the program. As part of this audit, the Auditor General shall verify, at a minimum, the total amount of students served and eligibility of reimbursements made by the each eligible nonprofit scholarship funding organization and transmit that information to the department. The Auditor General shall provide
the commissioner with a copy of each annual operational audit performed pursuant to this subsection within 10 days after the audit is finalized.

(b) The Auditor General shall notify the department of any eligible nonprofit scholarship-funding organization that fails to comply with a request for information.

(15) OBLIGATIONS RELATED TO APPROVED PROVIDERS.—The Department of Health, the Agency for Persons with Disabilities, and the Department of Education shall work with an eligible nonprofit scholarship-funding organization for easy or automated access to lists of licensed providers of services specified in paragraph (5)(c) to ensure efficient administration of the program.

(16) LIABILITY.—The state is not liable for the award or any use of awarded funds under this section.

(17) SCOPE OF AUTHORITY.—This section does not expand the regulatory authority of this state, its officers, or any school district to impose additional regulation on participating private schools, independent nonpublic postsecondary educational institutions, and private providers beyond those reasonably necessary to enforce requirements expressly set forth in this section.

(18) RULES.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

(19) IMPLEMENTATION SCHEDULE FOR THE 2014-2015 SCHOOL YEAR. Notwithstanding the provisions of this section related to notification and eligibility timelines, an eligible nonprofit scholarship-funding organization may enroll parents on a rolling
schedule on a first-come, first-served basis, within the amount
of funds provided in the General Appropriations Act.

Section 6. Paragraph (j) of subsection (6) and paragraphs
(a), (b), and (f) of subsection (16) of section 1002.395,
Florida Statutes, are amended to read:

1002.395 Florida Tax Credit Scholarship Program.—
(6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
ORGANIZATIONS.—An eligible nonprofit scholarship-funding
organization:

(j)1. May use up to 3 percent of eligible contributions
received during the state fiscal year in which such
contributions are collected for administrative expenses if the
organization has operated as an eligible nonprofit scholarship-
funding organization under this section for at least the
preceding 3 state fiscal years and did not have any negative
financial findings of material weakness or material
noncompliance in its most recent audit under paragraph (m). Such
administrative expenses must be reasonable and necessary for the
organization’s management and distribution of eligible
contributions under this section. No funds authorized under this
subparagraph shall be used for lobbying or political activity or
expenses related to lobbying or political activity. Up to one-
third of the funds authorized for administrative expenses under
this subparagraph may be used for expenses related to the
recruitment of contributions from taxpayers. If An eligible
nonprofit scholarship-funding organization may not charge
charges an application fee for a scholarship, the application
fee must be immediately refunded to the person that paid the fee
if the student is not enrolled in a participating school within
2. Must expend for annual or partial-year scholarships an amount equal to or greater than 75 percent of the net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected. No more than 25 percent of such net eligible contributions may be carried forward to the following state fiscal year. All amounts carried forward, for audit purposes, must be specifically identified for particular students, by student name and the name of the school to which the student is admitted, subject to the requirements of ss. 1002.22 and 1002.221 and 20 U.S.C. s. 1232g, and the applicable rules and regulations issued pursuant thereto. Any amounts carried forward shall be expended for annual or partial-year scholarships in the following state fiscal year. Net eligible contributions remaining on June 30 of each year that are in excess of the 25 percent that may be carried forward shall be transferred to other eligible nonprofit scholarship-funding organizations to provide scholarships for eligible students. All transferred funds must be deposited by each eligible nonprofit scholarship-funding organization receiving such funds into its scholarship account. All transferred amounts received by any eligible nonprofit scholarship-funding organization must be separately disclosed in the annual financial audit required under paragraph (m) returned to the State Treasury for deposit in the General Revenue Fund.

3. Must, before granting a scholarship for an academic year, document each scholarship student’s eligibility for that academic year. A scholarship-funding organization may not grant multiyear scholarships in one approval process.
Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section shall remain confidential at all times in accordance with s. 213.053.

(16) NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; APPLICATION.—In order to participate in the scholarship program created under this section, a charitable organization that seeks to be a nonprofit scholarship-funding organization must submit an application for initial approval or renewal to the Office of Independent Education and Parental Choice no later than September 1 of each year before the school year for which the organization intends to offer scholarships.

(a) An application for initial approval must include:

1. A copy of the organization’s incorporation documents and registration with the Division of Corporations of the Department of State.

2. A copy of the organization’s Internal Revenue Service determination letter as a s. 501(c)(3) not-for-profit organization.

3. A description of the organization’s financial plan that demonstrates sufficient funds to operate throughout the school year.

4. A description of the geographic region that the organization intends to serve and an analysis of the demand and unmet need for eligible students in that area.

5. The organization’s organizational chart.

6. A description of the criteria and methodology that the
organization will use to evaluate scholarship eligibility.

7. A description of the application process, including
deadlines and any associated fees.

8. A description of the deadlines for attendance
verification and scholarship payments.

9. A copy of the organization’s policies on conflict of
interest and whistleblowers.

10. A copy of a surety bond or letter of credit to secure
the faithful performance of the obligations of the eligible
nonprofit scholarship-funding organization in accordance with
this section in an amount equal to 25 percent of the scholarship
funds anticipated for each school year or $100,000, whichever is
greater. The surety bond or letter of credit must specify that
any claim against the bond or letter of credit may be made only
by an eligible nonprofit scholarship-funding organization to
provide scholarships to and on behalf of students who would have
had scholarships funded if it were not for the diversion of
funds giving rise to the claim against the bond or letter of
credit.

(b) In addition to the information required by
subparagraphs (a)1.-9., an application for renewal must include:

1. A surety bond or letter of credit to secure the faithful
performance of the obligations of the eligible nonprofit
scholarship-funding organization in accordance with this section
equal to the amount of undisbursed donations held by the
organization based on the annual report submitted pursuant to
paragraph (6)(m). The amount of the surety bond or letter of
credit must be at least $100,000, but not more than $25 million.
The surety bond or letter of credit must specify that any claim
against the bond or letter of credit may be made only by an
eligible nonprofit scholarship-funding organization to provide
scholarships to and on behalf of students who would have had
scholarships funded if it were not for the diversion of funds
giving rise to the claim against the bond or letter of credit.

2. The organization’s completed Internal Revenue Service
Form 990 submitted no later than November 30 of the year before
the school year that the organization intends to offer the
scholarships, notwithstanding the September 1 application
deadline.

3. A copy of the statutorily required audit to the
Department of Education and Auditor General.

4. An annual report that includes:
   a. The number of students who completed applications, by
county and by grade.
   b. The number of students who were approved for
scholarships, by county and by grade.
   c. The number of students who received funding for
scholarships within each funding category, by county and by
grade.
   d. The amount of funds received, the amount of funds
distributed in scholarships, and an accounting of remaining
funds and the obligation of those funds.
   e. A detailed accounting of how the organization spent the
administrative funds allowable under paragraph (6)(j).

(f) All remaining funds held by a nonprofit scholarship-
funding organization that is disapproved for participation must
be transferred revert to the Department of Revenue for
redistribution to other eligible nonprofit scholarship-funding
organizations to provide scholarships for eligible students. All transferred funds must be deposited by each eligible nonprofit scholarship-funding organization receiving such funds into its scholarship account. All transferred amounts received by any eligible nonprofit scholarship-funding organization must be separately disclosed in the annual financial audit required under subsection (6).

Section 7. Paragraph (aa) is added to subsection (4) of section 1009.971, Florida Statutes, to read:

1009.971 Florida Prepaid College Board.—

(4) FLORIDA PREPAID COLLEGE BOARD; POWERS AND DUTIES.—The board shall have the powers and duties necessary or proper to carry out the provisions of ss. 1009.97-1009.988, including, but not limited to, the power and duty to:

(aa) Adopt rules relating to the purchase and use of a prepaid college plan authorized under s. 1009.98 or a college savings plan authorized under s. 1009.981 for the Gardiner Scholarship Program pursuant to s. 1002.385, which may include, but need not be limited to:

1. The use of such funds for postsecondary education programs for students with disabilities;

2. Effective procedures that allow program funds to be used in conjunction with other funds used by a parent in the purchase of a prepaid college plan or a college savings plan;

3. The tracking and accounting of program funds separately from other funds contributed to a prepaid college plan or a college savings plan;

4. The reversion of program funds, including, but not limited to, earnings from contributions to the Florida College
Savings Plan;

5. The use of program funds only after private payments have been used for prepaid college plan or college savings plan expenditures;

6. Contracting with each eligible nonprofit scholarship-funding organization to establish mechanisms to implement s. 1002.385, including, but not limited to, identifying the source of funds being deposited in the plans; and

7. The development of a written agreement that defines the owner and beneficiary of an account and outlines responsibilities for the use of the advance payment contract funds or savings program funds.

Section 8. Subsection (11) is added to section 1009.98, Florida Statutes, to read:

1009.98 Stanley G. Tate Florida Prepaid College Program.—

(11) IMPLEMENTATION PROCEDURES.—

(a) A prepaid college plan may be purchased, accounted for, used, and terminated as provided in s. 1002.385.

(b) A qualified beneficiary may apply the benefits of an advance payment contract toward the program fees of a program designed for students with disabilities conducted by a state postsecondary institution. A transfer authorized under this subsection may not exceed the redemption value of the advance payment contract at a state postsecondary institution or the number of semester credit hours contracted on behalf of a qualified beneficiary. A qualified beneficiary may not be changed while a prepaid college plan contains funds contributed under s. 1002.385.

Section 9. Subsection (10) is added to section 1009.981,
Florida Statutes, to read:

1009.981 Florida College Savings Program.—

(10) IMPLEMENTATION PROCEDURES.—
(a) A college savings plan may be purchased, accounted for, used, and terminated as provided in s. 1002.385.
(b) A designated beneficiary may apply the benefits of a participation agreement toward the program fees of a program designed for students with disabilities conducted by a state postsecondary institution. A designated beneficiary may not be changed while a college savings plan contains funds contributed under s. 1002.385.

Section 10. For the 2016-2017 fiscal year:
(1) The sum of $71.2 million in recurring funds from the General Revenue Fund is appropriated to the Department of Education for scholarship awards under the Gardiner Scholarship Program. In addition to the funds appropriated for the scholarship awards, the sum of $2,136,000 in recurring funds from the General Revenue Fund is appropriated to the Department of Education for reasonable and necessary administrative expenses for each scholarship-funding organization’s management and distribution of scholarship awards under the program; however, the amount paid to each scholarship-funding organization may not exceed 3 percent of the amount of each scholarship award.
(2) The sum of $14 million in recurring funds from the General Revenue Fund is appropriated to the Department of Education for incentive payments for the Standard Student Attire Incentive Program.
(3) The sum of $8 million in recurring funds from the
General Revenue Fund is appropriated for the Florida Postsecondary Comprehensive Transition Program to be administered by the Florida Center for Students with Unique Abilities at the University of Central Florida, as follows:

(a) The sum of $1.5 million shall be provided to the Florida Center for Students with Unique Abilities for costs solely associated with the center serving as the statewide coordinating center for the program.

(b) The sum of $3 million shall be distributed for startup and enhancement grants to eligible institutions pursuant to s. 1004.6495(5)(b)5., Florida Statutes.

(c) The sum of $3.5 million shall be distributed as Florida Postsecondary Comprehensive Transition Program scholarships for students who are enrolled in eligible programs.

Section 11. This act shall take effect July 1, 2016.
HOUSE ENROLLED ACT No. 1042

AN ACT to amend the Indiana Code concerning higher education.

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

SECTION 1. IC 21-12-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 15. Information Concerning Education Loans

Sec. 1. This chapter applies to an eligible institution that enrolls students who receive state financial aid administered by the commission for higher education.

Sec. 2. As used in this chapter, "education loan" has the meaning set forth in IC 21-16-1-5.

Sec. 3. (a) An eligible institution that receives education loan information for a student enrolled in the eligible institution shall provide to that student the following information:

(1) An estimate of the total amount of education loans taken out by the student.

(2) An estimate of:

(A) the potential total payoff amount of the education loans incurred or a range of the total payoff amount; and

(B) monthly repayment amounts that a similarly situated borrower may incur, including principal and interest, for the amount of loans the student has taken out at the time the information is provided.

HEA 1042
The information provided under this subdivision may include a statement that the estimates and ranges provided are general in nature and not meant as a guarantee or promise of the actual projected amount.

(3) The percentage of the borrowing limit the student has reached at the time the information is provided.

(b) An eligible institution shall provide the information required under subsection (a) annually.

(c) An eligible institution does not incur liability for any representations made under this section.
Substitute House Bill No. 6915

Public Act No. 15-162

AN ACT CONCERNING A STUDENT LOAN BILL OF RIGHTS.

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

Section 1. (NEW) (Effective October 1, 2015) (a) The Banking Commissioner shall, within available appropriations, designate a Student Loan Ombudsman within the Department of Banking to provide timely assistance to any student loan borrower, as defined in section 2 of this act, of any student education loan, as defined in section 2 of this act.

(b) The Student Loan Ombudsman, in consultation with the commissioner, shall:

(1) Receive, review and attempt to resolve any complaints from student loan borrowers, including, but not limited to, attempts to resolve such complaints in collaboration with institutions of higher education, student loan servicers, as defined in section 2 of this act, and any other participants in student loan lending, including, but not limited to, The University of Connecticut, the Board of Regents for Higher Education, the Office of Higher Education or the Connecticut Higher Education Supplemental Loan Authority;

(2) Compile and analyze data on student loan borrower complaints
as described in subdivision (1) of this subsection;

(3) Assist student loan borrowers to understand their rights and responsibilities under the terms of student education loans;

(4) Provide information to the public, agencies, legislators and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

(5) Analyze and monitor the development and implementation of federal, state and local laws, regulations and policies relating to student loan borrowers and recommend any changes the Student Loan Ombudsman deems necessary;

(6) Review the complete student education loan history for any student loan borrower who has provided written consent for such review;

(7) Disseminate information concerning the availability of the Student Loan Ombudsman to assist student loan borrowers and potential student loan borrowers, as well as public institutions of higher education, student loan servicers and any other participant in student education loan lending, with any student loan servicing concerns; and

(8) Take any other actions necessary to fulfill the duties of the Student Loan Ombudsman as set forth in this subsection.

(c) On or before October 1, 2016, the Student Loan Ombudsman, in consultation with the commissioner, shall, within available appropriations, establish and maintain a student loan borrower education course that shall include educational presentations and materials regarding student education loans. Such program shall include, but not be limited to, key loan terms, documentation
requirements, monthly payment obligations, income-based repayment options, loan forgiveness and disclosure requirements.

(d) On or before January 1, 2016, and annually thereafter, the Banking Commissioner shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committees of the General Assembly having cognizance of matters relating to banking and higher education. The commissioner shall report on: (1) The implementation of this section; (2) the overall effectiveness of the Student Loan Ombudsman position; and (3) additional steps that need to be taken for the Department of Banking to gain regulatory control over the licensing and enforcement of student loan servicers.

(e) (1) There is established an account to be known as the "student loan ombudsman account" which shall be a separate, nonlapsing account within the Banking Fund. The account shall contain the moneys described in subdivision (2) of this subsection and any other moneys required by law to be deposited in the account. Moneys in the account shall be expended by the Banking Commissioner for the purpose of administering the provisions of this section.

(2) The account established under subdivision (1) of this subsection shall contain any licensing or investigation fees collected pursuant to subsection (b) of section 3 of this act.

Sec. 2. (NEW) (Effective October 1, 2015) As used in this section and sections 3 to 10, inclusive, of this act:

(1) "Student loan borrower" means (A) any resident of this state who has received or agreed to pay a student education loan; or (B) any person who shares responsibility with such resident for repaying the student education loan.

(2) "Student loan servicer" means any person, wherever located,
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responsible for the servicing of any student education loan to any student loan borrower.

(3) "Servicing" means (A) receiving any scheduled periodic payments from a student loan borrower pursuant to the terms of a student education loan; (B) applying the payments of principal and interest and such other payments with respect to the amounts received from a student loan borrower, as may be required pursuant to the terms of a student education loan; and (C) performing other administrative services with respect to a student education loan.

(4) "Student education loan" means any loan primarily for personal use to finance education or other school-related expenses.

Sec. 3. (NEW) (Effective July 1, 2016) (a) (1) No person shall act as a student loan servicer, directly or indirectly, without first obtaining a license from the Banking Commissioner under subsection (b) of this section, unless such person is exempt from licensure pursuant to subdivision (2) of this subsection.

(2) The following persons are exempt from student loan servicer licensing requirements: (A) Any bank, out-of-state bank, Connecticut credit union, federal credit union or out-of-state credit union; (B) any wholly owned subsidiary of any such bank or credit union; and (C) any operating subsidiary where each owner of such operating subsidiary is wholly owned by the same bank or credit union.

(b) Any person seeking to act within this state as a student loan servicer shall make a written application to the commissioner for an initial license in such form as the commissioner prescribes. Such application shall be accompanied by (1) a financial statement prepared by a certified public accountant or a public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner or a corporate officer or a member duly authorized to
execute such documents, (2) (A) the history of criminal convictions of the (i) applicant; (ii) partners, if the applicant is a partnership; (iii) members, if the applicant is a limited liability company or association; or (iv) officers, directors and principal employees, if the applicant is a corporation, and (B) sufficient information pertaining to the history of criminal convictions of such applicant, partners, members, officers, directors or principal employees as the commissioner deems necessary to make the findings under subsection (c) of this section, (3) a nonrefundable license fee of one thousand dollars, and (4) a nonrefundable investigation fee of eight hundred dollars. The commissioner, in accordance with section 29-17a of the general statutes, may conduct a state and national criminal history records check of the applicant and of each partner, member, officer, director and principal employee of such applicant.

(c) Upon the filing of an application for an initial license and the payment of the fees for license and investigation, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The commissioner may issue a license if the commissioner finds that:

(1) The applicant's financial condition is sound;

(2) The applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes and intent of sections 2 to 10, inclusive, of this act, and in a manner commanding the confidence and trust of the community;

(3) (A) If the applicant is an individual, such individual is in all respects properly qualified and of good character, (B) if the applicant is a partnership, each partner is in all respects properly qualified and of good character, (C) if the applicant is a corporation or association, the president, chairperson of the executive committee, senior officer responsible for the corporation's business and chief financial officer or
any other person who performs similar functions as determined by the commissioner, each director, each trustee and each shareholder owning ten per cent or more of each class of the securities of such corporation is in all respects properly qualified and of good character, or (D) if the applicant is a limited liability company, each member is in all respects properly qualified and of good character;

(4) No person on behalf of the applicant knowingly has made any incorrect statement of a material fact in the application, or in any report or statement made pursuant to sections 2 to 10, inclusive, of this act;

(5) No person on behalf of the applicant knowingly has omitted to state any material fact necessary to give the commissioner any information lawfully required by the commissioner;

(6) The applicant has paid the investigation fee and the license fee required under subsection (b) of this section; and

(7) The applicant has met any other similar requirements as determined by the commissioner.

(d) A license issued pursuant to subsection (c) of this section shall expire at the close of business on September thirtieth of the odd-numbered year following its issuance, unless renewed or earlier surrendered, suspended or revoked pursuant to sections 2 to 10, inclusive, of this act. Not later than fifteen days after a licensee ceases to engage in the business of student loan servicing in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy or voluntary dissolution, such licensee shall provide written notice of surrender to the commissioner and shall surrender to the commissioner its license for each location in which such licensee has ceased to engage in such business. The written notice of surrender shall identify the location where the records of the
licensee will be stored and the name, address and telephone number of an individual authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, assess a civil penalty, order restitution or exercise any other authority provided to the commissioner.

(e) A license may be renewed for the ensuing twenty-four-month period upon the filing of an application containing all required documents and fees as provided in subsection (b) of this section. Such renewal application shall be filed on or before September first of the year in which the license expires. Any renewal application filed with the commissioner after September first shall be accompanied by a one-hundred-dollar late fee and any such filing shall be deemed to be timely and sufficient for purposes of subsection (b) of section 4-182 of the general statutes. If an application for a renewal license has been filed with the commissioner on or before the date the license expires, the license sought to be renewed shall continue in full force and effect until the issuance by the commissioner of the renewal license applied for or until the commissioner has notified the licensee in writing of the commissioner's refusal to issue such renewal license together with the grounds upon which such refusal is based. The commissioner may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license.

(f) If the commissioner determines that a check filed with the commissioner to pay a license or renewal fee has been dishonored, the commissioner shall automatically suspend the license or the renewal license that has been issued but is not yet effective. The commissioner shall give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for

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a hearing on such actions in accordance with section 36a-51 of the general statutes.

(g) The applicant or licensee shall notify the commissioner, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for such license, as applicable, not later than ten business days after the occurrence of the event that results in such information becoming inaccurate.

(h) The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required under sections 2 to 10, inclusive, of this act, or any regulations adopted pursuant to said sections. The commissioner shall notify the applicant, in writing, that if the applicant fails to submit such information not later than sixty days after the date on which such request for information was made, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a license under the provisions of sections 2 to 10, inclusive, of this act.

Sec. 4. (NEW) (Effective July 1, 2016) No person licensed to act within this state as a student loan servicer shall do so under any other name or at any other place of business than that named in the license. Any change of location of a place of business of a licensee shall require prior written notice to the commissioner. Not more than one place of business shall be maintained under the same license but the commissioner may issue more than one license to the same licensee upon compliance with the provisions of sections 2 to 10, inclusive, of this act as to each new licensee. A license shall not be transferable or assignable.
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Sec. 5. (NEW) (Effective July 1, 2016) (a) Each student loan servicer licensee and persons exempt from licensure pursuant to subdivision (2) of subsection (a) of section 3 of this act shall maintain adequate records of each student education loan transaction for not less than two years following the final payment on such student education loan or the assignment of such student education loan, whichever occurs first, or such longer period as may be required by any other provision of law.

(b) If requested by the commissioner, each student loan servicer shall make such records available or send such records to the commissioner by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the commissioner to do so. Upon request, the commissioner may grant a licensee additional time to make such records available or send the records to the commissioner.

Sec. 6. (NEW) (Effective July 1, 2016) No student loan servicer shall:

(1) Directly or indirectly employ any scheme, device or artifice to defraud or mislead student loan borrowers;

(2) Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan;

(3) Obtain property by fraud or misrepresentation;

(4) Knowingly misapply or recklessly apply student education loan payments to the outstanding balance of a student education loan;
(5) Knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming a student loan borrower's creditworthiness;

(6) Fail to report both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer credit bureau at least annually if the student loan servicer regularly reports information to a credit bureau;

(7) Refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the student loan borrower, provided the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower; or

(8) Negligently make any false statement or knowingly and wilfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the Banking Commissioner or another governmental agency.

Sec. 7. (NEW) (Effective July 1, 2016) (a) In addition to any authority provided under title 36a of the general statutes, the Banking Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with sections 2 to 10, inclusive, of this act, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to, (A) criminal, civil and administrative history information; (B) personal history and experience information,
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including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 USC 1681a; and (C) any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under sections 2 to 10, inclusive, of this act or for the purposes of examination, the commissioner may review, investigate or examine any student loan servicer licensee or person subject to said sections as often as necessary in order to carry out the purposes of said sections. The commissioner may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the student education loan or the business or subject matter of any such examination or investigation, and may direct, subpoena or order such person to produce books, accounts, records, files and any other documents the commissioner deems relevant to the inquiry.

(b) In making any examination or investigation authorized by this section, the commissioner may control access to any documents and records of the student loan servicer licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the student loan servicer licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of sections 2 to 10, inclusive, of this act, the student loan servicer licensee or owner of the documents and records shall have
access to the documents or records as necessary to conduct its ordinary business affairs.

(c) In order to carry out the purposes of this section, the commissioner may:

(1) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(3) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the student loan servicer licensee or person subject to sections 2 to 10, inclusive, of this act;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(5) Accept audit reports made by an independent certified public accountant for the student loan servicer licensee or person subject to sections 2 to 10, inclusive, of this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

(d) The authority of this section shall remain in effect, whether such student loan servicer licensee or person subject to sections 2 to 10, inclusive, of this act, acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.
(e) No student loan servicer licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

Sec. 8. (NEW) (Effective July 1, 2016) (a) The commissioner may suspend, revoke or refuse to renew any license issued under the provisions of subsection (c) of section 3 of this act, or take any other action, in accordance with section 36a-51 of the general statutes, if the commissioner finds that (1) the licensee has violated any provision of sections 2 to 10, inclusive, of this act or any regulation or order lawfully made pursuant to and within the authority of said sections, or (2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted a denial of such license. No abatement of the license fee shall be made if the license is surrendered, revoked or suspended prior to the expiration of the period for which it was issued.

(b) Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any of the provisions of sections 2 to 10, inclusive, of this act, or any regulation adopted pursuant to said sections, or any licensee or any owner, director, officer, member, partner, shareholder, trustee, employee or agent of such licensee has committed any fraud, engaged in dishonest activities or made any misrepresentation, the commissioner may take action against such person or licensee in accordance with sections 36a-50 and 36a-52 of the general statutes.

Sec. 9. (NEW) (Effective July 1, 2016) A student loan servicer shall comply with all applicable federal laws and regulations relating to student loan servicing, including, but not limited to, the Truth-in-Lending Act, 15 USC Section 1601 et seq., as from time to time amended, and the regulations promulgated thereunder. In addition to any other remedies provided by law, a violation of any such federal
law or regulation shall be deemed a violation of this section and a basis upon which the commissioner may take enforcement action pursuant to section 8 of this act.

Sec. 10. (NEW) (Effective July 1, 2016) The Banking Commissioner shall adopt such regulations, in accordance with chapter 54 of the general statutes, to implement the provisions of this section and sections 2 to 9, inclusive, of this act.

Approved July 2, 2015
SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-701 of Title 14A, unless there is created a duplication in numbering, reads as follows:

Sections 7 through 11 of this act shall be known and may be cited as the “Oklahoma Private Student Loan Transparency and Improvement Act”.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-702 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) The term “covered educational institution” means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education) and includes an agent, officer, or employee of the educational institution.

(2) (a) The term “gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. Gift includes an item described in this paragraph provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual’s relationship with the officer, employee, or agent, if the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent.

(b) Gift does not include:

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through
participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student’s employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure:

(aa) applications for private education loans or private education loan volume;

(bb) applications or loan volume for any loan made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(cc) the purchase of a product or service of a specific private educational lender;

(dd) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(ee) state education grants, scholarships, or financial aid funds administered by or on behalf of a state.
(3) The term “institution of higher education” has the same meaning as in 20 U.S.C. 1002.

(4) The term “postsecondary educational expenses” means any of the expenses that are included as part of the cost of attendance of a student, as defined in 20 U.S.C. 1087.

(5) The term “preferred lender arrangement” has the same meaning as in Section 151 of the Higher Education Act of 1965.

(6) The term “private educational lender” means:

(a) a financial institution, as defined in 12 U.S.C. 1813 that solicits, makes, or extends private education loans;

(b) a Federal credit union, as defined in 12 U.S.C. 1752 that solicits, makes, or extends private education loans; and

(c) any other person engaged in the business of soliciting, making, or extending private education loans.

(7) The term “private education loan” means a loan provided by a private educational lender that:

(a) is not made, insured, or guaranteed under 20 U.S.C. 1070 et seq.;

(b) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(c) does not include an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

(8) The term “revenue sharing” means an arrangement between a covered educational institution and a private educational lender under which:
(a) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(b) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(c) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-703 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A private educational lender may not, directly or indirectly:

(a) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private educational loan activities; or

(b) engage in revenue sharing with a covered educational institution.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-704 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.
(2) Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

(3) It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.

(4) An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(5) No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made:

(a) on the campus of an institution of higher education;

(b) near the campus of an institution of higher education, as determined by rule of the Administrator; or

(c) at an event sponsored by or related to an institution of higher education.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-705 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously:

(a) the potential range of rates of interest applicable to the private education loan;
(b) whether the rate of interest applicable to the private education loan is fixed or variable;

(c) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(d) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

(e) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

(f) fees or range of fees applicable to the private education loan;

(g) the term of the private education loan;

(h) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(i) payment deferral options;

(j) general eligibility criteria for the private education loan;

(k) an example of the total cost of the private education loan over the life of the loan:

   (i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

   (ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

(l) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;
(m) that the borrower may qualify for federal student financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a nonfederal source;

(n) the interest rates available with respect to such federal student financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(o) that, as provided in subsection (6) of this section:

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within thirty (30) calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in subparagraph (i) of this paragraph;

(p) that before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under subsection (3) of this section, and complete, sign, and return such form to the private educational lender;

(q) that the consumer may obtain additional information concerning such federal student financial assistance from their institution of higher education, or at the website of the United States Department of Education; and

(r) such other information as the Administrator shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.
(2) Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously:

(a) the applicable rate of interest in effect on the date of approval;

(b) whether the rate of interest applicable to the private education loan is fixed or variable;

(c) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(d) the initial approved principal amount;

(e) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(f) fees or range of fees applicable to the private education loan;

(g) the maximum term under the private education loan program;

(h) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good-faith estimate thereof;

(i) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(j) payment deferral options applicable to the borrower;
(k) whether monthly payments are graduated;

(l) that, as provided in subsection (6) of this section:

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within thirty (30) calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in subparagraph (i) of this paragraph;

(m) that the borrower:

(i) may qualify for federal financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a nonfederal source; and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the United States Department of Education;

(n) the interest rates available with respect to such federal financial assistance through a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(o) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good-faith estimate thereof; and
(p) such other information as the Administrator shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(3) Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of the United States Department of Education under Section 155 of the Higher Education Act of 1965, signed by the applicant, in written or electronic form. No other provision of this section shall be construed to require a private educational lender to perform any additional duty under this subsection, other than collecting the form required under this subsection.

(4) Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in:

(a) paragraph (a) of subsection (2) of this section (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

(b) paragraphs (b) through (k) and (m) through (p) of subsection (2) of this section; and

(c) subsection (7) of this section.

(5) The Administrator shall publish model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this section.

(a) Model forms developed under this subsection shall:

(i) be comprehensible to borrowers, with a clear format and design;

(ii) provide for clear and conspicuous disclosures;

(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and
(iv) be succinct, and use an easily readable type font.

(b) Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this section.

(6) With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within thirty (30) calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period. Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of:

(a) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in this subsection; or

(b) the expiration of the period described in this subsection.

(7) With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within three (3) business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with subsection (4) of this section.

(8) No funds may be disbursed with respect to a private education loan until the expiration of the three-day period described in subsection (7) of this section.

(9) In issuing regulations under this section, the Administrator shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this title, except that in any case in which the disclosure requirements of this section differ or conflict with the disclosure requirements of any other
provision of this title, the requirements of this section shall be controlling.

(10) Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually provide to the covered educational institution such information as the Administrator determines to include in the model form developed under subsection (5) of this section for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in Section 481 of the Higher Education Act of 1965).

SECTION 12. This act shall become effective July 1, 2013.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.
Assembly Bill No. 379

CHAPTER 772

An act to amend Sections 48853, 48853.5, 49069.5, 51225.1, and 51225.2 of, and to amend the heading of Chapter 5.5 (commencing with Section 48850) of Part 27 of Division 4 of Title 2 of, the Education Code, relating to foster youth.

[Approved by Governor October 11, 2015. Filed with Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 379, Gordon. Foster youth: homeless children or youth: complaint of noncompliance: exemption from local graduation requirements.

(1) Existing law requires certain pupils placed in a licensed children’s institution or foster family home to attend programs operated by the local educational agency unless a specified condition applies. Existing law authorizes certain foster children living in emergency shelters to receive educational services at the emergency shelter as necessary for short periods of time for specified reasons. Existing law requires that all educational and school placement decisions be based on the best interests of the child.

This bill would authorize the filing of a complaint of noncompliance with these provisions to be filed with the local educational agency under the Uniform Complaint Procedures set forth in the California Code of Regulations. The bill would require, if a local educational agency finds merit in a complaint or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency to provide a remedy to the affected pupil. The bill would also require information regarding the requirements of these provisions relating to educational and school placements of certain foster youth to be included in a specified annual notification. By imposing additional requirements on local educational agencies, this bill would impose a state-mandated local program.

(2) Existing law requires each local educational agency, as defined, to designate a staff person as the educational liaison for foster children, as defined. Existing law requires the educational liaison to ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children, and to assist foster children when transferring from one school to another school or from one school district to another school district in ensuring the proper transfer of credits, records, and grades.

This bill would authorize the filing of a complaint of noncompliance with these provisions to be filed with the local educational agency under the Uniform Complaint Procedures set forth in the California Code of Regulations. The bill would require, if a local educational agency finds merit in a complaint or the Superintendent of Public Instruction finds merit
in an appeal, the local educational agency to provide a remedy to the affected pupil. The bill would also require information regarding the requirements of these provisions relating to educational and school placements of certain foster youth to be included in a specified annual notification. By imposing additional requirements on local educational agencies, this bill would impose a state-mandated local program.

(3) Existing law establishes procedures for the transfer of pupils in foster care between schools and, among other things, requires the local educational agency from which the pupil is transferring to compile the complete educational record of the pupil, including, among other things, full or partial credits earned and current classes and grades, and to deliver the educational information and records of the pupil to the next educational placement.

This bill would authorize the filing of a complaint of noncompliance with these provisions to be filed with the local educational agency under the Uniform Complaint Procedures set forth in the California Code of Regulations. The bill would require, if a local educational agency finds merit in a complaint or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency to provide a remedy to the affected pupil. The bill would also require information regarding the requirements of these provisions relating to the transfer of pupils in foster care between schools to be included in a specified annual notification. By imposing additional requirements on local educational agencies, this bill would impose a state-mandated local program.

(4) Existing law requires a school district, except as provided, to exempt a pupil in foster care, as defined, or a pupil who is a homeless child or youth, as defined, who transfers between schools any time after the completion of the pupil’s 2nd year of high school from all coursework and other requirements adopted by the governing board of the school district that are in addition to certain statewide coursework requirements. Existing law requires the school district to notify specified individuals, including a pupil in foster care or a pupil who is a homeless child or youth, within 30 calendar days of the date that the pupil who may qualify for the exemption from local graduation requirements transfers into a school, that the pupil qualifies for that exemption.

Existing law requires, if a pupil in foster care is exempted from local graduation requirements, that the exemption continue to apply after the termination of the court’s jurisdiction over the pupil while he or she is enrolled in school or if the pupil transfers to another school or school district.

This bill would, if the school district fails to provide the required notification, declare the affected pupil eligible for the exemption from local graduation requirements once notified, even if that notification is received after the termination of the court’s jurisdiction over the pupil or after the pupil is no longer a homeless child or youth, as applicable, if the pupil otherwise qualifies for the exemption.

This bill would require, if a pupil who is a homeless child or youth is exempted from local graduation requirements, that the exemption continue to apply after the pupil is no longer a homeless child or youth while he or
she is enrolled in school or if the pupil transfers to another school or school district.

This bill would authorize the filing of a complaint of noncompliance with these provisions to be filed with the local educational agency under the Uniform Complaint Procedures set forth in the California Code of Regulations. The bill would require, if a local educational agency finds merit in a complaint or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency to provide a remedy to the affected pupil. The bill would also require information regarding the requirements of these provisions relating to exempting certain pupils from specified coursework to be included in a specified annual notification. By imposing additional requirements on local educational agencies, this bill would impose a state-mandated local program.

(5) Existing law requires a school district and county office of education to accept coursework satisfactorily completed by a pupil in foster care or a pupil who is a homeless child while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency even if the pupil did not complete the entire course and requires the school district and county office of education to issue the pupil full or partial credit for the coursework completed. Existing law requires those credits accepted to be applied to the same or equivalent course, if applicable, as the coursework completed in the prior public school, juvenile court school, or nonpublic, nonsectarian school or agency.

This bill would authorize the filing of a complaint of noncompliance with these provisions to be filed with the local educational agency under the Uniform Complaint Procedures set forth in the California Code of Regulations. The bill would require, if a local educational agency finds merit in a complaint or the Superintendent of Public Instruction finds merit in an appeal, the local educational agency to provide a remedy to the affected pupil. The bill would also require information regarding the requirements of these provisions relating to the requirement that local educational agencies accept coursework satisfactorily completed by certain pupils, as specified, to be included in a specified annual notification. By imposing additional requirements on local educational agencies, this bill would impose a state-mandated local program.

(6) This bill would incorporate changes to Sections 48853 and 48853.5 of the Education Code proposed by both this bill and AB 224, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

(7) 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.
The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 5.5 (commencing with Section 48850) of Part 27 of Division 4 of Title 2 of the Education Code is amended to read:

CHAPTER 5.5. EDUCATION OF PUPILS IN FOSTER CARE AND PUPILS WHO ARE HOMELESS

SEC. 2. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil described in subdivision (a) of Section 48853.5 who is placed in a licensed children’s institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil is entitled to remain in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

(2) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(3) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interests of the pupil to be placed in another educational program, in which case the parent or guardian or other person holding the right to make educational decisions for the pupil shall provide a written statement that he or she has made that determination to the local educational agency. This statement shall include a declaration that the parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of all of the following:

(A) The pupil has a right to attend a regular public school in the least restrictive environment.

(B) The alternate education program is a special education program, if applicable.

(C) The decision to unilaterally remove the pupil from the regular public school and to place the pupil in an alternate education program may not be financed by the local educational agency.

(D) Any attempt to seek reimbursement for the alternate education program may be at the expense of the parent, guardian, or other person holding the right to make educational decisions for the pupil.

(b) For purposes of ensuring a parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of the information described in subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (a), the local educational agency may provide him or her with that information in writing.

(c) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, a community school as described in Sections...
1981 and 48660, or other alternative educational setting, the parent or
guardian, or person holding the right to make educational decisions for the
pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code
or Section 56055, shall first consider placement in the regular public school.

(d) If any dispute arises as to the school placement of a pupil subject to
this section, the pupil has the right to remain in his or her school of origin,
as defined in subdivision (e) of Section 48853.5, pending resolution of the
dispute. The dispute shall be resolved in accordance with the existing dispute
resolution process available to any pupil served by the local educational
agency.

(e) This section does not supersede other laws that govern pupil expulsion.

(f) This section does not supersede any other law governing the
educational placement in a juvenile court school, as defined by Section
48645.1, of a pupil detained in a county juvenile hall, or committed to a
county juvenile ranch, camp, forestry camp, or regional facility.

(g) (1) Foster children living in emergency shelters, as referenced in the
federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301
et seq.), may receive educational services at the emergency shelter as
necessary for short periods of time for either of the following reasons:

(A) For health and safety emergencies.

(B) To provide temporary, special, and supplementary services to meet
the child’s unique needs if a decision regarding whether it is in the child’s
best interests to attend the school of origin cannot be made promptly, it is
not practical to transport the child to the school of origin, and the child
would otherwise not receive educational services.

(2) The educational services may be provided at the shelter pending a
determination by the person holding the right regarding the educational
placement of the child.

(h) All educational and school placement decisions shall be made to
ensure that the child is placed in the least restrictive educational programs
and has access to academic resources, services, and extracurricular and
enrichment activities that are available to all pupils. In all instances,
educational and school placement decisions shall be based on the best
interests of the child.

(i) (1) A complaint of noncompliance with the requirements of this
section may be filed with the local educational agency under the Uniform
Complaint Procedures set forth in Chapter 5.1 (commencing with Section
4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational
agency may appeal the decision to the department pursuant to Chapter 5.1
(commencing with Section 4600) of Division 1 of Title 5 of the California
Code of Regulations and shall receive a written decision regarding the appeal
within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the
Superintendent finds merit in an appeal, the local educational agency shall
provide a remedy to the affected pupil.
(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 2.5. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil described in subdivision (a) of Section 48853.5 who is placed in a licensed children’s institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil is entitled to remain in his or her school of origin pursuant to paragraph (1) of subdivision (e) of Section 48853.5.

(2) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(3) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interests of the pupil to be placed in another educational program, in which case the parent or guardian or other person holding the right to make educational decisions for the pupil shall provide a written statement that he or she has made that determination to the local educational agency. This statement shall include a declaration that the parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of all of the following:

(A) The pupil has a right to attend a regular public school in the least restrictive environment.

(B) The alternate education program is a special education program, if applicable.

(C) The decision to unilaterally remove the pupil from the regular public school and to place the pupil in an alternate education program may not be financed by the local educational agency.

(D) Any attempt to seek reimbursement for the alternate education program may be at the expense of the parent, guardian, or other person holding the right to make educational decisions for the pupil.

(b) For purposes of ensuring a parent, guardian, or other person holding the right to make educational decisions for the pupil is aware of the information described in subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (a), the local educational agency may provide him or her with that information in writing.

(c) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, a community school as described in Sections 1981 and 48660, or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(d) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin,
as defined in subdivision (f) of Section 48853.5, pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

(e) This section does not supersede other laws that govern pupil expulsion.

(f) This section does not supersede any other law governing the educational placement in a juvenile court school, as defined by Section 48645.1, of a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility.

(g) (1) Foster children living in emergency shelters, as referenced in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(A) For health and safety emergencies.

(B) To provide temporary, special, and supplementary services to meet the child’s unique needs if a decision regarding whether it is in the child’s best interests to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would otherwise not receive educational services.

(2) The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of the child.

(h) All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

(i) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 3. Section 48853.5 of the Education Code is amended to read:

48853.5. (a) This section applies to a foster child. “Foster child” means a child who has been removed from his or her home pursuant to Section
309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of Division 3, the educational liaison shall be affiliated with the local foster children services program. The educational liaison shall do both of the following:

1. Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.
2. Assist foster children when transferring from one school to another school or from one school district to another school district in ensuring proper transfer of credits, records, and grades.

(c) If so designated by the superintendent of the local educational agency, the educational liaison shall notify a foster child’s attorney and the appropriate representative of the county child welfare agency of pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, if the foster child is an individual with exceptional needs, pending manifestation determinations pursuant to Section 1415(k) of Title 20 of the United States Code if the local educational agency has proposed a change in placement due to an act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools.

(d) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or legal guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.

(e) (1) At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the jurisdiction of the court.

2. If the jurisdiction of the court is terminated before the end of an academic year, the local educational agency shall allow a former foster child who is in kindergarten or any of grades 1 to 8, inclusive, to continue his or her education in the school of origin through the duration of the academic school year.

3. (A) If the jurisdiction of the court is terminated while a foster child is in high school, the local educational agency shall allow the former foster
child to continue his or her education in the school of origin through graduation.

(B) For purposes of this paragraph, a school district is not required to provide transportation to a former foster child who has an individualized education program that does not require transportation as a related service and who changes residence but remains in his or her school of origin pursuant to this paragraph, unless the individualized education program team determines that transportation is a necessary related service.

(4) To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the local educational agency shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district.

(5) Paragraphs (2), (3), and (4) do not require a school district to provide transportation services to allow a foster child to attend a school or school district, unless otherwise required under federal law. This paragraph does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

(6) The educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, may recommend, in accordance with the foster child’s best interests, that the foster child’s right to attend the school of origin be waived and the foster child be enrolled in a public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

(7) Before making a recommendation to move a foster child from his or her school of origin, the educational liaison shall provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how the recommendation serves the foster child’s best interests.

(8) (A) If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agrees that the best interests of the foster child would best be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such as previous academic records, medical records, including, but not limited to, records or other proof of immunization history pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code, proof of residency, other documentation, or school uniforms.
Within two business days of the foster child’s request for enrollment, the educational liaison for the new school shall contact the school last attended by the foster child to obtain all academic and other records. The last school attended by the foster child shall provide all required records to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. The educational liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the local educational agency.

The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

It is the intent of the Legislature that this subdivision shall not supersede or exceed other laws governing special education services for eligible foster children.

For purposes of this section, “school of origin” means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected and that the foster child attended within the immediately preceding 15 months, the educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin.

This section does not supersede other law governing the educational placements in juvenile court schools, as described in Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.
(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 3.5. Section 48853.5 of the Education Code is amended to read:

48853.5. (a) This section applies to a foster child. “Foster child” means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(b) The department, in consultation with the California Foster Youth Education Task Force, shall develop a standardized notice of the educational rights of foster children, as specified in Sections 48850 to this section, inclusive, 48911, 48915.5, 49069.5, 49076, 51225.1, and 51225.2. The notice shall include complaint process information, as applicable. The department shall make the notice available to educational liaisons for foster children for dissemination by posting the notice on its Internet Web site. Any version of this notice prepared for use by foster children shall also include, to the greatest extent practicable, the rights established pursuant to Section 16001.9 of the Welfare and Institutions Code. In developing the notice that includes the rights in Section 16001.9 of the Welfare and Institutions Code, the department shall consult with the Office of the State Foster Care Ombudsperson.

(c) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of Division 3, the educational liaison shall be affiliated with the local foster children services program. The educational liaison shall do both of the following:

1. Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.

2. Assist foster children when transferring from one school to another school or from one school district to another school district in ensuring proper transfer of credits, records, and grades.

(d) If so designated by the superintendent of the local educational agency, the educational liaison shall notify a foster child’s attorney and the appropriate representative of the county child welfare agency of pending expulsion proceedings if the decision to recommend expulsion is a discretionary act, pending proceedings to extend a suspension until an expulsion decision is rendered if the decision to recommend expulsion is a discretionary act, and, if the foster child is an individual with exceptional needs, pending manifestation determinations pursuant to Section 1415(k) of Title 20 of the United States Code if the local educational agency has proposed a change in placement due to an act for which the decision to recommend expulsion is at the discretion of the principal or the district superintendent of schools.

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(e) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or legal guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of the school of origin.

(f) (1) At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the jurisdiction of the court.

(2) If the jurisdiction of the court is terminated before the end of an academic year, the local educational agency shall allow a former foster child who is in kindergarten or any of grades 1 to 8, inclusive, to continue his or her education in the school of origin through the duration of the academic school year.

(3) (A) If the jurisdiction of the court is terminated while a foster child is in high school, the local educational agency shall allow the former foster child to continue his or her education in the school of origin through graduation.

(B) For purposes of this paragraph, a school district is not required to provide transportation to a former foster child who has an individualized education program that does not require transportation as a related service and who changes residence but remains in his or her school of origin pursuant to this paragraph, unless the individualized education program team determines that transportation is a necessary related service.

(4) To ensure that the foster child has the benefit of matriculating with his or her peers in accordance with the established feeder patterns of school districts, if the foster child is transitioning between school grade levels, the local educational agency shall allow the foster child to continue in the school district of origin in the same attendance area, or, if the foster child is transitioning to a middle school or high school, and the school designated for matriculation is in another school district, to the school designated for matriculation in that school district.

(5) Paragraphs (2), (3), and (4) do not require a school district to provide transportation services to allow a foster child to attend a school or school district, unless otherwise required under federal law. This paragraph does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

(6) The educational liaison, in consultation with, and with the agreement of, the foster child and the person holding the right to make educational decisions for the foster child, may recommend, in accordance with the foster child’s best interests, that the foster child’s right to attend the school of origin be waived and the foster child be enrolled in a public school that pupils living in the attendance area in which the foster child resides are eligible to attend.
Before making a recommendation to move a foster child from his or her school of origin, the educational liaison shall provide the foster child and the person holding the right to make educational decisions for the foster child with a written explanation stating the basis for the recommendation and how the recommendation serves the foster child’s best interests.

(8) (A) If the educational liaison, in consultation with the foster child and the person holding the right to make educational decisions for the foster child, agrees that the best interests of the foster child would best be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce clothing or records normally required for enrollment, such as previous academic records, medical records, including, but not limited to, records or other proof of immunization history pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code, proof of residency, other documentation, or school uniforms.

(C) Within two business days of the foster child’s request for enrollment, the educational liaison for the new school shall contact the school last attended by the foster child to obtain all academic and other records. The last school attended by the foster child shall provide all required records to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. The educational liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

(9) If a dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to a pupil served by the local educational agency.

(10) The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum use of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

(11) It is the intent of the Legislature that this subdivision shall not supersede or exceed other laws governing special education services for eligible foster children.

(g) For purposes of this section, “school of origin” means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected and that the foster child attended within the immediately preceding 15 months, the educational liaison, in consultation with, and with the agreement of, the foster child and
the person holding the right to make educational decisions for the foster child, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin.

(h) This section does not supersede other law governing the educational placements in juvenile court schools, as described in Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

(i) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 4. Section 49069.5 of the Education Code is amended to read:

49069.5. (a) The Legislature finds and declares all of the following:

(1) The mobility of pupils in foster care often disrupts their educational experience.

(2) Efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(3) Pupils who have had contact with the juvenile justice system are often denied credit or partial credit earned during enrollment in juvenile court schools. Delays in school enrollment and loss of earned credit can result in improper class or school placement, denial of special education services, and school dropout.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency, including the county office of education for pupils in foster care who are enrolled in juvenile court schools, and the county placing agency, which includes the county probation department.

(c) As soon as the county placing agency or county office of education becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency or county office of education shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency or notification of enrollment from the new local educational agency, the local
educational agency receiving the transfer request or notification shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil, including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil’s plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and who is aware of the specific educational recordkeeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that, if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that, if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

(i) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

(j) For purposes of this section, the following definitions apply:

(1) “County placing agency” means a county social services department or county probation department.

(2) “Local educational agency” means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.
(3) “Pupil in foster care” means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

SEC. 5. Section 51225.1 of the Education Code is amended to read:

51225.1. (a) Notwithstanding any other law, a school district shall exempt a pupil in foster care, as defined in Section 51225.2, or a pupil who is a homeless child or youth, as defined in Section 11434a(2) of Title 42 of the United States Code, who transfers between schools any time after the completion of the pupil’s second year of high school from all coursework and other requirements adopted by the governing board of the school district that are in addition to the statewide coursework requirements specified in Section 51225.3, unless the school district makes a finding that the pupil is reasonably able to complete the school district’s graduation requirements in time to graduate from high school by the end of the pupil’s fourth year of high school.

(b) If the school district determines that the pupil in foster care, or the pupil who is a homeless child or youth, is reasonably able to complete the school district’s graduation requirements within the pupil’s fifth year of high school, the school district shall do all of the following:

(1) Inform the pupil of his or her option to remain in school for a fifth year to complete the school district’s graduation requirements.

(2) Inform the pupil, and the person holding the right to make educational decisions for the pupil, about how remaining in school for a fifth year to complete the school district’s graduation requirements will affect the pupil’s ability to gain admission to a postsecondary educational institution.

(3) Provide information to the pupil about transfer opportunities available through the California Community Colleges.

(4) Permit the pupil to stay in school for a fifth year to complete the school district’s graduation requirements upon agreement with the pupil, if the pupil is 18 years of age or older, or, if the pupil is under 18 years of age, upon agreement with the person holding the right to make educational decisions for the pupil.

(c) To determine whether a pupil in foster care, or a pupil who is a homeless child or youth, is in the third or fourth year of high school, either the number of credits the pupil has earned to the date of transfer or the length of the pupil’s school enrollment may be used, whichever will qualify the pupil for the exemption.

(d) (1) (A) Within 30 calendar days of the date that a pupil in foster care who may qualify for the exemption from local graduation requirements pursuant to this section transfers into a school, the school district shall notify the pupil, the person holding the right to make educational decisions for the pupil, and the pupil’s social worker or probation officer of the availability of the exemption and whether the pupil qualifies for an exemption.
(B) If the school district fails to provide timely notice pursuant to subparagraph (A), the pupil described in subparagraph (A) shall be eligible for the exemption from local graduation requirements pursuant to this section once notified, even if that notification occurs after the termination of the court’s jurisdiction over the pupil, if the pupil otherwise qualifies for the exemption pursuant to this section.

(2) (A) Within 30 calendar days of the date that a pupil who is a homeless child or youth may qualify for the exemption from local graduation requirements pursuant to this section transfers into a school, the school district shall notify the pupil, the person holding the right to make educational decisions for the pupil, and the local educational agency liaison for homeless children and youth designated pursuant to Section 11432(g)(1)(J)(ii) of Title 42 of the United States Code, of the availability of the exemption and whether the pupil qualifies for an exemption.

(B) If the school district fails to provide timely notice pursuant to subparagraph (A), the pupil described in subparagraph (A) shall be eligible for the exemption from local graduation requirements pursuant to this section once notified, even if that notification occurs after the pupil is no longer a homeless child or youth, if the pupil otherwise qualifies for the exemption pursuant to this section.

(e) If a pupil in foster care, or a pupil who is a homeless child or youth, is exempted from local graduation requirements pursuant to this section and completes the statewide coursework requirements specified in Section 51225.3 before the end of his or her fourth year of high school and that pupil would otherwise be entitled to remain in attendance at the school, a school or school district shall not require or request that the pupil graduate before the end of his or her fourth year of high school.

(f) If a pupil in foster care, or a pupil who is a homeless child or youth, is exempted from local graduation requirements pursuant to this section, the school district shall notify the pupil and the person holding the right to make educational decisions for the pupil how any of the requirements that are waived will affect the pupil’s ability to gain admission to a postsecondary educational institution and shall provide information about transfer opportunities available through the California Community Colleges.

(g) A pupil in foster care, or a pupil who is a homeless child or youth, who is eligible for the exemption from local graduation requirements pursuant to this section and would otherwise be entitled to remain in attendance at the school shall not be required to accept the exemption or be denied enrollment in, or the ability to complete, courses for which he or she is otherwise eligible, including courses necessary to attend an institution of higher education, regardless of whether those courses are required for statewide graduation requirements.

(h) If a pupil in foster care, or a pupil who is a homeless child or youth, is not exempted from local graduation requirements or has previously declined the exemption pursuant to this section, a school district shall exempt the pupil at any time if an exemption is requested by the pupil and the pupil qualifies for the exemption.
(i) If a pupil in foster care, or a pupil who is a homeless child or youth, is exempted from local graduation requirements pursuant to this section, a school district shall not revoke the exemption.

(j) (1) If a pupil in foster care is exempted from local graduation requirements pursuant to this section, the exemption shall continue to apply after the termination of the court’s jurisdiction over the pupil while he or she is enrolled in school or if the pupil transfers to another school or school district.

(2) If a pupil who is a homeless child or youth is exempted from local graduation requirements pursuant to this section, the exemption shall continue to apply after the pupil is no longer a homeless child or youth while he or she is enrolled in school or if the pupil transfers to another school or school district.

(k) A school district shall not require or request a pupil in foster care, or a pupil who is a homeless child or youth, to transfer schools in order to qualify the pupil for an exemption pursuant to this section.

(l) (1) A pupil in foster care, the person holding the right to make educational decisions for the pupil, the pupil’s social worker, or the pupil’s probation officer shall not request a transfer solely to qualify the pupil for an exemption pursuant to this section.

(2) A pupil who is a homeless child or youth, the person holding the right to make educational decisions for the pupil, or the local educational agency liaison for homeless children and youth designated pursuant to Section 11432(g)(1)(J)(ii) of Title 42 of the United States Code, shall not request a transfer solely to qualify the pupil for an exemption pursuant to this section.

(m) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils, parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 6. Section 51225.2 of the Education Code is amended to read:

51225.2. (a) (1) For purposes of this section, “pupil in foster care” means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has
been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(2) For purposes of this section, “pupil who is a homeless child or youth” means a pupil who meets the definition of “homeless child or youth” in Section 11434(a)(2) of Title 42 of the United States Code.

(b) Notwithstanding any other law, a school district and county office of education shall accept coursework satisfactorily completed by a pupil in foster care or a pupil who is a homeless child while attending another public school, a juvenile court school, or a nonpublic, nonsectarian school or agency even if the pupil did not complete the entire course and shall issue that pupil full or partial credit for the coursework completed.

(c) The credits accepted pursuant to subdivision (b) shall be applied to the same or equivalent course, if applicable, as the coursework completed in the prior public school, juvenile court school, or nonpublic, nonsectarian school or agency.

(d) A school district or county office of education shall not require a pupil in foster care or a pupil who is a homeless child or youth to retake a course if the pupil has satisfactorily completed the entire course in a public school, a juvenile court school, or a nonpublic, nonsectarian school or agency. If the pupil did not complete the entire course, the school district or county office of education shall not require the pupil to retake the portion of the course the pupil completed unless the school district or county office of education, in consultation with the holder of educational rights for the pupil, finds that the pupil is reasonably able to complete the requirements in time to graduate from high school. When partial credit is awarded in a particular course, the pupil in foster care or the pupil who is a homeless child or youth shall be enrolled in the same or equivalent course, if applicable, so that the pupil may continue and complete the entire course.

(e) A pupil in foster care or a pupil who is a homeless child or youth shall not be prevented from retaking or taking a course to meet the eligibility requirements for admission to the California State University or the University of California.

(f) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department’s receipt of the appeal.

(3) If a local educational agency finds merit in a complaint, or the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(4) Information regarding the requirements of this section shall be included in the annual notification distributed to, among others, pupils,
parents or guardians of pupils, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 48853 of the Education Code proposed by both this bill and Assembly Bill 224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 48853 of the Education Code, and (3) this bill is enacted after Assembly Bill 224, in which case Section 2 of this bill shall not become operative.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 48853.5 of the Education Code proposed by both this bill and Assembly Bill 224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 48853.5 of the Education Code, and (3) this bill is enacted after Assembly Bill 224, in which case Section 3 of this bill shall not become operative.

SEC. 9. 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.
AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SUICIDE PREVENTION IN SCHOOLS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4124 Suicide prevention.

(a) Each local education agency shall ensure that its public school employees receive combined training each year totaling 90 minutes on suicide prevention. The training materials shall be evidence based and developed and/or approved by the Department of Health and Social Services, the Department of Services for Children, Youth and their Families and the Department of Education. Any in-service training required by this section shall be provided within the contracted school year as provided in §1305(e) of this title.

(b) Each local education agency shall establish a policy which shall require but not be limited to the following:

(1) Recognition of the serious problem of youth suicide.

(2) The development of a suicide prevention program.

(3) That each school within a local education agency establish a committee that is responsible for coordinating the suicide prevention program within that school.

(4) A statement prohibiting retaliation against an employee, school volunteer or student for reporting the warning signs of suicide.
(5) That a procedure be established for the confidential and anonymous reporting of the warning signs of suicide.

(6) That a procedure be established for communication between school staff members and medical professionals who are involved in treating students for suicide issues.

(c) Each local education agency shall adopt the policy required by subsection (b) and shall submit a copy to the Delaware Department of Education by September 1, 2016. Any policy changes shall be provided to the Department within 60 calendar days. For any local education agency opening after September 1, 2016, the policy shall be provided by September 1st of the year the local education agency opens.

(d) The policy adopted pursuant to this section shall appear in the student and staff handbook and on the website of each local education agency.

(e) A school employee, school volunteer or student is individually immune from a cause of action for damages arising from reporting warning signs of suicide to the appropriate person or persons using the procedures specified in the local education agency’s suicide prevention policy, but there shall be no such immunity if the act of reporting constituted gross negligence and/or reckless, willful or intentional conduct.
AN ACT concerning education.

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 Student Optional Disclosure of Private Mental Health Act.

Section 5. Definitions. In this Act:

(a) "Designated person" means a parent, guardian, or other person over the age of 18 designated by the student to receive disclosure of certain private mental health information.

(b) "Qualified examiner" has the meaning ascribed to that term in Section 1-122 of the Mental Health and Developmental Disabilities Code.


(a) An institution of higher learning in Illinois shall, at or near the time that an incoming student enrolls at the institution of higher learning, provide that student the opportunity to authorize in writing the disclosure of certain private mental health information to a designated person.

(b) The institution may disclose the student's mental information if a physician, clinical psychologist, or qualified examiner who is employed by the institution of higher learning makes a determination that the student poses a clear
danger to himself, herself, or others to protect the student or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the person or by the student on himself, herself, or another.

The physician, clinical psychologist, or qualified examiner shall, as soon as practicable, but in no more than 24 hours after making a determination under this Section, attempt to contact the designated person and notify the designated person that the physician, clinical psychologist, or qualified examiner has made a determination that the student poses a clear, imminent danger to himself, herself, or others.

Section 15. Preparation of authorization form. An institution of higher learning shall prepare a form for the purpose of such authorization and shall create a policy and supporting procedures to ensure that every new student is given the opportunity to complete and submit the form if he or she so desires. The form shall provide a space for the student to affirmatively authorize, or decline to authorize, the disclosure of the information. The firm shall contain a space for the student to enter the name, address, telephone number, and other contact information for the designated person.
AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO EDUCATION AND THE INDIVIDUALIZED EDUCATION PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, the individualized education program (IEP) process is the method by which educational programs and services for students with diagnosed disabilities in Delaware public schools are determined; and

WHEREAS, Senate Concurrent Resolution 63 of the 147th General Assembly established the IEP Improvement Task Force in order to examine means to improve the individualized education program process for students in Delaware public schools,” and

WHEREAS, the task force was assigned to recommend to the General Assembly and Governor “potential legislative, regulatory, funding, or other improvements to Delaware’s IEP process”; and

WHEREAS, the Task Force delivered its report to the General Assembly and Governor in January, 2015, and in so doing recommended a number of legislative and funding changes to improve the IEP process;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

Section 1. Amend Subchapter III, Chapter 31, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3125. Parent Councils.
Each school district and charter school enrolling any child with disabilities shall, on an annual basis, contact the parents of each such child to attempt to facilitate the creation and maintenance of a parent council for the parents of students with disabilities. Parent councils will advocate generally for students with disabilities and provide person-to-person support for individual parents and children. The charter schools and school districts shall collaborate and coordinate with existing parent groups and other information and support groups to facilitate creation, maintenance, and effectiveness of the Parent Councils.

§ 3125A. IEP training for charter schools.

Effective January 1, 2016, each charter school will designate and maintain at least one professional staff member who has completed training approved by the Department of Education regarding the legal responsibilities of charter schools with respect to preparation of individualized education programs for students with disabilities and resources available to charter schools to assist in preparation of such programs. The Department of Education, by regulation, shall define the scope and timetable of initial and refresher training.

Section 2. Amend Subchapter V, Chapter 31, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3131 Minutes of meetings.

Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a child with a disability’s free, appropriate, public education, at the option of the parents of the child with a disability, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising the option under this section.

§ 3131 Conduct of Meetings

(a) No charter school or school district, or any person acting under the authority of a charter school or school district, shall discriminate or take any adverse employment or contract action against any person based upon statements that person makes while advocating for a student in connection with an individualized education program (IEP), including statements made in preparation for or at a meeting, review, or conference concerning a child with a disability’s free, appropriate public education. Entities or persons who violate this subsection shall be subject to the same injunctive and monetary sanctions as persons or entities that engage in unlawful employment practices under Chapter 7, Title 19 of the Delaware Code.
(b) Subject to confidentiality requirements of applicable state or federal law, minutes may be taken, by disclosed recording device or stenographer, of any meeting, review or conference concerning a child with a disability's free, appropriate, public education, at the option of the parents of the child with a disability, their authorized representative or the agency conducting the meeting, review or conference. Costs of the recording shall be borne by the person or agency exercising the option under this section.

(c) Discussions about employment options with children and parents during the IEP process should be consistent with Delaware’s employment first policy articulated by § 743 of Title 19. Progress made toward post-secondary goals in transition IEPs will be reported with the same frequency as that for academic goals.

(d) The Department of Education, in consultation with the Department of Justice, shall annually survey a material number of parents and children who have individualized education programs with respect to the parents’ and children’s satisfaction with the IEP process. Information gathered through this survey shall be used by the Department of Education and Department of Justice to conduct follow-up examinations with school districts and charter schools as to their good faith compliance with state and federal laws and regulations.

§ 3134. Contents of notice.

The notice under § 3133 of this title must include all of the following:

1. A full explanation of all of the procedural safeguards available to the parents under this subchapter, state and federal law and regulations.

2. A written description of the action proposed or refused by the district or agency, an explanation of why the district or agency proposes or refuses to take the action, and a description of any options the district or agency considered and the reasons why those options were rejected.

3. A written description of each evaluation procedure, test, record or report the district or agency uses as a basis for the proposal or refusal.

4. A written description of any other factors which are relevant to the district or agency's proposal or refusal.

5. A written statement that the parents of a child with a disability have protection under the procedural safeguards of this chapter, state and federal law and regulations and, if this notice is an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
(6) Sources for parents to contact to obtain assistance in understanding the provisions of this subchapter, including specific contact information for existing parent assistance programs, legal assistance programs, and the Delaware State Bar Association.

(7) A separate questionnaire requesting the input of a child’s parent and, where appropriate, a child, with respect to the child’s progress to date and additional proposed steps that should be taken to adjust the child’s goals, curriculum, services, aids, modifications, or other elements of the child’s individualized education program. The questionnaire may be sent prior to the written notice of an individualized education program meeting or its equivalent and, if it is, does not need to be included in the notice under this section.

(8) A copy of the draft individualized education program accompanied by a letter clearly indicating to the parent and child that the document is a draft for discussion and subject to revision at the noticed meeting, if a draft individualized education program will be presented to a child or parent, or otherwise utilized at the individualized education program meeting for which notice is provided. If such a draft individualized education program is prepared subsequent to the notice required by this section but prior to the noticed meeting, it shall be provided to the parent and child prior to the noticed meeting, along with the explanatory letter required by this paragraph. Any draft document provided to a child or parent pursuant to this paragraph shall be clearly labeled on each page as a draft document for discussion purposes only. The Department in collaboration with the Governor’s Advisory Council on Exceptional Citizens shall create a draft letter and associated guidance to assist the charter schools and school districts with the content and application of the above letter.

(9) A notice that a parent or child may request prior to an individualized education program meeting any data in the charter school’s or school district’s possession relevant to the child’s needs or disability.

(10) A notice that a parent or child may request the presence of any teacher, paraprofessional, and any additional staff members of their choosing at an individualized education program meeting.

Section 3. The Department of Education is directed to make a formal, written report on the functionality of the IEP Plus system, specific plans that it has put in place to remedy any deficiencies in the IEP Plus system and when those plans will be executed, and specific available alternatives to the IEP Plus system which would provide computerized systems for preparation of individualized education programs. This report must be submitted to the General Assembly within 30 days of enactment of this legislation.
SENATE BILL No. 175

An Act concerning postsecondary education; relating to the exercise of religious beliefs by student associations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in sections 1 through 3, and amendments thereto:
(a) “Benefit” means the following:
(1) Recognition;
(2) registration;
(3) the use of facilities of the postsecondary educational institution for meetings or speaking purposes;
(4) the use of channels of communication of the postsecondary educational institution; and
(5) funding sources that are otherwise available to other student associations in the postsecondary educational institution.
(b) “Postsecondary educational institution” shall have the same meaning as that term is defined in K.S.A. 74-3201b, and amendments thereto.
(c) “Student” means any person who is enrolled on a full-time or part-time basis in a postsecondary educational institution.
(d) “Religious student association” means an association of students organized around shared religious beliefs.

Sec. 2. No postsecondary educational institution may take any action or enforce any policy that would deny a religious student association any benefit available to any other student association, or discriminate against a religious student association with respect to such benefit, based on such association’s requirement that the leaders or members of such association:
(a) Adhere to the association’s sincerely held religious beliefs;
(b) comply with the association’s sincerely held religious beliefs;
(c) comply with the association’s sincere religious standards of conduct; or
(d) be committed to furthering the association’s religious missions, as such religious beliefs, observance requirements, standards of conduct or missions are defined by the religious student association, or the religion on which the association is based.

Sec. 3. Any student or religious student association aggrieved by a violation of section 2, and amendments thereto, may bring a cause of action against the postsecondary educational institution for such violation and seek appropriate relief, including, but not limited to, monetary damages. Any student or religious student association aggrieved by a violation of section 2, and amendments thereto, also may assert such violation as a defense or counterclaim in any civil or administrative proceedings brought against such student or religious student association.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the Senate, and passed that body

________________________
President of the Senate

________________________
Secretary of the Senate

Passed the House

________________________
Speaker of the House

________________________
Chief Clerk of the House

________________________
Governor
AN ACT to create and enact a new section to chapter 38-08 and a new subsection to section 38-08-26 of the North Dakota Century Code, relating to the operation of underground gathering pipelines and the sharing of information by a surface owner; to amend and reenact subsection 18 of section 38-08-02, subdivisions d and l of subsection 1 of section 38-08-04, subsection 6 of section 38-08-04, and section 38-08-04.5 of the North Dakota Century Code, relating to an exception to confidentiality of well data, to underground gathering pipelines, to temporarily abandoned status, and the uses of the abandoned oil and gas well plugging and site reclamation fund; to provide a report to the legislative management; to provide a transfer; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

 SECTION 1. AMENDMENT. Subsection 18 of section 38-08-02 of the North Dakota Century Code is amended and reenacted as follows:

18. "Underground gathering pipeline" means an underground gas or liquid pipeline that with associated above ground equipment which is designed for or capable of transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas which is not subject to chapter 49-22. As used in this subsection, "associated above ground equipment" means equipment and property located above ground level, which is incidental to and necessary for or useful for transporting crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas from a production facility. As used in this subsection, "equipment and property" includes a pump, a compressor, storage, leak detection or monitoring equipment, and any other facility or structure.

 SECTION 2. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

Controls, inspections, and engineering design on crude oil and produced water underground gathering pipelines.

The application of this section is limited to an underground gathering pipeline that is designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes and which was placed into service after August 1, 2015. Upon request, the operator shall provide the commission the underground gathering pipeline engineering construction design drawings and specifications, list of independent inspectors, and a plan for leak protection and monitoring for the underground gathering pipeline. Within sixty days of an underground gathering pipeline being placed into service, the operator of that pipeline shall file with the commission an independent inspector's certificate of hydrostatic or pneumatic testing of the underground gathering pipeline.

 SECTION 3. AMENDMENT. Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission, including without limitation a bond covering the operation of any underground gathering pipeline transferring oil or produced water from a production facility for disposal, storage, or sale purposes, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit under such terms and conditions
as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

SECTION 4. AMENDMENT. Subdivision I of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

I. The placing of wells in abandoned-well status which have not produced oil or natural gas in paying quantities for one year. A well in abandoned-well status must be promptly returned to production in paying quantities, approved by the commission for temporarily abandoned status, or plugged and reclaimed within six months. If none of the three preceding conditions are met, the industrial commission may require the well to be placed immediately on a single-well bond in an amount equal to the cost of plugging the well and reclaiming the well site. In setting the bond amount, the commission shall use information from recent plugging and reclamation operations. After a well has been in abandoned-well status for one year, the well’s equipment, all well-related equipment at the well site, and salable oil at the well site are subject to forfeiture by the commission. If the commission exercises this authority, section 38-08-04.9 applies. After a well has been in abandoned-well status for one year, the single-well bond referred to above, or any other bond covering the well if the single-well bond has not been obtained, is subject to forfeiture by the commission. A surface owner may request a review of the temporarily abandoned status of a well that has been on temporarily abandoned status for at least seven years. The commission shall require notice and hearing to review the temporarily abandoned status. After notice and hearing, the surface owner may request a review of the temporarily abandoned status every two years.

SECTION 5. AMENDMENT. Subsection 6 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

6. To provide for the confidentiality of well data reported to the commission if requested in writing by those reporting the data for a period not to exceed six months. However, the commission may release:

   a. Volumes injected into a saltwater injection well.

   b. Information from the spill report on a well on a site at which more than ten barrels of fluid, not contained on the well site, was released for which an oilfield environmental incident report is required by law.

SECTION 6. AMENDMENT. Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Budget section report.

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

1. Revenue to the fund must include:

   a. Fees collected by the oil and gas division of the industrial commission for permits or other services.

   b. Moneys received from the forfeiture of drilling and reclamation bonds.

   c. Moneys received from any federal agency for the purpose of this section.

   d. Moneys donated to the commission for the purposes of this section.
e. Moneys received from the state's oil and gas impact fund.

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

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

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

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

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

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

a. Contracting for the plugging of abandoned wells.

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

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

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

e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to one million five hundred thousand dollars per biennium from the fund in the following priority:

   (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.

   (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.

   (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.

   (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.

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

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

SECTION 7. A new subsection to section 38-08-26 of the North Dakota Century Code is created and enacted as follows:
The surface owner may share information contained in the geographic information system database.

SECTION 8. TRANSFER - ABANDONED OIL AND GAS WELL PLUGGING AND SITE RECLAMATION FUND TO OIL AND GAS RESEARCH FUND - PRODUCED WATER PIPELINE STUDY - REPORT TO LEGISLATIVE MANAGEMENT. The director of the office of management and budget shall transfer the sum of $1,500,000 from the abandoned oil and gas well plugging and site reclamation fund to the oil and gas research fund for the purpose of funding a special project through the energy and environmental research center at the university of North Dakota during the biennium beginning July 1, 2015, and ending June 30, 2017. The special project must focus on conducting an analysis of crude oil and produced water pipelines including the construction standards, depths, pressures, monitoring systems, maintenance, types of materials used in the pipeline including backfill, and an analysis of the ratio of spills and leaks occurring in this state in comparison to other large oil and gas-producing states with substantial volumes of produced water. The industrial commission shall contract with the energy and environmental research center to compile the information and the center shall work with the department of mineral resources to analyze the existing regulations on construction and monitoring of crude oil and produced water pipelines, determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems, and provide a report with recommendations to the industrial commission and the energy development and transmission committee by December 1, 2015. The industrial commission shall adopt the necessary administrative rules necessary to improve produced water and crude oil pipeline safety and integrity. In addition, the industrial commission shall contract for a pilot project to evaluate a pipeline leak detection and monitoring system.

SECTION 9. APPROPRIATION. Notwithstanding section 38-08-04.5, there is appropriated out of any moneys in the abandoned oil and gas well plugging and site reclamation fund in the state treasury, not otherwise appropriated, the sum of $500,000, or so much of the sum as may be necessary, to the industrial commission for the purpose of conducting a pilot program involving the oil and gas research council in conjunction with research facilities in this state to determine the best techniques for remediating salt and any other contamination from the soil surrounding waste pits reclaimed by trenching between 1951 and 1984 in the north central portion of this state, for the biennium beginning July 1, 2015, and ending June 30, 2017.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.
AN ACT concerning utilities.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Public Utilities Act is amended by changing Sections 8-406, 8-406.1, and 8-510 as follows:

(220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)
Sec. 8-406. Certificate of public convenience and necessity.
(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition
thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(c) After the effective date of this amendatory Act of 1987, no construction shall commence on any new nuclear power plant to be located within this State, and no certificate of
public convenience and necessity or other authorization shall be issued therefor by the Commission, until the Director of the Illinois Environmental Protection Agency finds that the United States Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste, or until such construction has been specifically approved by a statute enacted by the General Assembly.

As used in this Section, "high level nuclear waste" means those aqueous wastes resulting from the operation of the first cycle of the solvent extraction system or equivalent and the concentrated wastes of the subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel and shall include spent fuel assemblies prior to fuel reprocessing.

(d) In making its determination, the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings, including the public utility's engineering judgment regarding the materials used for construction.

(e) The Commission may issue a temporary certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may
by regulation exempt from the requirements of this Section
temporary acts or operations for which the issuance of a
certificate will not be required in the public interest.

A public utility shall not be required to obtain but may
apply for and obtain a certificate of public convenience and
necessity pursuant to this Section with respect to any matter
as to which it has received the authorization or order of the
Commission under the Electric Supplier Act, and any such
authorization or order granted a public utility by the
Commission under that Act shall as between public utilities be
deemed to be, and shall have except as provided in that Act the
same force and effect as, a certificate of public convenience
and necessity issued pursuant to this Section.

No electric cooperative shall be made or shall become a
party to or shall be entitled to be heard or to otherwise
appear or participate in any proceeding initiated under this
Section for authorization of power plant construction and as to
matters as to which a remedy is available under The Electric
Supplier Act.

(f) Such certificates may be altered or modified by the
Commission, upon its own motion or upon application by the
person or corporation affected. Unless exercised within a
period of 2 years from the grant thereof authority conferred by
a certificate of convenience and necessity issued by the
Commission shall be null and void.

No certificate of public convenience and necessity shall be
construed as granting a monopoly or an exclusive privilege, immunity or franchise.

(g) A public utility that undertakes any of the actions described in items (1) through (3) of this subsection (g) or that has obtained approval pursuant to Section 8-406.1 of this Act shall not be required to comply with the requirements of this Section to the extent such requirements otherwise would apply. For purposes of this Section and Section 8-406.1 of this Act, "high voltage electric service line" means an electric line having a design voltage of 100,000 or more. For purposes of this subsection (g), a public utility may do any of the following:

(1) replace or upgrade any existing high voltage electric service line and related facilities, notwithstanding its length;

(2) relocate any existing high voltage electric service line and related facilities, notwithstanding its length, to accommodate construction or expansion of a roadway or other transportation infrastructure; or

(3) construct a high voltage electric service line and related facilities that is constructed solely to serve a single customer's premises or to provide a generator interconnection to the public utility's transmission system and that will pass under or over the premises owned by the customer or generator to be served or under or over premises for which the customer or generator has secured
(h) A public utility seeking to construct a high-voltage electric service line and related facilities (Project) must show that the utility has held a minimum of 2 pre-filing public meetings to receive public comment concerning the Project in each county where the Project is to be located, no earlier than 6 months prior to filing an application for a certificate of public convenience and necessity from the Commission. Notice of the public meeting shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks, beginning no earlier than one month prior to the first public meeting. If the Project traverses 2 contiguous counties and where in one county the transmission line mileage and number of landowners over whose property the proposed route traverses is one-fifth or less of the transmission line mileage and number of such landowners of the other county, then the utility may combine the 2 pre-filing meetings in the county with the greater transmission line mileage and affected landowners. All other requirements regarding pre-filing meetings shall apply in both counties. Notice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located. A representative of the Commission shall be invited to each pre-filing public meeting.

(i) For applications filed after the effective date of this amendatory Act of the 99th General Assembly, the Commission
shall by registered mail notify each owner of record of land, as identified in the records of the relevant county tax assessor, included in the right-of-way over which the utility seeks in its application to construct a high-voltage electric line of the time and place scheduled for the initial hearing on the public utility's application. The utility shall reimburse the Commission for the cost of the postage and supplies incurred for mailing the notice.

(Source: P.A. 95-700, eff. 11-9-07; 96-1348, eff. 7-28-10.)

(220 ILCS 5/8-406.1)

Sec. 8-406.1. Certificate of public convenience and necessity; expedited procedure.

(a) A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities (Project). To facilitate the expedited review process of an application filed pursuant to this Section, an application shall include all of the following:

(1) Information in support of the application that shall include the following:

(A) A detailed description of the Project, including location maps and plot plans to scale showing all major components.

(B) The following engineering data:

(i) a detailed Project description including:
(I) name and destination of the Project;
(II) design voltage rating (kV);
(III) operating voltage rating (kV); and
(IV) normal peak operating current rating;
(ii) a conductor, structures, and substations
description including:
(I) conductor size and type;
(II) type of structures;
(III) height of typical structures;
(IV) an explanation why these structures
were selected;
(V) dimensional drawings of the typical
structures to be used in the Project; and
(VI) a list of the names of all new (and
existing if applicable) substations or
switching stations that will be associated
with the proposed new high voltage electric
service line;
(iii) the location of the site and
right-of-way including:
(I) miles of right-of-way;
(II) miles of circuit;
(III) width of the right-of-way; and
(IV) a brief description of the area
traversed by the proposed high voltage
electric service line, including a description
of the general land uses in the area and the
type of terrain crossed by the proposed line;
(iv) assumptions, bases, formulae, and methods
used in the development and preparation of the
diagrams and accompanying data, and a technical
description providing the following information:

(I) number of circuits, with
identification as to whether the circuit is
overhead or underground;

(II) the operating voltage and frequency;

and

(III) conductor size and type and number
of conductors per phase;

(v) if the proposed interconnection is an
overhead line, the following additional
information also must be provided:

(I) the wind and ice loading design
parameters;

(II) a full description and drawing of a
typical supporting structure, including
strength specifications;

(III) structure spacing with typical
ruling and maximum spans;

(IV) conductor (phase) spacing; and

(V) the designed line-to-ground and
conductor-side clearances;
(vi) if an underground or underwater interconnection is proposed, the following additional information also must be provided:

(I) burial depth;

(II) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;

(III) cathodic protection scheme; and

(IV) type of dielectric fluid and safeguards used to limit potential spills in waterways;

(vii) technical diagrams that provide clarification of any item under this item (1) should be included; and

(viii) applicant shall provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing. To the extent applicable, for each right-of-way, an applicant shall provide the information described in this subsection (a). Upon a showing of good cause in its filing, an applicant may be excused from providing and identifying alternate rights-of-way.

(2) An application fee of $100,000, which shall be paid into the Public Utility Fund at the time the Chief Clerk of
the Commission deems it complete and accepts the filing.

(3) Information showing that the utility has held a minimum of 3 pre-filing public meetings to receive public comment concerning the Project in each county where the Project is to be located, no earlier than 6 months prior to the filing of the application. Notice of the public meeting shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks, beginning no earlier than one month prior to the first public meeting. If the Project traverses 2 contiguous counties and where in one county the transmission line mileage and number of landowners over whose property the proposed route traverses is 1/5 or less of the transmission line mileage and number of such landowners of the other county, then the utility may combine the 3 pre-filing meetings in the county with the greater transmission line mileage and affected landowners. All other requirements regarding pre-filing meetings shall apply in both counties. Notice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located. A representative of the Commission shall be invited to each pre-filing public meeting.

For applications filed after the effective date of this amendatory Act of the 99th General Assembly, the Commission shall by registered mail notify each owner of record of the
land, as identified in the records of the relevant county tax
assessor, included in the primary or alternate rights-of-way
identified in the utility's application of the time and place
scheduled for the initial hearing upon the public utility's
application. The utility shall reimburse the Commission for the
cost of the postage and supplies incurred for mailing the
notice.

(b) At the first status hearing the administrative law
judge shall set a schedule for discovery that shall take into
consideration the expedited nature of the proceeding.

(c) Nothing in this Section prohibits a utility from
requesting, or the Commission from approving, protection of
confidential or proprietary information under applicable law.
The public utility may seek confidential protection of any of
the information provided pursuant to this Section, subject to
Commission approval.

(d) The public utility shall publish notice of its
application in the official State newspaper within 10 days
following the date of the application's filing.

(e) The public utility shall establish a dedicated website
for the Project 3 weeks prior to the first public meeting and
maintain the website until construction of the Project is
complete. The website address shall be included in all public
notices.

(f) The Commission shall, after notice and hearing, grant a
certificate of public convenience and necessity filed in
accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

(1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

(2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction.

(3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that
good cause exists to extend the 150-day period.

(h) In the event the Commission grants a public utility's application for a certificate pursuant to this Section, the public utility shall pay a one-time construction fee to each county in which the Project is constructed within 30 days after the completion of construction. The construction fee shall be $20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee. The fee shall be in lieu of any permitting fees that otherwise would be imposed by a county. Counties receiving a payment under this subsection (h) may distribute all or portions of the fee to local taxing districts in that county.

(i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

(Source: P.A. 96-1348, eff. 7-28-10.)

(220 ILCS 5/8-510) (from Ch. 111 2/3, par. 8-510)

Sec. 8-510. Land surveys and land use studies. For the purpose of making land surveys and land use studies, any public utility that has been granted a certificate of public convenience and necessity by, or received an order under
Section 8-503 or 8-406.1 of this Act from, the Commission may, 30 days after providing written notice to the owner thereof by registered mail and after providing a second notice to the owner of record, as identified in the records of the relevant county tax assessor, by telephone or electronic mail or by registered mail in the event the property owner has not been notified by other means, at least 3 days, but not more than 15 days, prior to the stated date in the notice, identifying the date when land surveys and land use studies will first begin on their property and informing the landowner that they or their agent may be present when the land surveys or land use studies occur, enter upon the property of any owner who has refused permission for entrance upon that property, but subject to responsibility for all damages which may be inflicted thereby. (Source: P.A. 96-1348, eff. 7-28-10.)

Section 99. Effective date. This Act takes effect upon becoming law.
AN ACT relative to the siting of high pressure gas pipelines.

Be it Enacted by the Senate and House of Representatives in General Court convened:

264:1 New Section; Siting of High Pressure Gas Pipelines. Amend RSA 162-H by inserting after section 10-a the following new section:

162-H:10-b Siting of High Pressure Gas Pipelines; Rulemaking; Intervention.

I. To meet the objectives of this chapter, and with due regard to meeting the energy needs of the residents and businesses of New Hampshire, the general court finds that appropriately sited high pressure gas pipelines subject to committee approval have the potential to assist the state in accomplishing these goals. Accordingly, the general court finds that it is in the public interest for the site evaluation committee to establish criteria or standards governing the siting of high pressure gas pipelines in order to ensure that the potential benefits of such systems are appropriately considered and unreasonable adverse effects avoided through a comprehensive, transparent, and predictable process. When establishing any criteria, standard, or rule for a high pressure gas pipeline or when specifying the type of information that a high pressure gas pipeline applicant shall provide to the committee for its decision-making, the committee shall rely upon the best available evidence.

II. For the adoption of rules, pursuant to RSA 541-A, relative to the siting of high pressure gas pipelines, the committee shall address the following:

(a) Impacts to natural, scenic, recreational, visual, and cultural resources.

(b) Health and safety impacts, including but not limited to, proximity to high pressure gas pipelines that could be mitigated by appropriate setbacks from any high pressure gas pipeline.

(c) Project-related sound and vibration impact assessment prepared in accordance with professional standards by an expert in the field.

(d) Impacts to the environment, air and water quality, plants, animals, and natural communities.

(e) Site fire protection plan requirements.

(f) Best practical measures to ensure quality construction that minimizes safety issues.

(g) Best practical measures to avoid, minimize, or mitigate adverse effects.

(h) Criteria to maintain property owners’ ability to use and enjoy their property.
III. As soon as practicable, but no later than one year from the effective date of this section, the committee shall adopt rules, pursuant to RSA 541-A, consistent with paragraphs I and II of this section.

IV. The committee shall consider intervention in Federal Energy Regulatory Commission proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire.

264:2 Certificate Terms and Conditions. Amend RSA 162-H:16, VI to read as follows:

VI. A certificate of site and facility may contain such reasonable terms and conditions, including but not limited to the authority to require bonding, as the committee deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued, shall be final and subject only to judicial review.

264:3 Effective Date. This act shall take effect upon its passage.

Approved: July 20, 2015

Effective Date: July 20, 2015
AN ACT to renumber 71.23 (3); to renumber and amend 71.67 (6), 77.52 (7) and 77.53 (9); to amend 71.03 (2) (a), 77.52 (12) and 323.12 (title); and to create 71.04 (7) (f) 17., 71.05 (1) (g), 71.23 (3) (bm), 71.25 (9) (f) 17., 71.25 (16), 71.26 (2) (a) 12., 71.64 (6) (c), 71.67 (6) (b), 77.52 (7) (b), 77.53 (9) (b), 77.53 (19) and 323.12 (5) of the statutes; relating to: exemptions from certain taxes and other requirements for work performed by persons from outside the state during a state of emergency declared by the governor.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.03 (2) (a) 2. of the statutes is amended to read:

71.03 (2) (a) 2. Every nonresident person and every person who changes domicile into or out of this state during the taxable year shall file a return if the person is unmarried and has gross income of $2,000 or more, or if the person is married and the combined gross income of the person and his or her spouse is $2,000 or more, except that a return is not required to be filed if all the income is exempt from income tax under s. 71.05 (1) (g).

SECTION 2. 71.04 (7) (f) 17. of the statutes is created to read:

71.04 (7) (f) 17. Gross receipts from sales of property or services as part of performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 3. 71.05 (1) (g) of the statutes is created to read:

71.05 (1) (g) Income from work performed during a declared state of emergency. Income of an out-of-state business, as defined in s. 323.12 (5) (a) 6., and an out-of-state employee, as defined in s. 323.12 (5) (a) 7., from disaster relief work, as defined under s. 323.12 (5) (a) 3.

SECTION 4. 71.23 (3) of the statutes is renumbered 71.23 (3) (am).

SECTION 5. 71.23 (3) (bm) of the statutes is created to read:

71.23 (3) (bm) Except as provided in s. 71.255 (5), an out-of-state business, as defined in s. 323.12 (5) (a) 6., may do business in this state without subjecting itself to the imposition of the income or franchise tax under subs. (1) and (2) if its only activity in this state is disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 6. 71.25 (9) (f) 17. of the statutes is created to read:

71.25 (9) (f) 17. Gross receipts from sales of property or services as part of performing disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 7. 71.25 (16) of the statutes is created to read:

71.25 (16) DISASTER RELIEF WORK. For purposes of the apportionment of any income under this section, the disaster relief work, as defined in s. 323.12 (5) (a) 3., of an out-of-state business, as defined in s. 323.12 (5) (a) 6., shall not increase the amount of income apportioned to this state. For purposes of sub. (7), any property brought temporarily into this state by an out-of-state business in connection with performing disaster relief work, as defined in s. 323.12 (5) (a) 3., shall not increase the amount of income apportioned to this state.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”
work is not considered property located in this state. For purposes of sub. (8), compensation paid to out-of-state employees, as defined in s. 323.12 (5) (a) 7., who are performing disaster relief work is not considered compensation paid in this state. For purposes of sub. (9), gross receipts from the sale of property or services as part of performing any disaster relief work are not considered gross receipts from sales received in this state.

SECTION 8. 71.26 (2) (a) 12. of the statutes is created to read:

71.26 (2) (a) 12. Minus the income of an out−of−state business, as defined in s. 323.12 (5) (a) 6., from disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 9. 71.64 (6) (c) of the statutes is created to read:

71.64 (6) (c) No amount shall be withheld from wages paid to an out−of−state employee, as defined in s. 323.12 (5) (a) 7., for disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 10. 71.67 (6) of the statutes is renumbered 71.67 (6) (a) and amended to read:

71.67 (6) (a) Except as provided under par. (b), each employer who is required to withhold under this chapter shall obtain a valid certificate under s. 73.03 (50).

SECTION 11. 71.67 (6) (b) of the statutes is created to read:

71.67 (6) (b) An out−of−state business, as defined in s. 323.12 (5) (a) 6., whose only payments to employees are to out−of−state employees, as defined in s. 323.12 (5) (a) 7., for disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to obtain a certificate under s. 73.03 (50).

SECTION 12. 77.52 (7) of the statutes is renumbered 77.52 (7) (a) and amended to read:

77.52 (7) (a) Every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant’s place of operations, and the other information that the department requires. Except as provided in sub. (7b), the application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has a sales price taxable under s. 77.54 (7m) shall obtain a seller’s permit and pay taxes under this subchapter on all taxable sales prices received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller’s permit, it may surrender that permit.

SECTION 13. 77.52 (7) (b) of the statutes is created to read:

77.52 (7) (b) An out−of−state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during a disaster period, as defined in s. 323.12 (5) (a) 2.

SECTION 14. 77.52 (12) of the statutes is amended to read:

77.52 (12) A person who operates as a seller in this state without a permit or after a permit has been suspended or revoked or has expired, unless the person is not required to obtain a permit as provided under sub. (7) (b) or unless the person has a temporary permit under sub. (11), and each officer of any corporation, partnership member, limited liability company member, or other person authorized to act on behalf of a seller who so operates, is guilty of a misdemeanor. Except for a person who is registered in accordance with the agreement, as defined in s. 77.65 (2) (a), permits shall be held only by persons actively operating as sellers of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services. Any person not so operating shall forthwith surrender that person’s permit to the department for cancellation. The department may revoke the permit of a person found not to be actively operating as a seller of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or taxable services.

SECTION 15. 77.53 (9) of the statutes is renumbered 77.53 (9) (a) and amended to read:

77.53 (9) (a) Every retailer selling tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services for storage, use or other consumption in this state shall register with the department and obtain a certificate under s. 73.03 (50) and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, the standard industrial code classification of each place of business in this state and the other information that the department requires. Any person who may register under this subsection may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under this subsection, in the manner prescribed by the department.

SECTION 16. 77.53 (9) (b) of the statutes is created to read:

77.53 (9) (b) An out−of−state business, as defined in s. 323.12 (5) (a) 6., performing disaster relief work, as defined in s. 323.12 (5) (a) 3., is not required to register with the department under par. (a) and is not required to obtain a certificate under s. 73.03 (50) for sales made during the disaster period, as defined in s. 323.12 (5) (a) 2.
SECTION 17. 77.53 (19) of the statutes is created to read:

77.53 (19) This section does not apply to the storage, use, or other consumption in this state of tangible personal property, property, or goods under s. 77.52 (1) (a), (c), or (d), or taxable services, purchased outside this state, as determined under s. 77.522, by an out-of-state business, as defined in s. 323.12 (5) (a) 6., and brought into this state and used solely for disaster relief work, as defined in s. 323.12 (5) (a) 3.

SECTION 18. 323.12 (title) of the statutes is amended to read:

323.12 (title) Governor; duties and powers; out-of-state assistance.

SECTION 19. 323.12 (5) of the statutes is created to read:

323.12 (5) Work performed by an out-of-state business or employee. (a) In this subsection:

1. “Declared state of emergency” means a state of emergency declared by the governor under s. 323.10.

2. “Disaster period” means the time that begins 10 days before a declared state of emergency and ends 60 days after the declared state of emergency ends.

3. “Disaster relief work” means work, including repairing, renovating, installing, building, or performing other services or activities, relating to infrastructure in this state that has been damaged, impaired, or destroyed in connection with a declared state of emergency.

4. “Doing business in this state” has the meaning given in s. 71.22 (1r), except that members of a combined group, as defined in s. 71.255 (1) (a), are not considered to be doing business in this state based solely on another member of the combined group doing business in this state.

A business shall be considered to be doing business in this state for purposes of ch. 77 if it performs disaster relief work in this state.

5. “Infrastructure” means property and equipment owned or used by a telecommunications provider or cable operator or that is used for communications networks, including telecommunications, broadband, and multichannel video networks; electric generation, transmission, and distribution systems; gas distribution systems; water pipelines; and any related support facilities that service multiple customers or citizens, including buildings, offices, lines, poles, pipes, structures, equipment, and other real or personal property.

6. “Out-of-state business” means a sole proprietorship, partnership, limited liability company, joint venture, corporation, or other organization or enterprise, whether operated for profit or not for profit, that is not organized under the laws of this state and that, except for disaster relief work during a disaster period, was not doing business in this state during the 3 taxable years immediately preceding the disaster period or the current taxable year in which the declared state of emergency occurs.

7. “Out-of-state employee” means an individual who does not work in this state, except for disaster relief work during a disaster period, and who immediately prior to that declared state of emergency was not a resident of this state, was not doing business in this state that required a tax return to be filed in this state, and was not performing services in this state that required a tax return to be filed in this state.

8. “Taxable year” has the meaning given in s. 71.01 (12).

(b) Subject to par. (c), any out-of-state business or out-of-state employee is exempt from all of the following for disaster relief work performed during a disaster period:

1. Any applicable state withholding, income, franchise, or use tax, and any related registration requirement or fee, as provided under ss. 71.03 (2) (a) 2., 71.04 (7) (f) 17., 71.05 (1) (g), 71.23 (3) (bm), 71.25 (9) (f) 17. and (16), 71.26 (2) (a) 12., 71.64 (6) (c), 71.67 (6) (b), 77.52 (7) (b) and (12), and 77.53 (9) (b) and (19). The department of revenue may examine and inspect the books, records, memoranda, and property of any out-of-state business or out-of-state employee to verify an exemption claimed under this subdivision.

2. Any applicable fee imposed by a state agency, local unit of government, or other subdivision or instrumentality of the state or of a local unit of government.

3. Any applicable license, certificate, registration, permit, or other credential or approval of a state agency, local unit of government, or other subdivision or instrumentality of the state or of a local unit of government.

(c) No later than 90 days after the last day of a disaster period, any out-of-state business, and the employer of any out-of-state employee, that wishes to claim an exemption under par. (b) shall provide notice to the department of revenue, in the manner prescribed by the department, that the out-of-state business or out-of-state employee is in the state solely to perform disaster relief work. The notice shall include all of the following information for each out-of-state business and each out-of-state employer:

1. Legal name and business name, if any.

2. State of domicile or residence.

3. Principal address.

4. Federal tax identification number.

5. The date of entry to the state for the purpose of performing the disaster relief work.

6. Contact information.

(d) A business organized under the laws of this state shall provide the information required under par. (c) for any out-of-state business that is a related entity, as defined in s. 71.22 (9am), that enters the state to perform disaster relief.
SECTION 20. Initial applicability.

(1) DISASTER RELIEF WORK. The treatment of sections 71.03 (2) (a) 2., 71.04 (7) (f) 17., 71.05 (1) (g), 71.25 (9) (f) 17. and (16), 71.26 (2) (a) 12., and 71.64 (6) (c) of the statutes, the renumbering of section 71.23 (3) of the statutes, the renumbering and amendment of section 71.67 (6) of the statutes, and the creation of sections 71.23 (3) (bm) and 71.67 (6) (b) of the statutes first apply to taxable years beginning on January 1, 2015.

SECTION 21. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 77.52 (12) and 77.53 (19) of the statutes, the renumbering and amendment of sections 77.52 (7) and 77.53 (9) of the statutes, and the creation of sections 77.52 (7) (b) and 77.53 (9) (b) of the statutes take effect on the first day of the 3rd month beginning after publication.
No. 139. An act relating to establishing a product stewardship program for primary batteries.

(H.695)

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

Sec. 1. 10 V.S.A. chapter 168 is added to read:

CHAPTER 168. PRODUCT STEWARDSHIP FOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIES

Subchapter 1. Definitions

§ 7581. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Brand” means a name, symbol, word, or traceable mark that identifies a primary battery and attributes the primary battery to the owner or licensee of the brand as the producer.

(3) “Calendar year” means the period commencing January 1 and ending December 31 of the same year.

(4) “Collection rate” means a percentage by weight that each producer or primary battery stewardship organization collects by an established date.

The collection rate shall be calculated by dividing the total weight of the primary batteries that are collected during a calendar year by the average annual weight of primary batteries that were estimated to have been sold in the State by participating producers during the previous three calendar years.

Estimates of primary batteries sold in the State may be based on a reasonable pro rata calculation based on national sales.
(5) “Consumer” means any person who presents or delivers any number of primary batteries to a collection facility that is included in an approved primary battery stewardship plan.

(6) “Consumer product” means any product that is regularly used or purchased to be used for personal, family, or household purposes. “Consumer product” shall not mean a product primarily used or purchased for industrial or business use.

(7) “Discarded primary battery” means a primary battery that is no longer used for its manufactured purpose.

(8) “Easily removable” means readily detachable by a person without the use of tools or with the use of common household tools.

(9) “Participate” means to appoint a primary battery stewardship organization or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship organization.

(10) “Primary battery” means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. “Primary battery” shall not mean:

(A) batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use;

(B) a battery that is sold in a computer, computer monitor, computer peripheral, printer, television, or device containing a cathode ray tube;
(C) a battery that is not easily removable or is not intended to be removed from a consumer product; and

(D) a battery that is sold or used in a medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as may be amended.

(11) “Primary battery producer” or “producer” means one of the following with regard to a primary battery that is sold or offered for sale in the State:

(A) a person who manufactures a primary battery and who sells or offers for sale that primary battery in the State under the person’s own name or brand;

(B) if subdivision (A) of this subdivision (11) does not apply, a person who owns or licenses a trademark or brand under which a primary battery is sold or offered for sale whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (11) do not apply, a person who imports a primary battery into the State for sale.

(12) “Primary battery stewardship organization” means an organization appointed by one or more producers to act as an agent on behalf of a producer or producers to design, submit, implement, and administer a primary battery stewardship plan under this chapter.

(13) “Primary battery stewardship plan” or “plan” means a plan submitted to the Secretary pursuant to section 7584 of this title by an individual producer or a primary battery stewardship organization.
(14) “Program” or “stewardship program” means the system for the collection, transportation, recycling, and disposal of primary batteries implemented pursuant to an approved primary battery stewardship plan.

(15)(A) “Rechargeable battery” means:

(i) one or more voltaic or galvanic cells, electrically connected to produce electric energy and designed to be recharged and weighing less than 11 pounds; or

(ii) a battery pack designed to be recharged that weighs less than 11 pounds and that is designed to provide less than 40 volts direct current.

(B) “Rechargeable battery” shall not mean:

(i) a battery that is not easily removable or is not intended or designed to be removed from the covered product, other than by the manufacturer;

(ii) a battery that contains electrolyte as a free liquid;

(iii) a battery or battery pack that employs lead-acid technology, unless the battery or battery pack:

(I) is sealed;

(II) contains no liquid electrolyte; and

(III) is intended by its manufacturer to power a handheld device or to provide uninterrupted backup electrical power protection for stationary consumer products or stationary office equipment; or

(iv) a battery intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.
(16) “Rechargeable battery steward” means a person who:

(A) manufactures a rechargeable battery or a rechargeable product that is sold, offered for sale, or distributed in the State under its own brand name;

(B) owns or licenses a trademark or brand under which a rechargeable battery or rechargeable product is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (16) do not apply, imports a rechargeable battery or rechargeable product into the State for sale or distribution.

(17) “Rechargeable battery stewardship organization” means an entity registered by the Secretary pursuant to section 7588 of this title that is either a single rechargeable battery steward operating on its own behalf; an organization appointed by one or more rechargeable battery stewards to operate a plan in which each steward is participating; or a retailer or franchisor of retailers operating a plan on behalf of itself or its franchisees.

(18) “Rechargeable product” means a consumer product that contains or is packaged with a rechargeable battery at the time the product is sold, offered for sale, or distributed in the State. “Rechargeable product” shall not mean:

(A) a product from which a rechargeable battery is not easily removable or is not intended or designed to be removed from the product, other than by the manufacturer; or
(B) a medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

(19) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity, but does not include energy recovery or energy generation by means of combusting discarded products, components, and by products with or without other waste products.

(20) “Retailer” means a person who offers a primary battery for sale to any consumer or business at retail in the State through any means, including remote offerings such as sales outlets, catalogues, or an Internet website.

(21) “Secretary” means the Secretary of Natural Resources.

Subchapter 2. Primary Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES

(a) Sale prohibited. Except as set forth under subsections (b) and (c) of this section, beginning on January 1, 2016, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless:

(1) the producer or the primary battery stewardship organization in which the producer is participating is registered under an approved and implemented primary battery stewardship plan;

(2) the producer or primary battery stewardship organization has paid the fee under section 7594 of this title; and
(3) the name of the producer and the producer’s brand are designated on the Agency website as covered by an approved primary battery stewardship plan.

(b) New producers.

(1) A producer of a primary battery who, after January 1, 2016, seeks to sell, offer for sale, or offer for promotional purposes in the State a primary battery not previously sold in State, shall notify the Secretary prior to selling or offering for sale or promotion a primary battery not covered by an approved primary battery stewardship plan.

(2) The Secretary shall list a producer who supplies notice under this subsection as a “new producer” on the Agency’s website. A producer that supplies notice under this subsection shall have 90 days, not including the time required for public comment under subsection 7586(c) of this section, to either join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the State.

(c) Exemption. A producer who annually sells, offers for sale, distributes, or imports in or into the State primary batteries with a total retail value of less than $2,000.00 shall be exempt from the requirements of this chapter.

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION

(a) Participation in a primary battery stewardship organization. A producer of primary batteries may meet the requirements of this chapter by participating
in a primary battery stewardship organization that undertakes the producer’s responsibilities under sections 7582, 7584, and 7585 of this title.

(b) Qualifications for a primary battery stewardship organization. To qualify as a primary battery stewardship organization under this chapter, an organization shall:

(1) commit to assume the responsibilities, obligations, and liabilities of all producers participating in the primary battery stewardship organization;

(2) not create unreasonable barriers for participation by producers in the primary battery stewardship organization; and

(3) maintain a public website that lists all producers and producers’ brands covered by the primary battery stewardship organization’s approved collection plan.

(c) Registration requirements.

(1) Beginning on March 1, 2015 and annually thereafter, a primary battery stewardship organization shall file a registration form with the Secretary. The Secretary shall provide the registration form to a primary battery stewardship organization. The registration form shall require submission of the following information:

(A) a list of the producers participating in the primary battery stewardship organization;

(B) the name, address, and contact information of a person responsible for ensuring a producer’s compliance with this chapter;
(C) a description of how the primary battery stewardship organization proposes to meet the requirements of subsection (a) of this section, including any reasonable requirements for participation in the primary battery stewardship organization; and

(D) the name, address, and contact information of a person for a nonmember manufacturer to contact on how to participate in the primary battery stewardship organization to satisfy the requirements of this chapter.

(2) A renewal of a registration without changes may be accomplished through notifying the Secretary on a form provided by the Secretary.

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

(a) Primary battery stewardship plan required. On or before June 1, 2015, each producer selling, offering for sale, distributing, or offering for promotional purposes a primary battery in the State shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the Secretary for review.

(b) Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:

(1) List of producers and brands. Each primary battery stewardship plan shall list:

(A) all participating producers and contact information for each of the participating producers; and

(B) the brands of primary batteries covered by the plan.
(2) Free collection. Each primary battery stewardship plan shall provide for the collection of primary batteries from consumers at no cost to consumers. A producer shall not refuse the collection of a primary battery based on the brand or producer of the primary battery.

(3) Collection; convenience. Each primary battery stewardship plan shall:

   (A) Allow all retailers who meet requirements specified in the plan, all municipalities, and all certified solid waste management facilities to opt to be a collection facility.

   (B) Provide, at a minimum, no fewer than two collection facilities in each county in the State that provide for collection throughout the year.

   (C) Provide for the acceptance from a consumer of up to 100 batteries per visit. A collection facility may agree to accept more than 100 batteries per visit from a consumer.

(4) Method of disposition. Each primary battery stewardship plan shall include a description of the method that will be used to responsibly manage discarded primary batteries to ensure that the components of the discarded primary batteries, to the extent economically and technically feasible, are recycled.

(5) Roles and responsibilities. A primary battery stewardship plan shall list all key participants in the primary battery collection chain, including:
(A) the number and name of the collection facilities accepting primary batteries under the plan, including the address and contact information for each facility; and

(B) the name and contact information of a transporter or contractor collecting primary batteries from collection facilities.

(C) the name, address, and contact information of the recycling facilities that process the collected primary batteries.

(6) Education and outreach. A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include mass media advertising in radio or television broadcasts or newspaper publications of general circulation in the State, retail displays, articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, certified solid waste management facilities, retailers, wholesalers, and haulers. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for all primary batteries; and

(B) the location of collection points and how to access the collection program.
(7) Reimbursement. A primary battery stewardship plan shall include a reimbursement procedure that is consistent with the requirements of subchapter 4 of this chapter.

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan. The collection rate includes the estimated total weight of primary batteries that will be sold or offered for sale in the State by the producer or the producers participating in the primary battery stewardship plan.

(c) Implementation. A producer or a primary battery stewardship organization shall include provisions in the plan for the implementation of the program in conjunction with those retailers, municipalities, and certified solid waste management facilities acting as collection facilities under a program. No transportation or recycling cost shall be imposed on retailers, municipalities, or certified solid waste management facilities acting as collection facilities under a program. A producer or a primary battery stewardship organization shall provide retailers, municipalities, and certified solid waste management facilities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of collected primary batteries, including arranging for the management of those primary batteries.
§ 7585. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. On or before March 1, 2017, and annually thereafter, a producer or a primary battery stewardship organization shall submit a report to the Secretary that contains the following:

(1) the weight of primary batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(2) the estimated percentage, by weight, of rechargeable batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(3) the percentage of primary batteries collected in the prior calendar year that are from producers who are not participating in any approved stewardship plan, based on periodic sorting of primary batteries by the reporting producer;

(4) the collection rate achieved in the prior calendar year under the primary battery stewardship plan, including a report of the estimate total sales data by weight for primary batteries sold in the State for the previous three calendar years;

(5) the locations for all collection points set up by the primary battery producers covered by the primary battery stewardship plan and contact information for each location;

(6) examples and description of educational materials used to increase collection;

(7) the manner in which the collected primary batteries were managed:
(8) any material change to the primary battery stewardship plan approved by the Secretary pursuant to section 7586 of this title; and

(9) the cost of implementation of the primary battery stewardship plan, including the costs of collection, recycling, education, and outreach.

(b) Plan audit. After five years of implementation of an approved primary battery stewardship plan, a primary battery producer or primary battery stewardship organization shall hire an independent third party to conduct a one-time audit of the primary battery stewardship plan and plan operation. The auditor shall examine the effectiveness of the primary battery stewardship plan in collecting and recycling primary batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for primary batteries in other jurisdictions. The independent auditor shall submit the results of the audit to the Secretary as part of the annual report required under subsection (a) of this section.

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

(a) Approval of plan. Within 90 days after receipt of a proposed primary battery stewardship plan, not including the time required for public comment under subsection (c) of this section, the Secretary shall determine whether the plan complies with the requirements of section 7584 of this title. If the Secretary determines that a plan complies with the requirements of section 7584 of this title, the Secretary shall notify the applicant of the plan approval in writing. If the Secretary rejects a primary battery stewardship plan, the Secretary shall notify the applicant in writing of the reasons for rejecting the
plan. An applicant whose plan is rejected by the Secretary shall submit a revised plan to the Secretary within 45 days of receiving notice of rejection.

A primary battery stewardship plan that is not approved or rejected by the Secretary within 90 days, not including the time required for public comment under subsection (c) of this section, of submission by a producer shall be deemed approved.

(b) Plan amendment; changes. Any changes to a proposed primary battery stewardship plan shall be approved by the Secretary in writing. The Secretary, in his or her discretion or at the request of a producer, may require a producer or a primary battery stewardship organization to amend an approved plan.

(c) Public notice. The Secretary shall post all proposed primary battery stewardship plans and all proposed amendments to a primary battery stewardship plan on the Agency’s website for 30 days from the date the application for a plan or a plan amendment is deemed complete by the Secretary, subject to the confidentiality provisions of section 7592 of this title.

(d) Public input. The Secretary shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is available for public review and comment.

(e) Registrations. The Secretary shall accept, review, and approve or deny primary battery stewardship organization registrations submitted under section 7583 of this title.

(f) Agency website. The Secretary shall maintain a website that includes a copy of all approved primary battery stewardship plans, the names of
producers with approved plans, participation in approved plans, or other compliance with this chapter. The website shall list all of an approved primary battery producer’s brands covered by a primary battery stewardship plan filed with the Secretary. The Secretary shall update information on the website within 10 days of receipt of notice of any change to the listed information. The website shall list all known primary battery producers exempt from the requirements of this chapter under subsection 7582(c) of this title.

(g) Term of primary battery stewardship plan. A primary battery stewardship plan approved by the Secretary under this section shall have a term not to exceed five years, provided that the primary battery producer or primary battery stewardship organization remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7587. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth in subsection (b) of this section, no retailer shall sell or offer for sale a primary battery on or after January 1, 2016 unless the producer of the primary battery is implementing an approved primary battery stewardship plan, is a member of a primary battery stewardship organization implementing an approved primary battery stewardship plan, or is exempt from participation in an approved plan, as determined by review of the producers listed on the Agency website required in subsection 7586(f) of this title.
(b) Inventory exception; expiration or revocation of producer registration.

A retailer shall not be responsible for an unlawful sale of a primary battery under this subsection if:

(1) the retailer purchased the primary battery prior to January 1, 2016 and sells the primary battery on or before January 1, 2017; or

(2) the producer’s primary battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer’s primary battery stewardship plan.

(c) Educational material. A producer or primary battery stewardship organization supplying primary batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for primary batteries. The retailer shall make the educational materials available to consumers.

Subchapter 3. Registration of Rechargeable Battery Stewardship Organization

§ 7588. REGISTRATION OF RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION

(a) A rechargeable battery steward or rechargeable battery stewardship organization shall register with the Secretary in order to seek reimbursement under subchapter 4 of this chapter.

(b) The Secretary shall register a rechargeable battery steward or rechargeable battery stewardship organization upon:
(1) submission of a registration form, provided by the Secretary, that includes:

(A) the name of a rechargeable battery steward implementing an individual program or a list of the producers participating in a rechargeable battery stewardship organization; and

(B) the name, address, and contact information of a person responsible for implementing the rechargeable battery stewardship program;

(2) a determination by the Secretary that the rechargeable battery steward or rechargeable battery stewardship organization offers to municipalities, certified solid waste management facilities, and retailers a year-round free collection and recycling program.

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of primary battery producers.

(1) A producer or a primary battery stewardship organization operating under an approved primary battery stewardship plan that collects primary batteries or rechargeable batteries that are not listed under its approved plan shall be entitled to reimbursement from the following entities of reimbursable costs per unit of weight incurred in collecting the batteries:

(A) the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery; or
(B) the rechargeable battery steward responsible for the collected rechargeable batteries, or where the rechargeable battery steward responsible for the collected rechargeable batteries is participating in a rechargeable battery stewardship organization, the stewardship organization.

(2) Reimbursement may be requested by a collecting primary battery producer or primary battery stewardship organization only after that producer has achieved the collection rate performance goal approved by the Secretary under section 7584 of this title.

(b) Reimbursement of rechargeable battery stewardship organization.
A registered rechargeable battery steward or rechargeable battery stewardship organization shall be entitled to reimbursement from the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery.

(c) Reimbursable costs. Under this subchapter, reimbursement shall be allowed only for those costs incurred in collecting the batteries subject to the reimbursement request. Reimbursable costs include:

(1) costs of collection, transport, recycling, and other methods of disposition identified in a primary battery stewardship plan approved pursuant to section 7586 of this title; and

(2) reasonable educational, promotional, or administrative costs.
§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

(1) A primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization that incurs reimbursable costs under section 7589 of this title shall submit a request to the producer of the collected primary battery or the primary battery stewardship organization in which the producer is participating or the rechargeable battery stewardship organization responsible for the collected rechargeable battery.

(2) A producer or primary battery stewardship organization or rechargeable battery stewardship organization that receives a request for reimbursement may, prior to payment and within 30 days of receipt of the request for reimbursement, request an independent audit of submitted reimbursement costs.

(3) The independent auditor shall be responsible for verifying the reasonableness of the reimbursement request, including the costs sought for reimbursement, the amount of reimbursement, and the reimbursable costs assessed by each of the two programs.

(4) If the independent audit confirms the reasonableness of the reimbursement request, the producer, primary battery stewardship organization, or rechargeable battery stewardship organization requesting the audit shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor. If the independent audit indicates the reimbursement request was not reasonable, the producer or primary battery organization shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor.
stewardship organization that initiated the reimbursement request shall pay the
cost of the audit and the amount of the reimbursement calculated by the
independent auditor.

(b) Role of Agency. The Agency shall not be required to provide
assistance or otherwise participate in a reimbursement request, audit, or other
action under this section, unless subject to subpoena before a court of
jurisdiction.

Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

(a) Action against producer with no primary battery stewardship plan. A
producer, a primary battery stewardship organization implementing an
approved primary battery stewardship plan in compliance with the
requirements of this chapter, a rechargeable battery steward, or a rechargeable
battery stewardship organization may bring a civil action against another
producer or primary battery stewardship organization for damages when:

(1) the plaintiff producer, primary battery stewardship organization,
rechargeable battery steward, or rechargeable battery stewardship organization
incurs more than $1,000.00 in actual reimbursable costs collecting, handling,
recycling, or properly disposing of primary batteries sold or offered for sale in
the State by that other producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected primary
batteries from a brand or marking on the discarded battery or from other
information available to the plaintiff producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization; and

(B) does not operate or participate in an approved primary battery stewardship organization in the State or is not otherwise in compliance with the requirements of this chapter.

(b) Action against producer with an approved primary battery stewardship plan. A producer, a primary battery stewardship organization in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a primary producer or primary battery stewardship organization in the State that is in compliance with the requirements of this chapter, provided that the conditions of subsection (d) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer, a primary battery stewardship organization in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary, provided that the conditions of subsection (d) of this section have been met.

(d) Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only if:
(1) a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization submitted a reimbursement request to another producer, primary battery stewardship organization, or rechargeable battery stewardship organization under subchapter 4 of this chapter; and

(2) the plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization does not receive reimbursement within:

(A) 90 days of the reimbursement request, if no independent audit is requested under subchapter 4 of this chapter; or

(B) 60 days after completion of an audit if an independent audit is requested under subchapter 4 of this chapter, and the audit confirms the validity of the reimbursement request.

(e) Action against individual producer or steward.

(1) A civil action under this section may be brought against an individual primary battery producer or an individual rechargeable battery steward only if the primary battery producer is implementing its own primary battery stewardship plan, the primary battery producer has failed to register to participate in a primary battery stewardship plan, or the rechargeable battery steward is implementing its own registered rechargeable battery stewardship organization.

(2) A primary battery producer participating in an approved primary battery stewardship plan covering multiple producers or a rechargeable battery...
steward participating in a rechargeable battery stewardship organization representing multiple stewards shall not be sued individually for reimbursement.

(3) An action against a primary battery producer participating in a primary battery stewardship plan covering multiple producers or an action against a rechargeable battery steward participating in a rechargeable battery stewardship organization shall be brought against the stewardship organization implementing the plan.

(f) Role of Agency. The Agency shall not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under this section solely due to its regulatory requirements under this chapter, unless subject to subpoena before a court of jurisdiction.

(g) Damages; definitions. As used in this section, “damages” means the actual, reimbursable costs a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of primary batteries reasonably identified as having originated from another primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization.


§ 7592. CONFIDENTIALITY OF SUBMITTED DATA

(a) Confidentiality. Reports and data submitted under this chapter shall be available for public inspection and copying, provided that:
(1) Information protected under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, or under the trade secret exemption under 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under the Public Records Act.

(2) The Secretary may publish information confidential under subdivision (1) of this subsection in a summary or aggregated form that does not directly or indirectly identify individual producers, battery stewards, distributors, or retailers.

(b) Omission of trade secret information. The Secretary may require, as a part of a report submitted under this chapter, that the producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization submit a report that does not contain trade secret information and is available for public inspection and review.

(c) Total weight of batteries. The total weight of batteries collected under an approved primary battery stewardship plan is not confidential business information under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, and shall be subject to inspection and review under the Public Records Act, 1 V.S.A chapter 5, subchapter 3.

§ 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries is
individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer’s, group of producers’, or primary battery stewardship organization’s chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization’s approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer’s or primary battery stewardship organization’s organized collection or recycling system for discarded batteries.

(b) Limitations on anti-trust activity. Subsection (a) of this section shall not apply to an agreement among producers, groups of producers, retailers, wholesalers, or primary battery stewardship organizations affecting the price of primary batteries or any agreement restricting the geographic area in which, or customers to whom, primary batteries shall be sold.

§ 7594. ADMINISTRATIVE FEE

(a) Fees assessed. A primary battery producer or primary battery stewardship organization shall pay a fee of $15,000.00 annually for operation under a primary battery stewardship plan approved by the Secretary under section 7586 of this title.
(b) Disposition of fees. The fees collected under subsection (a) of this section shall be deposited in the Environmental Permit Fund under 3 V.S.A. § 2805.

§ 7595. RULEMAKING; PROCEDURE

The Secretary may adopt rules or procedures to implement the requirements of this chapter.

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

On or before January 15, 2019, the Agency of Natural Resources shall submit to the House and Senate Committees on Natural Resources and Energy a report on the progress of the primary battery stewardship program under 10 V.S.A. chapter 168. The report shall include:

(1) the amount, by weight, of primary batteries and rechargeable batteries collected under approved primary battery stewardship plans;

(2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery stewardship plan or participating in an approved primary battery stewardship organization; and

(3) recommendation for any amendments to the requirements of 10 V.S.A. chapter 168, including whether additional manufacturers of batteries or battery containing products should be required to implement primary battery stewardship plans.
Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

* * *

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; and

(23) 24 V.S.A. § 2202a, relating to a municipality’s adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries.

Sec. 4. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(Q) chapter 164A (collection and disposal of mercury-containing lamps).

(R) chapter 32 (flood hazard areas).

(S) chapter 168 (collection and disposal of primary batteries).
(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill:  May 22, 2014
RELATING TO ELECTRONIC WASTE RECYCLING.

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

SECTION 1. Section 339D-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) By June 1, 2009, and annually thereafter, each electronic device manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the collection, transportation, and recycling of its covered electronic devices sold in the State, which shall be subject to the following conditions:

(1) The plan shall not permit the charging of a fee at the point of recycling if the covered electronic device is brought by the covered electronic device owner to a central location for recycling; provided that the plan may include a reasonable transportation fee if the electronic device manufacturer or electronic device manufacturer's agent removes the covered electronic device from the owner's premises at the owner's request and if the removal is not in conjunction with
delivery of a new electronic device to the owner;

[and]

(2) Any plan that exclusively provides a mail-back option for the collection, transportation, and recycling of an electronic device manufacturer's covered electronic devices sold in the State, shall not be approved by the department;

(3) An electronic device manufacturer of exclusively mobile covered electronic devices whose products are voluntarily accepted at no charge by at least fifty retail locations in the State may submit a recycling plan to the department that documents these locations to satisfy the requirements of this subsection; and

(4) Each electronic device manufacturer may develop its own recycling program or may collaborate with other electronic device manufacturers, so long as the program is implemented and fully operational no later than January 1, 2010."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2016.
AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Vital Records Act of 1981 to require the Registrar to issue a new certificate of birth designating a new gender for any individual who provides a written request and a signed statement from a licensed healthcare provider that the individual has undergone a gender transition, and to require that an original certificate of birth be sealed when a new certificate of birth is issued; to repeal section 16-2502 of the District of Columbia Official Code to remove the publication notification requirement for a name change; and to amend section 16-2503 of the District of Columbia Official Code to authorize the Superior Court of the District of Columbia to issue decrees of gender or name change in specific circumstances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013”.

Sec. 2. The Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-210 et seq.), is amended as follows:
(a) Section 6(f) (D.C. Official Code § 7-205(f)) is amended to read as follows:
“(f) (1) Either of the parents of the child, or other informant, shall confirm with his or her signature the accuracy of the personal data entered on the certificate before the certificate is filed.
“(2) Any institutional error regarding the personal data on the certificate may be corrected within 90 days of issuance, and:
“(A) A new certificate shall be issued;
“(B) The new certificate shall not be marked amended; and
“(C) The original, erroneous certificate shall be sealed and made available only upon the demand of the individual to whom the new certificate of birth was issued or an order of the Court.”.
(b) Section 11 (D.C. Official Code § 7-210) is amended by striking the period in the heading and inserting the phrase “for adoption and determination of parentage.” in its place.
(c) A new section 11a (to be codified at D.C. Official Code § 7-210.01) is added to read as follows:

“Sec. 11a. New certificates of birth for change of gender designation.
“(a) The Registrar shall establish a new certificate of birth that reflects the new gender designation and, if applicable, the new name of an individual born in the District upon receipt of the following documents:

“(1) A written request, signed under penalty of law, for a new certificate of birth with a gender designation that differs from the gender designated on the original certificate of birth, from the individual or, if the individual is a minor, the individual’s:

“(A) Parent;
“(B) Guardian; or
“(C) Legal representative;

“(2) A statement, signed under the penalty of law, by a licensed healthcare provider who has treated or evaluated the individual, stating that:

“(A) The individual has undergone surgical, hormonal, or other treatment appropriate for the individual for the purpose of gender transition, based on contemporary medical standards; or

“(B) The individual has an intersex condition, and that in the healthcare provider’s professional opinion, the individual’s gender designation should be changed; and

“(3) If a change of name listed on the certificate is also being requested, an original or certified copy of an order of a court of competent jurisdiction granting a change of name.

“(b) The Registrar shall establish, upon request, a new certificate of birth reflecting the new gender designation, new name, or name as previously amended, in these additional circumstances:

“(1) When an individual holds an amended certificate of birth issued before the effective date of the JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013, passed on 2nd reading on July 10, 2013 (Enrolled version of Bill 20-142), that reflects a previous name change and seeks a change of gender designation;

“(2) When an individual, who is requesting a change of name, holds a certificate of birth previously issued pursuant to subsection (a) of this section that reflects a change in gender; or

“(3) When an individual holds an amended certificate of birth issued before the effective date of the JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013, passed on 2nd reading on July 10, 2013 (Enrolled version of Bill 20-142), that reflects a previous change in gender designation.

“(c) A new certificate of birth, issued in accordance with subsection (a) or (b) of this section, shall:

“(1) Be substituted for the original certificate of birth; and
“(2) Not be marked “amended” or on its face show that:

“(A) A change in gender has been made;
A BILL FOR AN ACT

RELATING TO CERTIFICATES OF BIRTH.

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

SECTION 1. Section 338-17.7, Hawaii Revised Statutes, is amended to read as follows:

"§338-17.7 Establishment of new certificates of birth, when. (a) The department of health shall establish, in the following circumstances, a new certificate of birth for a person born in this State who already has a birth certificate filed with the department and who is referred to below as the "birth registrant":

(1) Upon receipt of an affidavit of paternity, a court order establishing paternity, or a certificate of marriage establishing the marriage of the natural parents to each other, together with a request from the birth registrant, or the birth registrant's parent or other person having legal custody of the birth registrant, that a new birth certificate be prepared because previously recorded information has been altered pursuant to law;"
(2) Upon receipt of a certified copy of a final order, judgment, or decree of a court of competent jurisdiction that determined the nonexistence of a parent and child relationship between a person identified as a parent on the birth certificate on file and the birth registrant;

(3) Upon receipt of a certified copy of a final adoption decree, or of an abstract of the decree, pursuant to sections 338-20 and 578-14;

(4) Upon receipt of an affidavit [of a physician that the physician has examined the birth registrant and has determined the following:

(A) The birth registrant's sex designation was entered incorrectly on the birth registrant's birth certificate; or

(B) The birth registrant has had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct; provided that the director of health may further investigate and require additional information that the director deems necessary;
from a United States licensed physician attesting that:

(A) The physician has a bona fide physician-patient relationship with the birth registrant;

(B) The physician has treated and evaluated the birth registrant and has reviewed and evaluated the birth registrant's medical history;

(C) The birth registrant has had appropriate clinical treatment for gender transition to the new gender and has completed the transition to the new gender; and

(D) The new gender does not align with the sex designation on the birth registrant's birth certificate; or

(5) Upon request of a law enforcement agency certifying that a new birth certificate showing different information would provide for the safety of the birth registrant; provided that the new birth certificate shall contain information requested by the law enforcement agency, shall be assigned a new number and filed accordingly, and shall not substitute for the
birth registrant's original birth certificate, which shall remain in place.

(b) When a new certificate of birth is established under this section, it shall be substituted for the original certificate of birth. The new certificate shall not be marked as amended and shall in no way reveal the original language changed by any amendment. Thereafter, the original certificate and the evidence supporting the preparation of the new certificate shall be sealed and filed. [Such] The sealed [documents] documents shall be opened only by an order of a court of record[4] or, for those documents amended pursuant to subsection (a)(4), by request of the birth registrant.

(c) If a new certificate of birth is established under subsection (a)(4), it shall reflect, or shall be reissued to reflect, any legal name change made before, simultaneously, or after the change in sex designation; provided appropriate documentation of the name change is submitted.

(d) If a new certificate of birth is established under subsection (a)(4), the department shall not require any additional medical information or records other than those required by subsection (a)(4)."
1 SECTION 2. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 3. This Act shall take effect on July 1, 2015.
AN ACT TO AMEND THE DELAWARE CODE RELATING TO NEIGHBORHOOD CONSERVATION AND LAND BANKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 47. The Delaware Neighborhood Conservation and Land Banking Act.
§ 4701. Short title.
This chapter shall be known and may be cited as the Delaware Neighborhood Conservation and Land Banking Act.
§ 4702. Legislative findings and purpose.
The General Assembly finds and declares as follows:

(1) Delaware’s communities are important to the social and economic vitality of Delaware. Whether urban, suburban, or rural, many Delaware communities are struggling to cope with unoccupied properties or properties incapable of lawful occupation. These vacant and abandoned properties represent lost revenue to local governments and significant expenses associated with demolition, safety hazards, increased calls for emergency services, and deterioration of neighborhoods.

(2) The need exists to strengthen and revitalize Delaware’s economy and address the associated harms that result
from high numbers of vacant and abandoned properties. Solving these problems requires a coordinated effort to foster the development of such property back into productive use and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies; ineffective property inspection; code enforcement and property rehabilitation support; lengthy or inadequate collection proceedings; depressed real estate markets; and lack of coordination and resources to support economic revitalization.

(3) There is an overriding public need to confront the problems caused by vacant, abandoned, and delinquent properties through the creation of new tools to be available to communities throughout Delaware enabling them to turn vacant spaces into vibrant places.

(4) Land banks are one of the tools currently utilized by other communities to facilitate the return of vacant, abandoned and delinquent properties to productive use. This chapter enables the creation of land banks in order to return dilapidated and blighted properties to productive use in Delaware.

§ 4703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) “Board of directors” or “board” means the board of directors of the land bank.

(2) “Land bank” means a land bank established under this chapter and in accordance with the provisions of this chapter.

(3) “Foreclosing governmental unit” means any political subdivision of the State of Delaware, where such political subdivision has the power to cause the sale of real property located within its respective jurisdiction for the collection of liens inuring to that political subdivision.

(4) “Large jurisdictional land bank” means a land bank established under this chapter and in accordance with the provisions of this chapter that serves one of the following:

a. An entire county,

b. A foreclosing governmental unit, or a combination of foreclosing governmental units that have formed a single land bank by intergovernmental agreement pursuant to 4705(b) of this title, that in total covers an area with a population in excess of 30,000 persons.

(5) “Liens” means any lien set forth in § 2901(a)(1) of Title 25.
(6) “Vacancy rate” means the percentage of residential structures that have been uninhabited for 6 months or more within a given jurisdiction.

§ 4704. Applicability of Delaware law.

(a) This chapter shall apply only to any land bank created pursuant to this chapter.

(b) Chapters 94 and 95 of Title 29 of the Delaware Code shall not apply to any land bank created pursuant to this chapter.

(c) If any provision of this chapter conflicts with any other provisions of Delaware law, the provisions of this chapter shall prevail.

§ 4705. Creation and existence.

(a) A foreclosing governmental unit may create a land bank by the adoption of a local law, ordinance, or resolution, as appropriate to such foreclosing governmental unit. The foreclosing governmental unit, prior to the adoption of a local law, ordinance, or resolution creating a land bank, must make a finding that residential structures within its jurisdiction have a vacancy rate at or above 3%. Each county in this State shall have the ability to create a land bank without making such a finding. The local law, ordinance, or resolution creating the land bank shall specify all of the following:

(1) The name of the land bank.

(2) The number of members of the board of directors, which shall consist of an odd number of members, and shall be not less than 7 members. For large jurisdictional land banks, the board of directors shall consist of an odd number of members and shall not be less than 11 members nor more than 15 members.

(3) The names of the initial individuals to serve as members of the board of directors, and the length of terms for which they are to serve.

(4) The qualifications, manner of selection or appointment, and terms of office of members of the board of directors.

(b) Two or more foreclosing governmental units may enter into an intergovernmental cooperation agreement which creates a single land bank to act on behalf of such foreclosing governmental units, which agreement shall be authorized by each of the respective foreclosing governmental units in accordance with subsection (a) of this section. Such intergovernmental agreement shall include provisions for the dissolution of such land bank. In the event that a land bank is created pursuant to an agreement in accordance with this subsection, such agreement shall also specify the matters identified in subsection (a) of this section.

(c) In the event a county creates a land bank, such land bank shall have the power to acquire real property only in
those portions of such county located outside of the geographical boundaries of any other land bank created by any other foreclosing governmental unit located partially or entirely within such county.

§ 4706. Board of directors.

(a) The initial size of the board of directors shall be determined in accordance with § 4705(a)(2) of this title. Unless restricted by the agreement specified in § 4705(b) of this title, and subject to the limits set forth in this section, the size of the board of directors may be adjusted in accordance with the adopted bylaws of the land bank and by adoption of a local law, ordinance, or resolution, as appropriate, of the applicable foreclosing governmental unit.

(b) Notwithstanding any law to the contrary, any public officer shall be eligible to serve as a board member and the acceptance of the appointment to the board shall neither terminate nor impair such public office. For purposes of this section, “public officer” shall mean a person who is elected to a State, county, or municipal office. Any State, county, or municipal employee shall also be eligible to serve as a board member. No more than half of the members of the board of a land bank shall be public officials or municipal employees.

(c) All board members of a land bank must either live in or work in a jurisdiction within the area covered by the land bank. The board shall include at least 1 voting member who maintains a membership with a recognized civic organization within the jurisdiction of the foreclosing governmental unit.

(d) Large jurisdictional land banks shall reserve one board seat for a member to be appointed by the Governor, one board seat for a member to be appointed by the President Pro Tempore of the Senate, and one board seat for a member to be appointed by the Speaker of the House of Representatives.

(e) The members of the board of directors shall select annually from among themselves a chair, a vice chair, a treasurer, and such other officers as the board may determine, and shall establish their duties as set forth in the bylaws of the land bank.

(f) The bylaws of the land bank shall establish rules and requirements relative to the attendance and participation of board members in board meetings, whether regular or special. Such bylaws may prescribe a procedure whereby, should any member fail to comply with such rules and regulations, such member may be disqualified and removed from office by no less than a majority vote of the remaining members of the board, and that member’s position shall be vacant as of the first day of the next calendar month. Any person removed under the provisions of this subsection shall be ineligible for reappointment to the board, unless such reappointment is confirmed by the board.

(g) A vacancy on the board shall be filled by the adoption of a local law, ordinance, or resolution, as appropriate, of the applicable foreclosing governmental unit and as provided in the bylaws of the land bank.

(h) Board members shall serve without compensation. Board members shall have the power to organize and reorganize the executive, administrative, clerical, and other departments of the land bank and to fix the duties, powers, and compensation of all employees, agents, and consultants of the land bank in the manner provided in the bylaws. The board
may reimburse any board member for expenses actually incurred in the performance of his or her duties on behalf of the land bank.

(i) The board shall meet in regular session according to a schedule adopted by the board and may also meet in special session as convened by any officer of the board or upon written notice signed by a majority of the members of the board. The presence of a majority of the board’s total membership, not including vacancies, shall constitute a quorum.

(i) All actions of the board shall be approved by the affirmative vote of a majority of the board members present and voting at the applicable meeting. However, no action of the board shall be authorized on any of the following matters unless approved by a majority of the total board membership:

1) Adoption of bylaws and other rules and regulations for conduct of the land bank’s business.

2) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify.

3) The incurring of debt.

4) Adoption or amendment of the annual budget.

5) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than $50,000.

(k) Vote by proxy shall not be permitted. Any board member may request a recorded vote on any resolution or action of the land bank. Board members may participate in board meetings by telephone or video conference to the extent permitted by the bylaws of the land bank.

§ 4707. Staff.

A land bank may employ a secretary, an executive director, its own counsel and legal staff, technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons. A land bank may also enter into contracts and agreements with foreclosing governmental units or non-profit entities designated by the foreclosing governmental unit for staffing services to be provided to the land bank by those foreclosing governmental units, designated non-profit entities or departments thereof, or for a land bank to provide such staffing services to such foreclosing governmental units, designated non-profit entities, or departments thereof.

§ 4708. Powers.

A land bank shall possess all powers necessary or appropriate to carry out and effectuate the purposes and provisions
of this chapter, including the following powers in addition to those herein otherwise granted:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business.

(2) To sue and be sued in its own name and plead and be interpleaded in all civil actions, including actions to clear title to property of the land bank.

(3) To adopt a seal and to alter the same at pleasure.

(4) To borrow from private lenders, from municipalities, from a county, from the State, or from federal government funds, as may be necessary, for the operation and work of the land bank.

(5) To borrow and issue bonds according to the provisions of this chapter.

(6) To procure insurance or guarantees from municipalities, counties, the State, or the federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith.

(7) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including intergovernmental agreements provided for in § 4705(b) of this title for the joint exercise of powers under this chapter.

(8) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank.

(9) To procure insurance against losses in connection with the real property, assets, or activities of the land bank.

(10) To invest money of the land bank, at the discretion of the board of directors, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.

(11) To enter into contracts for the acquisition, management, collection of rent, leasing, or sale of real property of the land bank.

(12) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property.

(13) To fix, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank.
(14) To grant or acquire a license, easement, lease, or option with respect to real property of the land bank.

(15) To enter into partnership, joint ventures, and other collaborative relationships with foreclosing governmental units and other public and private entities for the ownership, management, development, and disposition of real property.

(16) To solicit and accept donations to support the objectives and purposes of the land bank.

(17) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibility of the land bank.

§ 4709. Acquisition of property.

(a) The land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

(b) The land bank shall not own or hold real property located outside the jurisdictional boundaries of the foreclosing governmental unit or units that created the land bank; provided, however, that a land bank may be granted authority pursuant to an intergovernmental cooperation agreement with another foreclosing governmental unit to manage and maintain real property located within the jurisdiction of such other foreclosing governmental unit.

(c) Notwithstanding any other provision of law to the contrary, any foreclosing governmental unit may convey to a land bank real property and interests in real property on such terms and conditions, form and substance of consideration, and procedures, all as determined by the transferring foreclosing governmental unit in its discretion.

(d) The land bank shall maintain and make available for public review and inspection a complete inventory of all property owned by the land bank. Such inventory shall include: the location of the parcel; the purchase price, if any, for each parcel; the identity of the transferor to the land bank; and any conditions or restrictions applicable to the property.

(e) The land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property.

§ 4710. Disposition of property.

(a) The land bank shall determine and set forth in policies and procedures adopted by the board of directors the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board of directors to be in the best interest of the land bank.

(b) The land bank may convey, exchange, sell, transfer, lease, grant, release, demise, pledge, mortgage, and hypothecate any and all interests in, upon, or to real property of the land bank.
(c) A foreclosing governmental unit may, in its local law, resolution, or ordinance creating a land bank, or in the applicable intergovernmental cooperation agreement in the case of multiple foreclosing governmental units creating a single land bank under § 4705(b) of this title, establish a hierarchical ranking of priorities for the use of real property owned by a land bank. Any hierarchical ranking of priorities for the use of such real property that is established may include any of the following:

1. Use for purely public spaces and places.

2. Use for affordable housing.

3. Use for retail, commercial, and industrial activities.

4. Use as wildlife conservation areas.

5. Such other uses in such hierarchical order as determined by the applicable foreclosing governmental unit.

(d) The priorities established under subsection (c) of this section may be for the entire jurisdiction of the foreclosing governmental unit or may be set according to the needs of different neighborhoods, municipalities, or other locations within the jurisdiction, or according to the nature of the real property.

(e) A land bank shall consider all duly adopted land use plans and shall coordinate the disposition of land bank real property with such land use plans.

(f) A foreclosing governmental unit may, in its local law, resolution, or ordinance creating a land bank, or in the applicable intergovernmental cooperation agreement in the case of multiple foreclosing governmental units creating a single land bank under § 4705(b) of this title, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board of directors. Except and unless restricted or constrained in this manner, the board of directors may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the disposition of real property by the land bank.

(g) All property disposition records of the land bank shall be made available for public inspection as required by Chapter 100 of Title 29.

§ 4711. Maintenance of property.

(a) The land bank shall maintain all of its real property in accordance with the laws and regulations of the jurisdiction in which the real property is situated.

(b) Notwithstanding subsection (a) of this section, the foreclosing governmental unit may elect to reduce or waive monetary fines for violations of any housing codes or ordinances if the land bank is diligently pursuing a correction or
remedy for such violation.

(c) Where real property held by the land bank is found to be in violation of a housing code or ordinance, the enforcing jurisdiction shall timely notify the land bank and, subject to subsection (b) of this section, proceed in accordance with the applicable county or municipal property code provisions, or any other applicable law.

(d) Any fire or other casualty to real property held by the land bank shall be immediately remediated and adequately secured to prevent against further loss or damage or, in the event of total loss to the property, the lost property shall be demolished.

§ 4712. Delinquent property enforcement.

(a) All powers of foreclosing governmental units preserved. A foreclosing governmental unit may bring to public sale any real property within its jurisdiction that has liens inuring to the foreclosing governmental unit in accordance with applicable laws.

(b) Sale of liens and assessments to land banks permitted. A foreclosing governmental unit may enter into a contract to sell some or all of its liens to a land bank, subject to all of the following conditions:

1. The consideration to be paid may be more or less than the face amount of the liens.

2. Property owners that are subject to a lien that is proposed for sale shall be given at least 30 days advance notice of the proposed sale by the foreclosing governmental unit. Failure to provide such notice or the failure of the addressee to receive the same shall not in any way affect the validity of any sale of a lien or the underlying validity of the lien.

3. The foreclosing governmental unit shall set the terms and conditions of the sale of its liens.

4. A land bank must notify the foreclosing governmental unit that sold the lien to the land bank at least 30 days prior to commencing any judicial action to acquire property that is subject to such lien. The foreclosing governmental unit may, at its sole option and discretion, elect to repurchase the lien from the land bank by delivering a notice of such election to the land bank within 30 days of receiving the land bank’s notice. The repurchase price shall be the amount of the lien plus any accrued interest and collection fees incurred by the land bank. If the foreclosing governmental unit shall fail to elect to repurchase the lien, the land bank shall have the right to commence a judicial action to acquire property that is subject to such lien.

5. The sale of a lien pursuant to this section shall not operate to shorten the otherwise applicable redemption period or change the otherwise applicable interest rate for such lien.

6. A land bank which has purchased any lien may execute or foreclose on such lien in the same manner as the foreclosing governmental unit in whose favor the lien originally arose. At any time following the commencement of an action to execute or foreclose on a lien by a land bank, the amount required to redeem such lien shall include those reasonable and necessary collection costs, attorneys’ fees, legal costs, allowances, and disbursements that would have
been collectible by the foreclosing governmental unit in whose favor the lien originally arose.

(c) **Credit bids by land banks permitted.** If any property is submitted for sheriff’s sale due to an outstanding lien, a land bank may bid on such property at the sheriff’s sale with the same credit that would be afforded to the foreclosing governmental unit that initiated the sale of such property. If the land bank is the successful bidder for such property, the property shall be deemed sold to the land bank and the bid of the land bank shall be paid as to its form, substance, and timing according to such agreement as is mutually acceptable to the foreclosing governmental unit and the land bank.

§ 4713. Expedited quiet title proceedings.

As provided under § 6502 of Title 10, the land bank shall:

1. Be authorized to file an action to quiet title as to any real property in which the land bank has standing to file such an action.

2. Prior to the filing of an action to quiet title, the land bank shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by all of the following methods:

a. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records.

b. In the case of occupied real property by registered or certified mail, addressed to “Occupant”.

c. By posting a copy of the notice on the real property.

d. By publication in a newspaper of general circulation in the geographic location in which the property is located.

e. Such other methods as the Court may order.

(c) As part of the complaint to quiet title, the land bank shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.

(d) If the land bank moves for expedited proceedings the Court shall schedule a hearing on the complaint within 90 days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the Court shall issue its final judgment within 120 days of the filing of the complaint.

(e) Notwithstanding Court of Chancery Rule 19, a land bank shall be authorized to join in a single complaint to quiet title to one or more parcels of real property.
§ 4714. Taxing and financing of land bank operations.

(a) A land bank shall have no shareholders and may not be structured as a for-profit entity. A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under this chapter. A reasonable operating reserve may be established to facilitate operations. However, all revenues received by a land bank in excess of expenses must be utilized to address and remediate blight, for neighborhood conservation, or to improve housing within the foreclosing governmental unit.

(b) The real property held by a land bank, and its income, are exempt from all taxation by the State and by any of its political subdivisions. Dispositions of property into or out of a land bank are exempt from realty transfer taxes.

(c) In creating a land bank, a foreclosing governmental unit may elect to dedicate up to 50% of the real property taxes that would inure to the foreclosing governmental unit following the disposition of real property by the land bank, excluding any amounts allocated to school districts, for remittance to the land bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of disposition of the property by land bank and shall continue for a period of 5 years.

(d) Notwithstanding any law to the contrary, a foreclosing governmental unit creating a land bank may levy or impose such additional taxes, fees, assessments, fines, or penalties as are needed to support the operations of the land bank. Any tax, fee, assessment, fine, or penalty imposed by a foreclosing governmental unit pursuant to this subsection must be reauthorized by the foreclosing governmental unit every 5 years and appropriately adjusted so that the revenues from such tax, fee, assessment, fine, or penalty do not exceed the projected operating costs and expenses of the land bank. Any failure to reauthorize such tax, fee, assessment, fine, or penalty shall be deemed an election by the foreclosing governmental unit to cease imposing or levying such tax, fee, assessment, fine, or penalty at the end of the applicable 5 year period.

(e) The Delaware Auditor of Accounts shall have the authority to audit any land bank created pursuant to this chapter.

§ 4715. Public records and public meetings.

(a) The board shall cause minutes and a record to be kept of all its proceedings. Except as otherwise provided in this section, the land bank shall be subject to the provisions of Chapter 100 of Title 29.

(b) A land bank shall schedule and hold a public hearing prior to financing or issuance of bonds.

(c) In addition to any other report required by this chapter, the land bank, through its chair, shall annually deliver a report to the foreclosing governmental unit. Such report shall be presented in the manner required by the governing body or board of the foreclosing governmental unit. The report shall describe in detail the projects undertaken by the land bank during the past year; the financial statements of the land bank during the past year, including a balance sheet and an income statement; and the administrative activities of the land bank during the past year.
(d) A land bank shall be required to maintain a publicly-available website, which shall set forth the inventory required in § 4709(d) of this title and the bidding information required in § 4712(d) of this title.

§ 4716. Dissolution of land bank.

(a) A land bank may be dissolved within 60 calendar days after the adoption of an affirmative resolution approved by 2/3 of the membership of the board of directors authorizing such dissolution. Sixty calendar days advance written notice of consideration of a resolution of dissolution shall be given to the foreclosing governmental unit that created the land bank, shall be published in a local newspaper of general circulation, and shall be sent by certified mail to the trustee of any outstanding bonds of the land bank.

(b) The foreclosing governmental unit or units that created the land bank may dissolve the land bank by repeal of the local law, ordinance, resolution, or intergovernmental cooperation agreement that created the land bank under § 4705(a) or (b) of this title. Dissolution shall be effective no sooner than 60 calendar days after such repeal. Prior to dissolution, the land bank shall publish notice of the dissolution in a local newspaper of general circulation, and shall provide notice by certified mail to the trustee of any outstanding bonds of the land bank. In the event that 2 or more foreclosing governmental units created a land bank under § 4705(b) of this title, the withdrawal of 1 or more foreclosing governmental units shall not result in the dissolution of the land bank unless the intergovernmental cooperation agreement entered into under § 4705(b) of this title so provides and there is no foreclosing governmental unit that desires to continue the existence of the land bank.

(c) Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become assets of the foreclosing governmental unit that created the land bank.

§ 4717. Conflicts of interest.

(a) No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank.

(b) Board members of any land bank shall provide, prior to appointment and annually after appointment, a report identifying all real property interests owned, directly or indirectly, by such board member of by his or her immediate family, within the land bank jurisdiction. The report shall be submitted to the foreclosing governmental unit and shall be made available to the public upon request.

(c) The board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for members of the board and land bank employees.

§ 4718. Construction, intent, and scope of chapter.

This chapter shall be construed liberally to effectuate the legislative intent and purposes and all powers granted by this chapter shall be broadly interpreted to effectuate such intent and purposes. Except as otherwise expressly set forth in this
chapter, in the exercise of its powers and duties under this chapter and its powers relating to property held by the land bank, the land bank shall not be subject to restrictions imposed by the charter, ordinances, or resolutions of a foreclosing governamental unit with respect to contracts, procurement, or property disposition.

§ 4719. Duration and termination.

Any land bank created pursuant to this chapter shall have permanent and perpetual duration until terminated and dissolved in accordance with § 4716 of this title and Subchapter X, Chapter 1 of Title 8.

Section 2. Amend § 8106, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8106. Specific organizations and purposes.

(a) No real property owned and used by the organizations listed below or for the purposes stated below, except that which is held by way of investment, shall be liable to taxation and assessment for public purposes by any county or other political subdivision of this State.

Any land bank formed under Chapter 47 of Title 31 of the Delaware Code.

Section 3. Amend § 5401, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5401. Definitions.

As used in this subchapter, except where the context clearly indicates a different meaning:

(1) “Document” means any deed, instrument or writing whereby any real estate within this State, or any interest therein, shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, but shall not include the following:

x. Any conveyance to or from a land bank formed under Chapter 47 of Title 31 of the Delaware Code.

Section 4. This Act becomes effective 30 days after its enactment into law.
A BILL FOR AN ACT

RELATING TO IDENTIFICATION CARDS.

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

SECTION 1. Section 286-304, Hawaii Revised Statutes, is amended to read as follows:

"[§] 286-304. Procedure. (a) All information required by section 286-303 shall be obtained by employees of the examiner of drivers as provided for by rules of the director and by individual interviews with the applicant for the identification card or parent, individual in loco parentis, or guardian, as shown by letters of guardianship. Every applicant or individual providing information on behalf of any applicant under part VI and this part shall answer truthfully all questions, furnish all information within the possession or knowledge of the individual that may be asked or required by the employee within the scope of the requirements of this part, and submit to the examiner of drivers all information and supporting documentation required by rules of the director.

(b) Special provisions may be made by rules adopted by the director."
(c) The examiner of drivers may require an applicant, or any individual providing information on behalf of an applicant, to furnish original or certified copies of documents to establish or corroborate the information required to establish identity under this part and may, by rules, set forth what documents will be required to support or corroborate certain information.

(d) For a person who qualifies as homeless pursuant to section 346-361, the examiner of drivers shall accept a signed sworn statement from a member of a victim services organization, an attorney, a member of the clergy, correctional institution staff, a medical or other health professional from whom the person has sought services, or a verification letter from a homeless service provider as documentary evidence of the person's address."

SECTION 2. Section 286-309, Hawaii Revised Statutes, is amended to read as follows:

"[§]§286-309[] Rules. For the purpose of carrying out this part, the director, pursuant to chapter 91, shall adopt rules including rules assessing reasonable fees for the services provided under this part. The rules shall [authorize]:"
(1) Authorize the examiner of drivers to waive any fee in cases of extreme hardship and provide criteria for determining whether a waiver is warranted; and

(2) Direct the examiner of drivers to waive all fees for the issuance of an original or renewal identification card for any individual who is homeless; provided the individual's homeless status is corroborated by a verification letter issued by a homeless service provider."

SECTION 3. (a) There is established a working group to be placed in the department of human services for administrative purposes that shall conduct research and develop a plan to enable individuals in the State who are unable to produce documentation required for a state civil identification card to obtain satisfactory documentary evidence.

(b) The following individuals shall serve as members of the working group:

(1) A representative from the United States Citizenship and Immigration Services;

(2) A representative from the Social Security Administration;
The director of human services or the director's designee;

The director of health or the director's designee;

The director of labor and industrial relations or the director's designee;

The examiner of drivers for the city and county of Honolulu or the examiner's designee;

An individual who shall represent the examiners of drivers for Kauai, Hawaii, and Maui counties;

An individual who shall represent homeless service providers operating in the city and county of Honolulu;

An individual who shall represent homeless service providers operating on Kauai, Hawaii, and Maui counties; and

A representative from the Partners in Development Foundation's We Are Oceania project.

Members of the working group shall serve without compensation and without reimbursement for expenses.
(d) The working group shall submit an interim report to the legislature no later than twenty days prior to the convening of the regular session of 2016.

(e) The working group shall submit a final report with its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2017.

(f) The working group shall be dissolved on June 30, 2017.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.
A concurrent resolution urging Congress to propose the Regulation Freedom amendment to the United States Constitution.

WHEREAS, the growth and abuse of federal regulatory authority threaten our Constitutional liberties, including those guaranteed by the Bill of Rights in the First, Second, Fourth, and Fifth Amendments of our Constitution;

WHEREAS, federal regulators must be more accountable to elected representatives of the people and not immune from such accountability;

WHEREAS, the Declaration of Independence decried the imposition by the central government of "an absolute tyranny over these states" and a central government that "erected a multitude of new offices and sent hither swarms of officers to harass our people and eat out their substance";

WHEREAS, states too often find themselves in a similar position today;

WHEREAS, the United States House of Representatives has passed with bipartisan support the REINS Act to require that Congress approve major new federal regulations before they can take effect;

WHEREAS, even if enacted, a law may be repealed or waived by a future Congress and President; and

WHEREAS, an amendment to the United States Constitution does not require the President's approval and cannot be waived by a future Congress and President;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Sixty-fourth Legislative Assembly urges Congress to propose the Regulation Freedom amendment to the United States Constitution as follows:

"Whenever one quarter of the members of the United States House of Representatives or the United States Senate transmits to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House of Representatives and the Senate to adopt that regulation."

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of Congress and to the principal leaders in all state legislative chambers.
HOUSE BILL NO. 1441
(Representatives K. Koppelman, Brabandt, Dockter, Karls, Klein, Maragos, Owens, Paur, Schatz)
(Senators Burckhard, Hogue, Larsen)

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to certification of delegates to a convention of the states, called pursuant to article V of the United States Constitution, to amend the United States Constitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Certification of delegates to United States convention of the states.

1. If a convention of the states is called pursuant to article V of the United States Constitution, the legislative assembly or an official designated by the legislative assembly shall certify each delegate and alternate delegate from this state to the convention and provide a written copy of the certification to each delegate and alternate delegate and to the convention. If a delegate is ineligible or unwilling to serve as a delegate at the convention, the legislative assembly or the official designated by the legislative assembly shall certify an alternate delegate to replace the delegate and immediately provide a copy of the certification to the delegate and the convention.

2. If a delegate is rendered ineligible to serve under subsection 4, the delegate's certification must provide notice to the convention that any vote or other action taken by that delegate should be considered void.

3. An individual who has not been certified under this section may not serve as a delegate at the convention.

4. As a condition of being eligible for consideration or selection as a delegate or alternate delegate, each delegate and alternate delegate shall execute the following oath:

   I do solemnly swear or affirm that I will, to the best of my abilities, support the United States Constitution and the Constitution of North Dakota and I will not vote to allow consideration of or consider or approve any unauthorized amendment proposed for ratification to the United States Constitution. I understand that a violation of this oath will result in my being rendered ineligible to serve as a delegate at the convention as well as subject me to additional penalties under the laws of North Dakota.

5. A delegate at the convention may not vote to allow consideration of or consider or approve any unauthorized amendment. An "unauthorized amendment" means:

   a. A proposed amendment that varies from the exact text of the amendment contained in the application made by the legislative assembly, which limits the convention to approving or disapproving that exact text, or if the legislative assembly did not make the application, the exact text of the amendment contained in the applications relied upon by the United States Congress in calling the convention, if the application contains exact text for a proposed amendment; or

   b. A proposed amendment that is outside the permitted subject matter of the application made by the legislative assembly, or if the legislative assembly did not make the application, the permitted subject matter of the applications relied upon by the United
States Congress in calling the convention and as the subject matter may be further defined by the legislative assembly or an official designated by the legislative assembly, in instructions adopted by the legislative assembly by concurrent resolution and provided to each delegate and alternate delegate.

6. The legislative assembly or an official designated by the legislative assembly shall provide guidance upon the request of any delegate or alternate delegate as to whether a proposed amendment is within the permitted subject matter of the convention.

7. A delegate casting or attempting to cast a vote at a convention in violation of this section must be rendered ineligible to continue to serve as a delegate and must be immediately removed from office and replaced by an alternate delegate as provided under this section. A vote cast by a delegate at a convention which is in violation of this section is void.
SENATE BILL 1432
By Norris

AN ACT to amend Tennessee Code Annotated, Title 2 and Title 3, relative to Article V conventions and delegates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 3, Chapter 1, is amended by adding the following sections as a new part thereto:

3-1-1801.
This part shall apply whenever an Article V convention is called.

3-1-1802.
As used in this part, unless the context otherwise requires:

(1) "Alternate delegate" means an individual elected as an alternate delegate as provided by this part;

(2) "Article V convention" means a convention for proposing amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States;

(3) "Delegate" means an individual elected as provided by this part to represent Tennessee at an Article V convention;

(4) "House of representatives" means the house of representatives of the general assembly;

(5) "Paired delegate" means the delegate with whom an alternate delegate is paired as provided by this part; and

(6) "Senate" means the senate of the general assembly.
3-1-1803.

(a) At the time delegates and alternate delegates are elected, the general assembly shall adopt a joint resolution to provide instructions to the delegates and alternate delegates regarding the following:

(1) The rules of procedure; and
(2) Any other matter relating to the Article V convention that the general assembly considers necessary.

(b) The general assembly may amend the instructions at any time by joint resolution.

3-1-1804.

(a) An alternate delegate shall:

(1) Act in the place of the alternate delegate's paired delegate when the alternate delegate's paired delegate is absent from the Article V convention; or
(2) Replace the alternate delegate's paired delegate if the alternate delegate's paired delegate vacates the office.

(b) A vote cast by a delegate or an alternate delegate at an Article V convention that is outside the scope of:

(1) The instructions established by a joint resolution adopted under § 3-1-1803; or
(2) The limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

is void.

(c) A delegate or alternate delegate who votes or attempts to vote outside the scope of:
(1) The instructions established by a joint resolution adopted under § 3-1-1803; or

(2) The limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

forfeits the delegate’s appointment by virtue of that vote or attempt to vote.

(d) The paired alternate delegate of a delegate who forfeits appointment under subsection (c) becomes the delegate at the time the forfeiture of the appointment occurs. 3-1-1805.

The application of the general assembly to call an Article V convention for proposing amendments to the Constitution of the United States ceases to be a continuing application and shall be treated as having no effect if all of the delegates and alternate delegates vote or attempt to vote outside the scope of:

(1) The instructions established by a joint resolution adopted under § 3-1-1803; or

(2) The limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

3-1-1806.

(a) It is an offense for a delegate or alternate delegate to knowingly or intentionally vote or attempt to vote outside the scope of:

(1) The instructions established by a joint resolution adopted under § 3-1-1803; or
(2) The limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

(b) A violation of subsection (a) is a Class E felony.

3-1-1808.

(a) An individual must satisfy the following requirements to be appointed as a delegate or as an alternate delegate to an Article V convention:

(1) The individual shall be a resident of Tennessee for at least one (1) full year immediately prior to the appointment;

(2) The individual shall be a registered voter in Tennessee;

(3) The individual shall be at least eighteen (18) years of age; and

(4) The individual shall not be registered or required to be registered as a lobbyist under title 3, chapter 6, part 3 or under § 2 U.S.C. 1603, or rules or regulations adopted under such laws.

(b) An individual may not be appointed as a delegate or as an alternate delegate if the individual holds a federal elected or appointed office.

3-1-1809.

(a) Whenever an Article V convention is called, the general assembly shall appoint:

(1) The number of delegates allocated to represent Tennessee; and

(2) An equal number of alternate delegates; under rules adopted jointly by the house of representatives and the senate. Unless established otherwise by the rules and procedures of an Article V convention, it shall be assumed that
Tennessee has two (2) delegates and two (2) alternate delegates designated to represent Tennessee.

(b) If the general assembly is not in session during the time during which delegates to an Article V convention must be appointed, the governor shall call the general assembly into special session under Article III, Section 9 of the Constitution of Tennessee for the purpose of appointing delegates and alternate delegates.

3-1-1810.

(a) To be elected a delegate or an alternate delegate, an individual shall receive, in each house of the general assembly, a two-thirds (2/3) vote of all the members to which such house is entitled under the Tennessee Constitution.

(b) At the time of election, each alternate delegate shall be paired with a delegate as provided in a joint resolution adopted by the general assembly.

(c) The general assembly may recall any delegate or alternate delegate and replace that delegate or alternate delegate with an individual appointed under this section at any time.

(d) The general assembly shall appoint or recall delegates or alternate delegates by joint resolution.

3-1-1811.

(a) A delegate or an alternate delegate shall not receive compensation, but shall be eligible for reimbursement for expenses and mileage in accordance with the regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(b) For purposes of Article II, Section 26 of the Constitution of Tennessee, the position of delegate or alternate delegate is not a lucrative office.
(c) All funds necessary to pay expenses under subsection (a) shall be paid from appropriations to the general assembly.

3-1-1812.

(a) Each delegate and alternate delegate shall, after appointment and before the delegate or alternate delegate may exercise any function as delegate or alternate delegate, execute an oath in writing that the delegate or alternate delegate will:

   (1) Support the Constitution of the United States and the Constitution of Tennessee;

   (2) Faithfully abide by and execute any instructions to delegates and alternate delegates adopted by the general assembly and as may be amended by the general assembly at any time; and

   (3) Otherwise faithfully discharge the duties of delegate or alternate delegate.

(b) A delegate's or alternate delegate's executed oath shall be filed with the secretary of state.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.
SENATE ENROLLED ACT No. 224

AN ACT to amend the Indiana Code concerning the general assembly.

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

SECTION 1. IC 2-8 is added to the Indiana Code as a NEW ARTICLE to read as follows [effective July 1, 2013]:

ARTICLE 8. DELEGATES TO A CONVENTION CALLED UNDER ARTICLE V OF THE CONSTITUTION OF THE UNITED STATES

Chapter 1. General Provisions

Sec. 1. This article applies whenever an Article V convention is called.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Alternate delegate" refers to an individual appointed as an alternate delegate as provided by law.

Sec. 3. "Article V convention" refers to a convention for proposing amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States.

Sec. 4. "Delegate" refers to an individual appointed as provided by law to represent Indiana at an Article V convention.

Sec. 5. "House of representatives" refers to the house of representatives of the general assembly.
Sec. 6. "Paired delegate" refers to the delegate with whom an alternate delegate is paired as provided by law.

Sec. 7. "Senate" refers to the senate of the general assembly.

Chapter 3. Duties of Delegates and Alternate Delegates

Sec. 1. (a) At the time delegates and alternate delegates are appointed, the general assembly shall adopt a joint resolution to provide instructions to the delegates and alternate delegates regarding the following:

(1) The rules of procedure.
(2) Any other matter relating to the Article V convention that the general assembly considers necessary.

(b) The general assembly may amend the instructions at any time by joint resolution.

Sec. 2. An alternate delegate:

(1) shall act in the place of the alternate delegate's paired delegate when the alternate delegate's paired delegate is absent from the Article V convention; and
(2) replaces the alternate delegate's paired delegate if the alternate delegate's paired delegate vacates the office.

Sec. 3. A vote cast by a delegate or an alternate delegate at an Article V convention that is outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or
(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

is void.

Sec. 4. (a) A delegate or alternate delegate who votes or attempts to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or
(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;

forfeits the delegate's appointment by virtue of that vote or attempt to vote.

(b) The paired alternate delegate of a delegate who forfeits appointment under subsection (a) becomes the delegate at the time
the forfeiture of the appointment occurs.

Sec. 5. The application of the general assembly to call an Article V convention for proposing amendments to the Constitution of the United States ceases to be a continuing application and shall be treated as having no effect if all of the delegates and alternate delegates vote or attempt to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or
(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Sec. 6. A delegate or alternate delegate who knowingly or intentionally votes or attempts to vote outside the scope of:

(1) the instructions established by a joint resolution adopted under section 1 of this chapter; or
(2) the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention;
commits a Class D felony.

Chapter 4. Article V Convention Delegate Advisory Group

Sec. 1. As used in this chapter, "advisory group" refers to the Article V convention delegate advisory group established by section 2 of this chapter.

Sec. 2. The Article V convention delegate advisory group is established.

Sec. 3. The advisory group consists of the following members:

(1) The chief justice of the supreme court.
(2) The chief judge of the court of appeals.
(3) The judge of the tax court.

Sec. 4. The chief justice of the supreme court is the chair of the advisory group.

Sec. 5. The advisory group shall meet at the call of the chair.

Sec. 6. The advisory group shall establish the policies and procedures that the advisory group determines necessary to carry out this chapter.

Sec. 7. (a) Upon request of a delegate or alternate delegate, the advisory group shall advise the delegate or alternate delegate whether there is reason to believe that an action or an attempt to
take an action by a delegate or alternate delegate would:
(1) violate the instructions established by a joint resolution adopted under IC 2-8-3-1; or
(2) exceed the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.
(b) The advisory group may render an advisory determination under this section in any summary manner considered appropriate by the advisory group.
(c) The advisory group shall render an advisory determination under this section within twenty-four (24) hours after receiving a request for a determination.
(d) The advisory group shall transmit a copy of an advisory determination under this section in the most expeditious manner possible to the delegate or alternative delegate who requested the advisory determination.
(e) If the advisory group renders an advisory determination under this section, the advisory group may also take an action permitted under section 8 of this chapter.

Sec. 8. (a) On its own motion or upon request of the speaker of the house of representatives, the president pro tempore of the senate, or the attorney general, the advisory group shall advise the attorney general whether there is reason to believe that a vote or an attempt to vote by a delegate or alternate delegate has:
(1) violated the instructions established by a joint resolution adopted under IC 2-8-3-1; or
(2) exceeded the limits placed by the general assembly in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.
(b) The advisory group shall issue the advisory determination under this section by one (1) of the following summary procedures:
(1) Without notice or an evidentiary proceeding.
(2) After a hearing conducted by the advisory group.
(c) The advisory group shall render an advisory determination under this section within twenty-four (24) hours after receiving a request for an advisory determination.
(d) The advisory group shall transmit a copy of an advisory determination under this section in the most expeditious manner
possible to the attorney general.

Sec. 9. Immediately, upon receipt of an advisory determination under section 8 of this chapter that finds that a vote or attempt to vote by a delegate or alternate delegate is a violation described in section 8(a)(1) of this chapter or in excess of the authority of the delegate or alternate delegate, as described in section 8(a)(2) of this chapter, the attorney general shall inform the delegates, alternate delegates, the speaker of the house of representatives, the president pro tempore of the senate, and the Article V convention that:

(1) the vote or attempt to vote did not comply with Indiana law, is void, and has no effect; and

(2) the credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

SECTION 2. IC 4-6-2-1.1, AS AMENDED BY P.L.126-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.1. The attorney general has concurrent jurisdiction with the prosecuting attorney in the prosecution of the following:

(1) Actions in which a person is accused of committing, while a member of an unlawful assembly as defined in IC 35-45-1-1, a homicide (IC 35-42-1).

(2) Actions in which a person is accused of assisting a criminal (IC 35-44.1-2-5), if the person alleged to have been assisted is a person described in subdivision (1).

(3) Actions in which a sheriff is accused of any offense that involves a failure to protect the life of a prisoner in the sheriff's custody.

(4) Actions in which a violation of IC 2-8-3-6 (concerning constitutional convention delegates) has occurred.

SECTION 3. IC 35-32-2-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. A person may be tried for a violation of IC 2-8-3-6 in:

(1) Marion County; or

(2) the county where the person resides.

SECTION 4. IC 35-51-2-1, AS ADDED BY P.L.70-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. The following statutes define crimes in IC 2:

IC 2-4-1-4 (Concerning legislative investigations).

IC 2-7-6-2 (Concerning lobbying).

IC 2-7-6-3 (Concerning lobbying).

IC 2-7-6-4 (Concerning lobbying).
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 16-1005, Arizona Revised Statutes, is amended to read:

16-1005. Ballot abuse; violation; classification

A. Any person who knowingly marks a voted or unvoted ballot or ballot envelope with the intent to fix an election for his own benefit or for that of another person is guilty of a class 5 felony.

B. It is unlawful to offer or provide any consideration to acquire a voted or unvoted early ballot. A person who violates this subsection is guilty of a class 5 felony.

C. It is unlawful to receive or agree to receive any consideration in exchange for a voted or unvoted ballot. A person who violates this subsection is guilty of a class 5 felony.

D. It is unlawful to possess a voted or unvoted ballot with the intent to sell the voted or unvoted ballot of another person. A person who violates this subsection is guilty of a class 5 felony.

E. A person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials, is guilty of a class 5 felony.

F. A person who knowingly collects voted or unvoted ballots and who does not turn those ballots in to an election official, the United States postal service or any other entity permitted by law to transmit post is guilty of a class 5 felony.

G. A person who engages or participates in a pattern of ballot fraud is guilty of a class 4 felony. For the purposes of this subsection, "pattern of ballot fraud" means the person has offered or provided any consideration to three or more persons to acquire the voted or unvoted ballot of a person.

H. A person who knowingly collects voted or unvoted early ballots from another person is guilty of a class 6 felony. An election official, a United States postal service worker or any other person who is allowed by law to transmit United States mail is deemed not to have collected an early ballot if the official, worker or other person is engaged in official duties.

I. Subsection H of this section does not apply to:

1. An election held by a special taxing district formed pursuant to Title 48 for the purpose of protecting or providing services to agricultural lands or crops and that is authorized to conduct elections pursuant to Title 48.

2. A family member, household member or caregiver of the voter. For the purposes of this paragraph:
(a) "CAREGIVER" MEANS A PERSON WHO PROVIDES MEDICAL OR HEALTH CARE ASSISTANCE TO THE VOTER IN A RESIDENCE, NURSING CARE INSTITUTION, HOSPICE FACILITY, ASSISTED LIVING CENTER, ASSISTED LIVING FACILITY, ASSISTED LIVING HOME, RESIDENTIAL CARE INSTITUTION, ADULT DAY HEALTH CARE FACILITY OR ADULT FOSTER CARE HOME.

(b) "COLLECTS" MEANS TO GAIN POSSESSION OR CONTROL OF AN EARLY BALLOT.

(c) "FAMILY MEMBER" MEANS A PERSON WHO IS RELATED TO THE VOTER BY BLOOD, MARRIAGE, ADOPTION OR LEGAL GUARDIANSHIP.

(d) "HOUSEHOLD MEMBER" MEANS A PERSON WHO RESIDES AT THE SAME RESIDENCE AS THE VOTER.

PASSED BY THE HOUSE FEBRUARY 4, 2016

PASSED BY THE SENATE MARCH 9, 2016.

APPROVED BY THE GOVERNOR MARCH 9, 2016.

AN ACT TO AMEND TITLES 10, 11, 13, 16, 21, 23, AND 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE CHIEF MEDICAL EXAMINER AND THE DIVISION OF FORENSIC SCIENCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 47, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

CHAPTER 47. MEDICAL EXAMINERS, FORENSIC SCIENCE

§ 4701 Compensation of Chief Medical Examiner. Division of Forensic Science established; Purpose.

The purpose of this chapter is to establish a Division of Forensic Science to provide leadership and coordination in the exercise of forensic sciences. In furtherance of that purpose, there is created the Division of Forensic Science under the supervision and control of the Director of the Division of Forensic Science. The Division of Forensic Science is established and operational within the Department of Safety and Homeland Security. The Division of Forensic Science shall have all the powers, duties, and functions heretofore vested in the Office of the Chief Medical Examiner, its personnel, and the Forensic Science Laboratory. The Office of the Chief Medical Examiner is hereby abolished. The Chief Medical Examiner shall be compensated at a rate to be determined by the Secretary of the Department of Health and Social Services. The Chief Medical Examiner shall also be reimbursed for any necessary travel expenses.

§ 4702 Rules and regulations.
The Department of Safety and Homeland Security Health and Social Services may adopt and promulgate rules and regulations to carry into effect this chapter.

§ 4703 Appointment of professional and other personnel.

(a) The Director of the Division of Forensic Science shall appoint, with the approval of the Secretary of the Department of Safety and Homeland Security, a Chief Medical Examiner, who shall be a board certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology. The Chief Medical Examiner shall serve at the pleasure of the Director of the Division of Forensic Science and shall be subject to removal with or without cause by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security.

(b) The Chief Medical Examiner Director of the Division of Forensic Science may appoint, with the approval of the Department of Safety and Homeland Security Health and Social Services, 2 Assistant Medical Examiners who shall be physicians with 2 years or more of training or experience in pathology, necessary numbers of Deputy Medical Examiners who shall be practicing physicians and a Toxicologist who shall have a Ph.D. degree in toxicology or pharmacology or a master's degree in toxicology or pharmacology with a minimum of 3 years of experience in analytical toxicology, at such compensation as shall be determined by the Department of Safety and Homeland Security. The Director of the Division of Forensic Science Chief Medical Examiner may also appoint, in accordance with the state merit system regulations, technical, clerical and other personnel, as may be necessary for proper administration of the office Division.

(b c) The Chief Medical Examiner Director of the Division of Forensic Science may employ, with the approval of the Department of Safety and Homeland Security Health and Social Services, physicians on a contract basis for part-time services, as may be required. Except as otherwise provided, all professional, technical and clerical personnel appointed by the Chief Medical Examiner in accordance with this section are directly responsible to the Director of the Division of Forensic Science Chief Medical Examiner and are subject to removal by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security. Chief Medical Examiner for cause, in accordance with the state merit system regulations applicable to the position.

(d) The Director of the Division of Forensic Science or his or her designee may conduct pre-employment drug testing of any contractor or prospective employee accepting a position with the Division, random drug testing of employees, and testing upon reasonable suspicion that an employee is impaired by an illegal drug. The timing, procedures, and specific controlled substances of any drug testing shall be conducted in accordance with policies or regulations adopted
by the Division. The Division is further authorized to conduct pre-employment criminal background checks of any contractor or prospective employee accepting a position with the Division, and such persons are subject to criminal background checks from time to time while working in or for the Division.

(e) The Director of the Division of Forensic Science and Chief Medical Examiner shall be subject to the same Department of Safety and Homeland Security policies and procedures with respect to overtime, vacation and leave time, and compensatory time as other Department of Safety and Homeland Security division directors. The Director of the Division of Forensic Science, Chief Medical Examiner, Assistant Medical Examiners, Deputy Medical Examiners, Forensic Toxicologists, and Forensic Chemists shall not be permitted to maintain or engage in employment, or to work as an independent contractor, outside of the Division of Forensic Science without prior written approval of the Secretary. Such prior written approval must be issued for each employer or contract for private outside employment.

§ 4704 Duties of Medical Examiners.

(a) The Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners shall perform all the medical and other functions formerly devolving upon the coroners, deputy coroners and coroners' physicians in the counties of this State and in the City of Wilmington and duties imposed upon them by this chapter.

(b) The Chief Medical Examiner shall comply with the orders and directions of the Department of Safety and Homeland Security Health and Social Services.

§ 4705 Office and equipment.

The office of the Chief Medical Examiner shall be maintained in a suitable place or places which shall be designated by the Secretary of the Department of Safety and Homeland Security Health and Social Services. The Department of Safety and Homeland Security Health and Social Services shall provide or arrange for proper and necessary equipment for use of the staff of the Division of Forensic Science Medical Examiners.

§ 4706 Investigation of deaths.

(a) When any person shall die in this State, as a result of violence, by suicide or by casualty if such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion, by poison or suspicion of poison or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or if any body is to be cremated, it shall be the duty of the person having knowledge of such death or of the person issuing a permit for cremation under § 3162 of Title 16 immediately to notify the
Chief Medical Examiner, an Assistant Medical Examiner or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, manner and circumstances of such death. Any person who shall willfully neglect or refuse to report such death or who shall refuse to make available prior medical or other information pertinent to the death investigation or who, without an order from the office of the Chief Medical Examiner Division of Forensic Science, shall willfully touch, remove or disturb the clothing or any article upon or near the body shall upon conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than $1,000, or both.

(b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead body if either the Medical Examiner or the Attorney General shall deem it necessary. The office of the Chief Medical Examiner Division of Forensic Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

(c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce such facts as the Medical Examiner may deem necessary to writing and file the same in the office of the Chief Medical Examiner Division of Forensic Science.

(d) The Medical Examiner or a duly authorized investigator, in the absence of the next of kin, shall take possession of the personal property found on the deceased and make an exact inventory thereof on the Medical Examiner's report. If necessary an attending police officer may take temporary possession of such property in behalf of the Medical Examiner or an authorized investigator.

(e) The Medical Examiner shall take possession of any object or articles which, in the Medical Examiner's opinion, may be useful in establishing the identity of the deceased person or the cause of death and deliver them to the Attorney General. The balance of the personal property of the deceased remaining in the possession of the Medical Examiner shall be released to the next of kin of the deceased or the personal representative of the deceased.

§ 4707 Postmortem examination; autopsy reports.

(a) When the cause of death shall have been established within reasonable medical certainty by a Medical Examiner, the Medical Examiner shall prepare a written report and file it in the office of the Chief Medical Examiner Division of Forensic Science within 30 days after an investigation of such death.

(b) If, however, in the opinion of the Medical Examiner an autopsy is necessary in the public interest or as shall be requested by the Attorney General, the same shall be performed by the Chief Medical Examiner, an Assistant Medical
Examiner or by such other competent pathologists as may be designated by the Chief Medical Examiner. No person who authorizes or performs an autopsy pursuant to this chapter shall be liable in any civil action for damages.

(c) A detailed report of the findings written during the progress of the autopsy, related laboratory analysis and the conclusions drawn therefrom shall be filed in the office of the Chief Medical Examiner Division of Forensic Science.

(d) Promptly upon the conclusion of the postmortem examination, the body of the decedent shall be released to such person as shall be designated by a member of the decedent's immediate family, preferably the next of kin or by an appropriate representative of the decedent's estate.

(e) Upon written request the next of kin of the deceased shall receive a copy of the postmortem examination report, the autopsy report and the laboratory reports, unless there shall be a criminal prosecution pending in which case no such reports shall be released until the criminal prosecution shall have been finally concluded. The charge for completion of an insurance form for proof of death shall be $5.

§ 4708 Forensic Sciences Laboratory.

The Forensic Sciences Laboratory is established and operational within the office of the Chief Medical Examiner Division of Forensic Science. The Chief Medical Examiner Director of the Division of Forensic Science functions as the Director of the Forensic Sciences Laboratory.

§ 4709 Power to administer oaths and issue subpoenas.

The Director of the Division of Forensic Science, the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners, in the course of investigation of a death, may administer oaths and affirmations and take affidavits and make examinations as to any matter within the jurisdiction of their respective offices, but the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners may not summon a jury of inquisition. The Chief Medical Examiner, or in the Chief Medical Examiner's absence, Assistant Medical Examiners or Deputy Medical Examiners, shall have the power to issue subpoenas.

§ 4710 Records and reports; evidence.

(a) The Chief Medical Examiner is to keep full and complete records of in the Division of Forensic Science pertaining to the investigation of deaths and postmortem examinations. Such records shall be Chief Medical Examiner's office, properly indexed, giving the name, if known, of every deceased person investigated, the place where the body was found, the date and the cause of death and all other available information relating thereto. The original report of Medical Examiners and the detailed findings of the autopsy and subsequent laboratory examinations, if any, shall be attached to the record of each case.
(b) The Chief Medical Examiner shall deliver to the Attorney General copies of all records relating to every death in which, in the judgment of the investigating Medical Examiner, further investigation may be deemed advisable.

(c) The Attorney General may obtain from the office of the Chief Medical Examiner Division of Forensic Science copies of all records or other information which the Attorney General may deem necessary.

(d) The records of the office of the Chief Medical Examiner Division of Forensic Science prepared by the Director of the Division of Forensic Science Chief Medical Examiner or by anyone under the Director’s Chief Medical Examiner’s direction or supervision or a true copy thereof certified by the Director or the Chief Medical Examiner shall be received as competent evidence in any court in this State of the matters and facts therein contained.

§ 4711 Disposition of unclaimed body or remains of indigent person.

(a) In any case where there is an unclaimed body or there are remains of indigent persons and it is incumbent on the State or any political subdivision thereof to bury such person found dead, the Chief Medical Examiner or a duly authorized representative shall notify the Division of Social Services of the Department of Health and Social Services to arrange for the burial unless the case falls within the category described in subsection (b) of this section.

(b) When there is a written consent of the next of kin or other legally responsible party, the remains of an indigent person may be cremated or donated for scientific research.

§ 4712 Authority to provide corneas to eye banks.

(a) Upon request of an approved eye bank on behalf of a patient in need of corneal tissue for a transplant, a Medical Examiner is authorized to provide the cornea under the following conditions:

(1) A decedent who may provide a suitable cornea for transplant is under the jurisdiction of the Medical Examiner;

(2) An autopsy will be required;

(3) No objection by the decedent or next of kin is known by the Medical Examiner prior to the removal of the cornea by a representative of an approved eye bank; and

(4) Removal of the cornea for transplant will not interfere with the subsequent course of a postmortem examination or alter the postmortem facial appearance.

(b) For the purposes of this section, the following terms shall have the following meanings:

(1) "Approved eye bank," includes the Medical Eye Bank of Delaware and the Eye Foundation of Delaware Valley;

(2) "Next of kin" means:
a. A spouse;

b. If no spouse, the decedent's adult children;

c. If no spouse or adult children, the decedent's parents;

d. If no spouse, adult children or parents, the person who is legally entitled to claim the decedent's remains for final disposition.

(c) The Medical Examiner or an approved eye bank, while acting in compliance with this section, shall not be liable to the next of kin of a decedent, whose corneal tissue is removed and donated pursuant to this section, for any civil damages.

§ 4713 DNA analysis and data bank.

(a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison shall be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the person as shall be admissible in evidence.

(b) (1) Any person convicted on or after June 16, 1994, of any offense or attempted offense defined in subchapter II, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16, 1994, as a result of a conviction on one of the above offenses shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted on or after June 16, 1994, who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(2) Any person convicted after July 1, 2003, of any offense that is defined and classified as a felony under Title 11 shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted after July 1, 2003, of such felony offense and who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(c) The biological samples shall be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist or other qualified personnel approved by the Chief Medical Examiner Director of the Division of Forensic Science, and packaged and submitted in containers provided or approved by the Division of Forensic Science Chief Medical Examiner, Forensic Sciences Laboratory, in accordance with administrative
regulations promulgated by the Division of Forensic Science Chief Medical Examiner. No civil liability shall attach to any person authorized to obtain a biological sample as provided by this section as a result of obtaining a biological sample from any person, provided the biological sample was obtained according to generally accepted medical procedures.

(d) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant to subsection (b) or (c) without lawful authority shall be guilty of a Class D felony.

(e) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals shall be established in the Division of Forensic Science Office of the Chief Medical Examiner, Forensic Science Laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

(f) The purpose of the centralized DNA database is to assist federal, state and local criminal justice and law enforcement agencies within and outside the State in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes or other crimes and the identification of missing and unidentified persons.

(g) The Division of Forensic Science Chief Medical Examiner and Forensic Sciences Laboratory shall receive, analyze and classify biological samples in compliance with subsections (b) and (c) of this section, and shall record the DNA results in a centralized database for identification and statistical purposes. Except as specifically provided in this section, the results of the analysis shall be securely stored and shall remain confidential.

(h) Records produced from the biological samples shall be used only for law enforcement purposes and shall be exempt from the provisions of the Freedom of Information Act [Chapter 100 of this title].

(i) A person whose DNA profile has been included in the data bank pursuant to this section may petition Superior Court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The Office of Chief Medical Examiner Division of Forensic Science, Forensic Science Laboratory shall expunge all identifiable information in the data bank pertaining to the person and destroy all biological samples from the person upon receipt of a certified court order.

(j) The Chief Medical Examiner Division of Forensic Science and Forensic Sciences Laboratory shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for the collection of biological samples and the database system usage and integrity.

(k) Upon completion of the analysis required by this section, the Office of the Chief Medical Examiner Division of Forensic Science, Forensic Science Laboratory shall forward to the State Bureau of Identification the name and other
identifying information required by the State Bureau of Identification of each individual for whom a DNA identification record is developed. Upon receipt of such information the State Bureau of Identification shall make a notation of the existence of such DNA identification record in the criminal history record information file for such individual maintained pursuant to Chapter 85 of Title 11. Such information shall be available to all requesting criminal justice agencies in the same manner and under the same conditions as all other criminal record information maintained by the State Bureau of Identification.

(l) Any person who disseminates, receives or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

(m) For purposes of this section "biological sample" shall mean a blood sample or a buccal swab.

§ 4714 Commission on Forensic Science

(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the Commission, is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of ten members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General’s designee, the Public Defender or the Public Defender’s designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, a member of the Delaware State Troopers Association or the Fraternal Order of Police with formal training in forensic science appointed by the Secretary of the Department of Safety and Homeland Security with the concurrence of the Governor, and two members, appointed by the Governor, who have expertise in forensic science.

(b) For administrative and budgetary purposes, the Commission will be placed within the Department of Safety and Homeland Security, Office of the Secretary.

(c) The Director of the Division of Forensic Science shall create an audit process to include evidence accountability, requisite certifications, and security. The Director of the Division of Forensic Science shall file a report on this audit to the Commission and Governor once a year.

(d) The Commission shall undertake the following tasks:

(1) Evaluate and monitor the needs of the Division to ensure that it is able to provide accurate, timely, and responsive forensic sciences services to all members of the criminal justice community:
(2) Evaluate and monitor the needs of the Division as may help preserve the independence of judgment and the integrity of all scientific undertakings by the Division and its personnel;

(3) Evaluate and monitor the human resources needs and the personnel and hiring practices of the Division;

(4) Receive and consider input from all stakeholders in the criminal justice community, including, without limitation, prosecutors, defense attorneys, the courts, law enforcement, victims’ advocates, the Domestic Violence Coordinating Council, the Child Death, Near Death and Stillborn Commission, and other interested persons or parties;

(5) Evaluate and monitor the quality assurance structure and processes, including chain of custody practices for drug evidence;

(6) Evaluate and monitor professional competency and accreditation requirements and staff management policies;

(7) Review and comment upon all rules and regulations promulgated pursuant to § 4702 of this title; and

(8) Suggest and support the implementation of improvements to the operations of the Division or its communications and cooperation with other agencies of state and local government.

Section 2. Amend § 7903, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7903 Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

   a. A Director of the Division of Public Health, who shall be known as the Director of Public Health, and who shall be a licensed physician who shall have had at least 1 year of postgraduate training in public health, or in lieu thereof at least 5 years of experience as a full-time health official;

   b. A Director of the Division of Substance Abuse and Mental Health, who shall be known as the Director of Mental Health, and who shall be qualified by appropriate formal education in a field such as psychiatric medicine, psychiatric nursing, clinical psychology or psychiatric social work directly related to the care and treatment of persons with
mental or emotional conditions, by direct experience in the care and treatment of persons with mental or emotional conditions and by demonstrated administrative competence;

c. A Director of the Division of Social Services, who shall be known as the Director of Social Services, and who shall be qualified by education, ability and experience in the administration of social work or services;

d. An administrator and head of the Division of Business Administration and General Services who shall be known as the Chief of Business Administration and General Services and who shall be a person qualified by training and experience to perform the duties of the division;

e. An administrator and head of the Division of Planning, Research and Evaluation who shall be known as the Chief of Planning, Research and Evaluation and who shall be a person qualified by training and experience to perform the duties of the division;

f. A Director of the Division of Child Support Enforcement, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

g. A Director of the Division of Services for Aging and Adults with Physical Disabilities, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

h. A Director of the Division of State Service Centers, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

i. A Director of the Division of Long-Term Care Residents Protection, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

3) Appoint, with the written approval of the Governor, an administrator and head of the Office of Medical Examiner who shall be known as the Medical Examiner of the State for a term of 10 years, subject to reappointment, but always subject to removal for cause. The Medical Examiner shall be a physician licensed to practice in this State and shall be a board certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology.

(43) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(54) Establish a Division of Business Administration and General Services in order to administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the
Department and to coordinate such general services and business administration with other departments, agencies and offices of the government of this State;

(65) Establish a Division of Planning, Research and Evaluation in order to provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department;

(26) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(87) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable, in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(98) Delegate any of the Secretary's powers, duties or functions to a director of a division, except the Secretary's power to remove employees of the Department or to fix their compensation;

(409) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

a. The Secretary shall, in cooperation with the appropriate division directors and office heads, adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia. The mandatory training must include the following topics:

1. Communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia;
2. The psychological, social, and physical needs of those persons; and
3. Safety measures which need to be taken with those persons.

The mandatory training required under this paragraph applies only to those healthcare providers who must participate in continuing education programs;

b. The provisions of paragraph (10)a. of this section do not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 or first responders including police officers, firefighters and emergency medical technicians.
(44:10) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(44:11) Adopt an official seal or seals for the Department;

(44:12) The Secretary in cooperation with the division directors shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations;

(44:13) The Secretary shall be the successor to the State Board of Health exercising the powers and duties granted the Board by Title 16 or § 7904 of this title, which are not inconsistent with the laws of this State;

(44:14) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act.

a. Delaware Safe Drinking Water Revolving Fund. - There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;

2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;

5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;

6. To earn interest on amounts on deposit in such fund;

7. To establish all necessary interest bearing accounts for deposit of loan repayments;
8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and


The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. Standards and procedures. — Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for final recommendations by the Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

Section 3. Amend § 7916, Title 29 of the Delaware Code by making striking the section in its entirety as shown by strike through as follows:
§ 7916 Office of Medical Examiner.

The Office of Medical Examiner is established having the power to perform and shall be responsible for the performance of all powers, duties and functions heretofore vested in the Board of Postmortem Examiners for the State of Delaware pursuant to Chapter 47 of this title.

Section 4. Amend § 7922, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7922 Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of Health and Social Services;
(2) Director of Public Health;
(3) Director of the Division of Substance Abuse and Mental Health;
(4) Director of Social Services;
(5) Medical Examiner;
(6) Chief of Business Administration and General Services;
(7) Chief of Planning, Research and Evaluation;
(8) Director of Developmental Disabilities Services;
(9) Director of Child Support Enforcement;
(10) Director of the Division of Services for Aging and Adults with Physical Disabilities;
(11) Director of State Service Centers;
(12) Director of Long-Term Care Resident Protection; and
(13) Deputy Secretary of the Department of Health and Social Services.

Section 5. Amend § 7923, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7923 Assumption of functions of prior agencies.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Board of Health, the Board of Trustees of the Delaware Hospital for the Chronically Ill, the Hospital Advisory Council, the Department of Mental Health, the Board of Trustees of the Department of Mental Health, the Department of Public Welfare, the Board of Welfare, the Commission for the Blind, and the Commission for the Aging, and the Board of Postmortem Examiners of the
State of Delaware immediately prior to June 12, 1970, and which are not otherwise specifically transferred to the Department by this chapter.

Section 6. Amend § 8203, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8203 Powers, duties and functions of the Director.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint, and fix the salary of, with the written approval of the Governor, the following division directors who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

   a. A Secretary of the Division of State Police who shall be known as the Superintendent of State Police and shall hold the rank of Colonel. The Superintendent of State Police shall be qualified by training and experience to perform the duties of the office. The Superintendent of State Police shall be chosen from among the ranks of the State Police and shall have been promoted through the normal promotional policies of the State Police;

   b. A director of the Delaware Emergency Management Agency who shall be known as the "Director of the Delaware Emergency Management Agency", and who shall be qualified by training and experience to perform the duties of the office;

   c. A Director of the Division of Alcohol and Tobacco Enforcement who shall be known as the Director of Alcohol and Tobacco Enforcement, and who shall be qualified by training and experience to perform the duties of the office;

   d. A director of the Division of Capitol Police who shall be known as the Chief of Capitol Police, which position shall remain a merit position. The Chief of Capitol Police shall be qualified by training and experience to perform the duties of the office. The Chief of Capitol Police shall be chosen from among the ranks of the Capitol Police and through the normal promotional policies of the Capitol Police.

   e. A director of the Division of Communications who shall be known as the "Director of the Division of Communications", and who shall be qualified by training and experience to perform the duties of the office;

   f. A director of the Office of Highway Safety who shall be known as the "Director of the Office of Highway Safety", which position shall remain a merit position. The Director of the Office of Highway Safety shall be qualified by training and experience to perform the duties of the office;
g. A director of the State Council for Persons with Disabilities, who shall be known as the "Director of the State Council for Persons with Disabilities", which position shall remain a merit position, and who shall be qualified by training and experience to perform the duties of the office;

h. A director of the Division of Gaming Enforcement who shall be known as the "Director of the Division of Gaming Enforcement" and who shall be qualified by training and experience to perform the duties of the office; and

i. A director of the Division of Forensic Science who shall be known as the “Director of the Division of Forensic Science” and who shall be qualified by training, experience, education, or ability in the areas of administration and forensic science to perform the duties of Director.

Section 7. Amend § 8214, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8214 Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Public Safety;
(2) Superintendent of State Police;
(3) Director of Civil Defense;
(4) Director of Alcohol and Tobacco Enforcement;
(5) Director of the Division of Forensic Science; and
(6) Chief Medical Examiner.

Section 8. Amend Chapter 82, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8238 Division of Forensic Science

The Division of Forensic Science is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Office of the Chief Medical Examiner and duties of the medical examiners and Forensic Science Laboratory, as set forth in Title 29, Chapter 47.

Section 9. Amend § 4330, Title 10 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 4330 Chemical test report.

For the purpose of establishing that physical evidence in a criminal or civil proceeding constitutes a particular controlled substance defined under Chapter 47 of Title 16, a report signed by the forensic toxicologist or forensic chemist
who performed the test or tests as to its nature is prima facie evidence that the material delivered was properly tested under procedures approved by the Division of Forensic Science office of the Chief Medical Examiner/Forensic Sciences Laboratory, that those procedures are legally reliable, that the material was delivered by the officer or person stated in the report and that the material was or contained the substance therein stated, without the necessity of the forensic toxicologist or forensic chemist personally appearing in court, provided the report identifies the forensic toxicologist or forensic chemist as an individual certified by the Division of Forensic Science office of the Chief Medical Examiner/Forensic Sciences Laboratory, the Delaware State Police or any county or municipal police department employing analysts of controlled substances, as qualified under standards approved by the Division of Forensic Science office of the Chief Medical Examiner/Forensic Sciences Laboratory to analyze those substances, states that the forensic toxicologist or forensic chemist made an analysis of the material under the procedures approved by the Division of Forensic Science Chief Medical Examiner, Director of Forensic Sciences Laboratory and also states that the substance, in the forensic toxicologist's or forensic chemist's opinion, is or contains the particular controlled substance specified. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the report.

Section 10. Amend § 1448(g), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science Office of the Chief Medical Examiner and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

Section 11. Amend § 8515, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8515. Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Division of Forensic Science Office of the Chief Medical Examiner transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of

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memory, the Bureau shall furnish to such officer or Office the Division any information available pertaining to the identification of such person.

Section 12. Amend § 8701, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8701. Created; composition; compensation.

(a) There is hereby created the Criminal Justice Council.

(b) The Council shall consist of 29 members as follows:

(1) The Chief Justice of the Supreme Court, or the Chief Justice's designee;
(2) The President Judge of Superior Court, or the President Judge's designee;
(3) The Chief Judge of Family Court, or the Chief Judge's designee;
(4) The Chief Magistrate of the Justice of the Peace Courts, or the Chief Magistrate's designee;
(5) The Attorney General, or the Attorney General's designee;
(6) The Public Defender, or the Public Defender's designee;
(7) The Commissioner of the Department of Correction, or the Commissioner's designee;
(8) The Chief of the Bureau of Prisons of the Department of Correction, or the Bureau Chief's designee;
(9) The Director of the Division of Youth Rehabilitation, or the Director's designee;
(10) The Chairperson of the Board of Parole, or the Chairperson's designee;
(11) The Superintendent of the State Police, or the Superintendent's designee;
(12) The Chief of the New Castle County Police Department, or the Chief's designee;
(13) The Chief of the Wilmington Police Department, or the Chief's designee;
(14) The Chairperson of the Delaware Police Chiefs' Council, or the Chairperson's designee;
(15) The Director of the Division of Forensic Science, or the Director's Chief Medical Examiner, or the Chief Medical Examiner's designee;
(16) The Secretary of Health and Social Services, or the Secretary's designee;
(17) The Secretary of Labor, or the Secretary's designee
(18) The United States Attorney for the District of Delaware, or the United States Attorney's designee;
(19) The Secretary of Education, or the Secretary's designee;
(20) Five at-large members who shall serve at the pleasure of the Governor for a term of 5 years each;
(21) The Secretary of the Department of Technology and Information, or the Secretary's designee;
(22) The Chief Judge of the Court of Common Pleas, or the Chief Judge’s designee;

(23) The Secretary of the Department of Services for Children, Youth and their Families, or the Secretary's designee;

(24) The Secretary of Public Safety, or the Secretary's designee; and

(25) A sitting judge of the United States District Court for the District of Delaware as designated by the Chief Judge of the United States District Court for the District of Delaware.

(c) The terms of those members who serve by virtue of the office they hold shall be concurrent with service in the office from which they derive their membership.

(d) Commission members shall serve without salary, but shall be entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

Section 13. Amend § 2105(a), Title 13 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2105. Fatal incident reviews.

(a) The Council shall have the power to investigate and review, through a review panel, the facts and circumstances of all deaths and near deaths that occur in Delaware as a result of domestic violence. "Near death" means a victim in serious or critical condition as certified by a physician. This review shall include both homicides and suicides resulting from domestic violence. The Office of the Chief Medical Examiner Division of Forensic Science shall submit to the Council a monthly report within 30 days of the last day of the previous month, of all the homicides and suicides that occurred in Delaware. Reviews may also include cases where the victim suffered a substantial risk of serious physical injury or death. The review of deaths or near deaths involving criminal investigations will be delayed for at least 6 months, and will under no circumstances begin until authorized by the Attorney General's office. Any case involving the death of a minor (any child under the age of 18) related to domestic violence will be reviewed jointly by the appropriate regional panel of the Child Death, Near Death and Stillborn Commission and the domestic violence fatal incident review panel. The death of a minor will only be reviewed by the domestic violence fatal incident review panel where the minor's parents or guardians were involved in an abusive relationship and the minor's death is directly related to that abuse.

Section 14. Amend § 3123, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3123. Registration of deaths.
(a) A certificate of death for each death which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 3 days after death and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it may be determined by approximation.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director who assumes custody of the dead body shall file the certificate of death. The funeral director shall obtain the personal data from the next-of-kin or best qualified person or source available and shall obtain the medical certification from the attending physician or Medical Examiner.

(c) The medical certification shall be completed, signed and returned to the funeral director within 48 hours after death by the attending physician, except when an official death investigation is required by the Office of the Chief Medical Examiner Division of Forensic Science. In the absence of the attending physician the certificate may be completed and signed by the attending physician's designated physician or the chief medical officer of the institution in which death occurred provided such individual has knowledge about the medical history of the case.

(d) When an official death investigation is required pursuant to § 4706(a) of Title 29, the Medical Examiner shall determine the manner and cause of death and shall complete and sign the medical certification.

(e) If the cause of death cannot be determined within 48 hours after death, the attending physician or medical examiner shall file with the Office of Vital Statistics a pending certificate of death and a toxicology study shall be performed. If a cause of death cannot be determined after the toxicology study is performed, the remains and all reports and/or studies shall be turned over to the Office of the Chief Medical Examiner Division of Forensic Science for review. When the cause of death is determined a revised certification of death shall be issued and presented to the funeral director or the funeral director's agent, who in turn shall file the certificate with the Office of Vital Statistics.

(f) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of a court order which shall include the finding of facts required to
complete the death certificate. Such a death certificate shall be marked "By Court Order" and shall show on its face the date of registration and shall identify the court and the date of decree.

Section 15. Amend § 3124, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3124. Registration of spontaneous fetal death.

Each spontaneous fetal death of 350 grams or more, or in the absence of weight, of 20 completed week's gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within 3 days after delivery to the Office of Vital Statistics by filing a fetal death certificate. Induced terminations of pregnancy shall not be reported as spontaneous fetal deaths.

(1) When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall prepare and file a Certificate of Fetal Death.

(2) When a fetal death occurs outside an institution, the physician in attendance at or immediately after delivery shall prepare and file a Certificate of Fetal Death. No person other than a physician may sign a Certificate of Fetal Death.

(3) When a fetal death occurs without medical attendance at or shortly after the delivery, or when a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetal death occurs in this State and the place of fetal death is unknown, an investigation by the Office of the Chief Medical Examiner Division of Forensic Science shall be conducted to determine the cause and manner of the fetal death.

Section 16. Amend § 4177(h), Title 21 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(h) (1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.
(2) Any report introduced under paragraph (h)(1) of this section must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science, Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Division of Forensic Science, Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (h)(1) and (2) of this section.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe
the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

Section 17. Amend § 2301, Title 23 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2301. Definitions.
(a) "Alcohol concentration of 0.08 or more" shall mean:
(1) An amount of alcohol in a sample of a person's blood equivalent to 0.08 or more grams of alcohol per 100 milliliters of blood; or
(2) An amount of alcohol in a sample of a person's breath equivalent to 0.08 or more grams per 210 liters of breath.
(b) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between a law-enforcement officer and the person.
(c) "Operating a vessel or vessel operation" shall include driving, operating or having actual physical control of a vessel or boat.
(d) "Prior or previous offense" shall mean:
(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or
(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.

For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding
under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(e) "Underway" shall be defined as any vessel which is not at anchor or made fast ashore.

(f) "Vessel" shall mean every device in, upon or by which any person may be transported upon the water excepting devices moved by human power.

(g) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the operation of a vessel or boat.

Section 18. Amend § 2303, Title 23 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2303. Consent to submit to chemical test.

(a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat underway on the waters of this State shall be deemed to have given consent, subject to this section and § 2302 of this title, to a chemical test or tests of the person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of § 2302 of this title or a local ordinance substantially conforming thereto.

(b) At the time that a chemical test specimen is required, the person may be informed that if testing is refused, the person shall be prohibited from operating a vessel upon Delaware's waters for a period of 1 year.

(c) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(d) Alternative tests; physical incapacity. -- If for any reason a person is physically unable to supply enough breath or complete the chemical test, the person shall submit to other chemical tests as designated by the officer, subject to the requirements of subsection (a) of this section. Any person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal shall be deemed to not have withdrawn the consent provided in this section and any test may be performed as provided in subsection (a) of this section.
(e) Refusal to submit as admissible evidence. -- Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 2302 of this title, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) Admissibility in evidence of results of chemical test. -- For purposes of a conviction premised upon § 2302(a) of this title or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(g) Evidence of an alcohol concentration of 0.05 or less in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title is prima facie evidence that the person was not under the influence of alcohol within the meaning of this chapter. Evidence of an alcohol concentration of more than 0.05 but less than 0.08 in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(h) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law-enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence shall not be admissible in the determination of guilt under this section.

(i) Nothing in this section shall preclude conviction of an offense defined in this chapter based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(k) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or
tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

(1) That the blood delivered was properly tested under procedures approved by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory;

(2) That those procedures are legally reliable;

(3) That the blood was delivered by the officer or persons stated in the report; and

(4) That the blood contained the alcohol therein stated.

(1) (1) Any report introduced under subsection (k) of this section must:

a. Identify the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made the analysis of the blood under the procedures approved by the Division of Forensic Science Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and

c. State that the blood, in the person's opinion, contains the resulting alcohol concentration within the meaning of this chapter.

Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to subsections (k) and (l) of this section.

(2) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(3) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxologist, Forensic Chemist, State Police Forensic Analytical Chemist or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of
custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of § 2302(a) of this title.

(n) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of the person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

Section 19. Amend § 10002(l)(15), Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science office of the Chief Medical Examiner.

Section 20. On or before January 31, 2015, the Commission on Forensic Science will evaluate the structure of the Division of Forensic Science, including whether there are efficiencies or operational improvements gained by consolidating other forensic sciences with the Division of Forensic Science, whether death investigations should be moved from the Division of Forensic Science, or whether there are any other restructurings that would improve the provision of forensic science services in this State, and shall issue a report on this evaluation to the Governor and the General Assembly.

Section 21. This Act shall take effect on July 1, 2014 or 10 days following its enactment into law, whichever is later.

Section 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.
AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMINAL DEFENSE FOR INDIGENT PERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3303 Remuneration study; report.
(a) The Commission shall make a study of the salaries, emoluments, mileage, per diem, travel and other expense allowances and reimbursements (hereinafter collectively referred to as "remuneration") of the members of the General Assembly, the Governor, members of the Governor's cabinet, the Lieutenant Governor, the State Auditor, the State Treasurer, the Attorney General, the Insurance Commissioner, the Justices of the Supreme Court, the Chancellor and Vice-Chancellors of the Court of Chancery and all judges and court commissioners of the Superior Court, the Court of Common Pleas and the Family Court, the Chief Magistrate, the justices of the peace and the Public Chief Defender.

There is created the Office of Public Defender Defense Services, comprised of three branches: Central Administration, the Public Defender's Office and the Office of Conflicts Counsel.

§ 4602. Appointment; representation of defendants
(a) The Public Defender Office of Defense Services shall be headed by the Chief Defender. The Chief Defender shall be a qualified attorney licensed to practice in this State selected by the Governor. The Public Defender Office of Defense Services shall represent, without charge, each indigent person who is under arrest or charged with a crime, if:

(1) The defendant requests it; or

(2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject of record the opportunity to be so represented.
(b) Before arraignment the determination of indigency may be made by the Public Defender. Office of Defense Services. At or after arraignment the determination shall be made by the court.

§ 4603. Term of office; compensation; assistants

(a) The Public Defender shall serve for a term of 6 years from the date of appointment. The Public Defender shall receive $10,000 per year as compensation.

(b) The Public Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as the Public Defender considers necessary to enable the Public Defender to carry out the responsibilities of the office. An assistant attorney must be a qualified attorney licensed to practice in this State.

(c) The compensation of persons appointed under subsection (b) of this section shall be fixed by the Public Defender.

(d) Effective January 1, 2000, the Public Defender and Chief Deputy Public Defender shall be prohibited from engaging in the practice of law outside the duties of the Office of the Public Defender.

(a) For appointments made after July 1, 2015, the Chief Defender shall serve for a term of 8 years from the date of appointment.

(b) The Chief Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as the Chief Defender considers necessary to enable the Office of Defense Services to carry out the responsibilities of the office. Assistant Public Defenders and attorneys contracting with the Office of Conflicts Counsel must be licensed to practice in this State.

(c) The compensation of persons appointed under subsection (b) of this section shall be fixed by the Chief Defender.

(d) Salaried attorneys employed by the Office of Defense Services are prohibited from engaging in the practice of law outside the duties of the Office of Defense Services. Salaried attorneys who have already established private practices as of January 1, 2015 are exempt from the prohibition for a period of 10 years from the effective date of this statute. After 10 years from the effective date of this statute, all salaried attorneys employed by the Office of Defense Services are prohibited from engaging in private law practice.

§ 4604. Representation of indigent persons

When representing an indigent person, the Public Defender Office of Defense Services shall:

(1) Counsel and defend the indigent person, whether held in custody without commitment or charged with a criminal offense, at every stage of the proceedings following arrest; and
(2) Prosecute any appeals or other remedies before or after conviction that the Public Chief Defender considers to be in the interest of justice.

§ 4605. Appointment of additional counsel

For cause, the court may, on its own motion or upon the application of the Public Defender Office of Defense Services or the indigent person, appoint an attorney other than the Public Defender Office of Conflicts Counsel, or other qualified counsel, to represent the indigent person at any stage of the proceedings or on appeal. The attorneys contracting with the Office of Conflicts Counsel shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed by the court and paid by the State Chief Defender and paid through the Office of Conflicts Counsel.

§ 4606. Annual reports

The Public Defender Office of Defense Services shall make an annual report to the Governor and the General Assembly covering all cases handled by the Public Defender’s office Office of Defense Services during the preceding year.

§ 4607. Administrative fee assessment

(a) Each court of this State shall assess an administrative fee in the amount of $100 against any defendant on whose behalf an appearance is made by the Public Defender, one of the Public Defender’s assistants the Office of Defense Services, or any other attorney who has been appointed by a court to represent the defendant in a criminal proceeding. This fee shall be payable even though the criminal proceedings do not result in conviction but are instead terminated by a guilty plea, nolle prosequi or order of the court.

(b) Upon assessment of any administrative fee under this section, each defendant shall be directed to pay such assessment forthwith to the clerk of the court in which an entry of appearance by the Public Defender, one of the Public Defender’s assistants Office of Defense Services or any other attorney who has been appointed by a court was entered.

(c) A defendant’s present inability, failure or refusal to pay an assessment made under this section shall not operate to disqualify a defendant from legal representation.

(d) If a defendant is unable or fails to pay the administrative fee pursuant to this section, the court shall order the defendant to report to the Commissioner of the Department of Correction or a person designated by the Commissioner for work for a number and schedule of hours necessary to discharge the fine, pursuant to § 4105(b) of Title 11.
(e) In the event that any portion of an administrative fee assessed under this section shall remain unpaid at the time of sentencing, the sentencing judge shall make payment of the administrative fee an express condition of any sentence imposed.

(f) All moneys received in satisfaction of assessments under this section shall revert to the General Fund and the clerk of each court shall regularly remit all moneys received to the State Treasurer.

(g) On or before the first day of November of each year, the courts of this State in which assessments are regularly made under this section shall provide the State Auditor with a written report detailing the dollar value of assessments made in the previous fiscal year, the amount collected in the previous fiscal year as well as the balance of unpaid assessments at the open and close of the previous fiscal year.

§ 4608. Short title
This chapter may be cited as the Model Defender Act, Office of Defense Services Act.

§ 4714 Commission on Forensic Science.
(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the "Commission", is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of 10 members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General’s designee, the Public Chief Defender or the Public Chief Defender’s designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, a member of the Delaware State Troopers Association or the Fraternal Order of Police with formal training in forensic science appointed by the Secretary of the Department of Safety and Homeland Security with the concurrence of the Governor, and 2 members, appointed by the Governor, who have expertise in forensic science.

Section 2. Amend Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1008. Committee on Dispositional Guidelines for Juveniles.
(b) The members of the Committee shall include the following persons or their designees:
- Public Chief Defender;

§ 1053 Appeals by the State in Family Court cases.
(a) An appeal may be taken by the State from the Family Court to an appellate court in the following instances:
(2) Appeal in the discretion of the appellate court. — The State may apply to an appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of such an appeal; but in no event shall the decision or result of the appeal affect the rights of the appellee and he or she shall not be obligated to defend the appeal, but the appellate court may require the Public Chief Defender of the State to defend the appeal and to argue the cause; provided, however, that if the order appealed from is an order suppressing or excluding substantial and material evidence the appellate court may permit an interlocutory appeal of any pretrial order, and if the order suppressing such evidence is reversed, the appellee may be subjected to a trial.

§ 1062. Assignment of prosecutors and public defenders.

Sufficient prosecutors and public defenders shall be assigned to the Court in each county as are required in the judgment of the Attorney General, the public Chief Defender and the Court.

§ 2005 Emergency sessions of court.

(a) When the Chief Justice makes the determination that a court shall conduct proceedings outside its county, the Chief Justice may order emergency sessions of court in another county. In making this determination, the Chief Justice shall make a reasonable effort to consult with the chief judge and the court administrator of the affected court, the other members of the Supreme Court, the Attorney General, and the Public Chief Defender.

§ 3925 Public officers and employees.

Any public officer or employee, in a criminal or civil action against the person arising from state employment, shall be entitled to petition the court for a court-appointed attorney to represent the person's interests in the matter. If the judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the judge may require, determines that the petition has merit, the judge shall appoint an attorney to represent the interests of such public officer or employee. The court-appointed attorney shall represent such person at all stages, trial and appellate, until the final determination of the matter, unless the attorney is earlier released by such person or by the court. The court may first appoint an attorney from the Department of Justice. If the court determines that the Department is unable to represent such public officer or employee, the court may appoint an attorney from the Office of the Public Defender Defense Services in criminal actions only, and in civil actions may appoint an attorney licensed in this State. This section shall also apply to all federal courts within this State.

§ 8601 Recoupment of costs.
(a) A court may require a convicted defendant who has utilized court-appointed attorneys or the Public Defender's Office of Defense Services to pay the costs of defense in that court.

§ 9903 Appeal in the discretion of the appellate court.

The State may apply to the appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of the appeal; but, in no event of such appeals shall the decision or result of the appeal affect the rights of the defendant and he or she shall not be obligated to defend the appeal, but the court may require the Public Defender Office of Defense Services of this State to defend the appeal and to argue the cause.

Section 3. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 787 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.


(1) The Council shall consist of the following members or his or her designee:

f. The Public Chief Defender;

§ 4120A Sex Offender Management Board.

(c) Creation of the Sex Offender Management Board.

(1) There is hereby created, in the Delaware Department of Safety and Homeland Security, a Sex Offender Management Board which shall consist of the following members:

l. The Public Chief Defender of the State of Delaware, or the Public Chief Defender's designee;

§ 4205A Additional penalty for serious sex offenders and pedophile offenders.

(b) A fiscal report on the financial impact of this legislation shall be submitted by the Criminal Justice Coordinator or designee to the Controller General and Chairpersons of the Joint Finance Committee no later than March 15, 2008, after consultation with the Chief Judge of Superior Court, the Commissioner of Corrections, the Attorney General and Chief Public Defender or their designee.

§ 6580 Established; composition; purpose.

(a) The Delaware Sentencing Accountability Commission (hereinafter referred to as the "Commission") is hereby established. The Commission shall consist of 11 members, the body of which shall be comprised as follows:
(3) The Public Chief Defender or the Public Chief Defender's designee;

§ 8513 Dissemination of criminal history record information.

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(3) The State Public Defender Office of Defense Services when requesting information about an individual for whom the State Public Defender Office of Defense Services is attorney of record.

(c) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(7) One member of the Office of the Public Defender Defense Services, to be designated by the Public Chief Defender;

§ 8603 Board of Managers — Established; purpose; composition; term of office; staff; powers.

(b) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(7) One member of the Office of the Public Defender Defense Services, to be designated by the Public Chief Defender;

§ 8701 Created; composition; compensation.

(b) The Council shall consist of 29 members as follows:

(6) The Public Chief Defender, or the Public Chief Defender's designee;

§ 9502 Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender Mediation Committee to be composed of the Attorney General, Public Chief Defender, Chief Magistrate, Chair of the Criminal Justice Council, State Court Administrator and the Chief Judge of Family Court or their designees to administer this chapter. No funds shall be awarded or program approved without the approval of the Victim-Offender Mediation Committee.

Section 4. Amend Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2102 Composition.

The Council shall consist of the following members:

(5) The Public Chief Defender;

Section 5. Amend Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 912 The Child Protection Accountability Commission.
(a) The Delaware Child Protection Accountability Commission is hereby established. The Commission shall consist of 24 members with the at-large members and the Chair appointed by the Governor, and shall be staffed by the Office of the Child Advocate. Members of the Commission serving by virtue of position may appoint a designee to serve in their stead. The Commission shall be comprised of the following:

(15) One representative from the Public Defender's Office of Defense Services, appointed by the Public Chief Defender;

Section 6. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 711 Unlawful employment practices; employer practices.

(g) (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 of Defense Services, the Courts, or any position where federal or state statute requires or expressly permits the consideration of an applicant's criminal history.

SYNOPSIS

Every indigent person accused of a crime has the Constitutional right to effective, conflict-free counsel funded by the state. In Delaware, the Public Defender's Office and the Office of Conflict Counsel are charged with the responsibility of providing counsel for indigent people accused of crimes. The Public Defender's Office is a publicly funded law firm representing about 83% of all indigent defendants in Delaware. The Office of Conflicts Counsel is comprised of a group of lawyers who are independent contractors. They represent clients who cannot be represented by the Public Defender's Office due to a legally recognized conflict of interest. This bill modernizes the business model of the Public Defender's Office and the Office of Conflicts Counsel by consolidating their administrative functions while not compromising the interests of any client. The non-case related functions of both the Public Defender's Office and the Office of Conflicts Counsel will be handled by a Central Administration, all beneath the umbrella of an Office of Defense Services. In particular, the changes implemented by this bill will enhance the quality of representation by the lawyers contracting with the Office of Conflicts Counsel in the areas of IT support, training, client intake, early contact with clients and bill payments. This bill will ensure that all indigent persons accused of crime will be well represented. In addition to the modernization of the business model for delivery of indigent defense services, this bill changes the term of future Chief Defenders from 6 to 8 years.

This bill is the same as Senate Bill 28 with the addition of changes to the various references in the entire code required by the name changes.

Author: Senator Townsend
AN ACT

relating to state agency contracting.

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

SECTION 1. Section 321.013, Government Code, is amended by
adding Subsections (k) and (l) to read as follows:

(k) In devising the audit plan under Subsection (c), the
State Auditor shall consider the performance of audits on contracts
entered into by the Health and Human Services Commission that
exceed $100 million in annual value, including a contract between
the commission and a managed care organization. The State Auditor
shall collaborate with the financial managers in the Medicaid/CHIP
Division of the commission in performing an audit described by this
subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the
contract that the State Auditor determines poses the highest
financial risk to this state; and

(2) must determine whether the entity contracting with
the commission has spent state money in accordance with the
purposes authorized in the contract.

(l) The State Auditor may contract with a private auditor to
audit a contract under Subsection (k).

SECTION 2. Subchapter B, Chapter 403, Government Code, is
amended by adding Section 403.03057 to read as follows:

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.
(a) The comptroller, in cooperation with the governor's budget and policy staff, shall conduct a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one state agency. The study must examine the cost savings to this state that may be achieved through:

(1) abolishing offices or departments of state agencies that have a dedicated office or department for purchasing; and

(2) consolidating or reducing the number of vendors authorized to contract with this state to allow this state to better leverage its purchasing power.

(b) The comptroller shall prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report on the findings of the study conducted under Subsection (a), including:

(1) a detailed projection of expected savings or costs to this state in consolidating state purchasing;

(2) a report on the process for the legislature or the executive branch to implement the consolidation of state purchasing;

(3) a list of state agencies, including dedicated offices or departments in those agencies, with purchasing responsibilities; and

(4) the total cost to this state of the purchasing responsibilities for each state agency, including the dedicated office or department in the agency with purchasing responsibility.

(c) The comptroller shall prepare, deliver, and post on the
comptroller's Internet website the report required by this section not later than December 31, 2016.

(d) The comptroller may contract with a public or private entity to conduct the study required by this section.

(e) This section expires January 1, 2018.

SECTION 3. Subchapter I, Chapter 441, Government Code, is amended by adding Section 441.1855 to read as follows:

Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a state agency:

(1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and

(2) may destroy the contract and documents only after the seventh anniversary of the date:

(A) the contract is completed or expires; or

(B) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

SECTION 4. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.069 to read as follows:

Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment
SECTION 5. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.067 to read as follows:

Sec. 2054.067. POSTING OF CERTAIN DOCUMENTS RELATING TO CONTRACT SOLICITATIONS. (a) The department shall post all solicitation documents related to a contract of the department, including contracts under Chapter 2157, to the centralized accounting and payroll system authorized under Sections 2101.035 and 2101.036, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project.

(b) The documents posted under Subsection (a) must include documents showing the criteria by which the department evaluated each vendor responding to the contract solicitation and, if applicable, an explanation of why the vendor was selected by the department under Section 2157.068(b).

SECTION 6. Section 2101.001(1), Government Code, is amended to read as follows:

(1) "Enterprise resource planning" includes the administration of a state agency's:

(A) general ledger;
(B) accounts payable;
(C) accounts receivable;
(D) budgeting;
(E) inventory;
(F) asset management;
(G) billing;
(H) payroll;
(I) projects;
(J) grants;
(K) human resources, including administration of performance measures, time spent on tasks, and other personnel and labor issues; and
(L) purchasing, including solicitations and contracting.

SECTION 7. Section 2101.035, Government Code, is amended by adding Subsection (i) to read as follows:
(i) State agencies shall report contract and purchasing information in the uniform manner required by the comptroller.

SECTION 8. Section 2101.036, Government Code, is amended by adding Subsection (e) to read as follows:
(e) Notwithstanding Subsection (d), a state agency in the legislative branch may elect to participate in the enterprise resource planning system developed under this section.

SECTION 9. Subchapter C, Chapter 2101, Government Code, is amended by adding Section 2101.041 to read as follows:
Sec. 2101.041. STATE AGENCY REPORTING OF CONTRACTING INFORMATION. (a) The comptroller by rule shall determine the contracting information that state agencies must report or provide using the centralized accounting and payroll system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed
(b) In making the determination required by this section, the comptroller shall consider requiring a state agency to report or provide:

(1) a brief summary of each contract that is quickly and easily searchable, including the contract's purpose, timeline, and deliverables;

(2) contract planning and solicitation documents;

(3) the criteria used to determine the vendor awarded the contract;

(4) if the contract was awarded based on best value to the state:

(A) a list of the factors considered in determining best value with the weight given each factor; and

(B) a statement regarding how the vendor awarded the contract provides the best value to the state in relation to other vendors who bid or otherwise responded to the contract solicitation;

(5) any statements of work and work orders prepared for or under the contract;

(6) the proposed budget for the contract;

(7) any conflict of interest documents signed by state agency purchasing personnel participating in the planning, soliciting, or monitoring of the contract;

(8) criteria used or to be used by the state agency in monitoring the contract and vendor performance under the contract;

(9) a justification for each change order, contract
amendment, contract renewal or extension, or other proposed action
that would result in an increase in the monetary value of a contract
with an initial value exceeding $10 million; and

(10) additional supporting documentation and
justification for a change order, contract amendment, contract
renewal or extension, or other proposed action of a contract
described by Subdivision (9) that would result in an increase in the
contract's monetary value by more than 20 percent.

SECTION 10. Subchapter B, Chapter 2155, Government Code, is
amended by adding Section 2155.0755 to read as follows:

Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD.
(a) The contract manager or procurement director of each state
agency shall:

(1) approve each state agency contract for which the
agency is required to purchase goods or services using the best
value standard;

(2) ensure that, for each contract, the agency
documents the best value standard used for the contract; and

(3) acknowledge in writing that the agency complied
with the agency's and comptroller's contract management guide in
the purchase.

(b) For each purchase of goods or services for which a state
agency is required to use the best value standard, the comptroller
shall ensure that the agency includes in the vendor performance
tracking system established under Section 2262.055 information on
whether the vendor satisfied that standard.

SECTION 11. Section 2155.077, Government Code, is amended
by amending Subsections (a) and (b) and adding Subsection (a-2) to read as follows:

(a) The commission may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

(1) substandard performance under a contract with the state or a state agency;

(2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;

(3) fraud; [or]

(4) breaching a contract with the state or a state agency; or

(5) repeated unfavorable performance reviews under Section 2155.089 or repeated unfavorable classifications received by the vendor under Section 2262.055 after considering the following factors:

(A) the severity of the substandard performance by the vendor;

(B) the impact to the state of the substandard performance;

(C) any recommendations by a contracting state agency that provides an unfavorable performance review;

(D) whether debarment of the vendor is in the best interest of the state; and

(E) any other factor that the comptroller
considers relevant, as specified by comptroller rule.

(a-2) The comptroller may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.

(b) Except as provided by Subsection (d), the commission shall bar a vendor from participating in state contracts under Subsection (a) or (a-2) for a period that is commensurate with the seriousness of the vendor’s action and the damage to the state’s interests.

SECTION 12. Section 2155.078, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) The commission shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. The training and continuing education for state agency purchasing personnel must include ethics training. The commission may establish and offer appropriate training to vendors on a cost recovery basis. The commission may adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section.

(a-1) The training, continuing education, and certification required under Subsection (a) must include:

(1) training on the selection of an appropriate
procurement method by project type; and

(2) training conducted by the Department of Information Resources on purchasing technologies.

(b) Notwithstanding [Except as provided by] Subsection (n), all state agency purchasing personnel, including agencies exempted from the purchasing authority of the commission, must receive the training and continuing education to the extent required by rule of the commission. The training and continuing education must include ethics training. A state agency employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the commission. The equivalent training may count, as provided by Subsection (k), toward the continuing education requirements.

SECTION 13. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.089 to read as follows:

Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a contract is completed or otherwise terminated, each state agency shall review the vendor's performance under the contract.

(b) The state agency shall report to the comptroller, using the tracking system established by Section 2262.055, on the results of the review regarding a vendor's performance under a contract.

(c) This section does not apply to:

(1) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015; or

(2) a contract of the Employees Retirement System of
Texas or the Teacher Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code.

SECTION 14. Section 2156.181(a), Government Code, is amended to read as follows:

(a) The commission may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities or may participate in, sponsor, or administer a cooperative purchasing agreement through an entity that facilitates those agreements for the purchase of goods or services if the commission determines that the [entering into an] agreement would be in the best interest of the state.

SECTION 15. Section 2157.068, Government Code, is amended by adding Subsections (e-1) and (e-2) to read as follows:

(e-1) A state agency contracting to purchase a commodity item shall use the list maintained as required by Subsection (e) as follows:

(1) For a contract with a value of $50,000 or less, the agency may directly award the contract to a vendor included on the list without submission of a request for pricing to other vendors on the list;

(2) For a contract with a value of more than $50,000 but not more than $150,000, the agency must submit a request for pricing to at least three vendors included on the list in the category to which the contract relates; and
for a contract with a value of more than $150,000
but not more than $1 million, the agency must submit a request for
pricing to at least six vendors included on the list in the category
to which the contract relates or all vendors on the schedule if the
category has fewer than six vendors.
(e-2) A state agency may not enter into a contract to
purchase a commodity item if the value of the contract exceeds $1
million.

SECTION 16. Subchapter B, Chapter 2157, Government Code, is
amended by adding Section 2157.0685 to read as follows:

Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN
SERVICES. (a) In this section, "statement of work" means a
document that states the requirements for a contract, including
deliverables, performance specifications, and other requirements,
 specific to the vendor under that contract that are not specified in
a contract awarded by the department under Section 2157.068 for
contracts more than $50,000.
(b) For a contract awarded by the department under Section
2157.068 that requires a state agency to develop and execute a
statement of work to initiate services under the contract, the
state agency must:
(1) consult with the department before submission of
the statement of work to a vendor; and
(2) post each statement of work entered into by the
agency on the agency's Internet website in the manner required by
department rule.
(c) A statement of work executed by a state agency under a
contract awarded by the department under Section 2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

SECTION 17. Section 2261.001(a), Government Code, is amended to read as follows:

(a) This chapter, other than Subchapter F, applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131 or 2155.132.

SECTION 18. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR CERTAIN CONTRACTS

Sec. 2261.251. APPLICABILITY OF SUBCHAPTER.

(a) Notwithstanding Section 2261.001, this subchapter applies to the Texas Department of Transportation and to an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code.

(b) This subchapter does not apply to a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code.

Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency
employee or official who is involved in procurement or in contract
management for a state agency shall disclose to the agency any
potential conflict of interest specified by state law or agency
policy that is known by the employee or official with respect to any
contract with a private vendor or bid for the purchase of goods or
services from a private vendor by the agency.

(b) A state agency may not enter into a contract for the
purchase of goods or services with a private vendor with whom any of
the following agency employees or officials have a financial
interest:

(1) a member of the agency’s governing body;

(2) the governing official, executive director,
genral counsel, chief procurement officer, or procurement
director of the agency; or

(3) a family member related to an employee or official
described by Subdivision (1) or (2) within the second degree by
affinity or consanguinity.

(c) A state agency employee or official has a financial
interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an
ownership interest of at least one percent in the person, including
the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the
person could result in a financial benefit to the employee or
official.

(d) A financial interest prohibited by this section does not
include a retirement plan, a blind trust, insurance coverage, or an
ownership interest of less than one percent in a corporation.

Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS; ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;

(2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and

(3) the request for proposals related to a competitively bid contract included under Subdivision (1) until the contract expires or is completed.

(b) A state agency monthly may post contracts described by Subsection (a) that are valued at less than $15,000.

(c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this
subsection.

(d) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING $1 MILLION.

(a) For each contract for the purchase of goods or services that has a value exceeding $1 million, a state agency shall develop and implement contract reporting requirements that provide information on:

(1) compliance with financial provisions and delivery schedules under the contract;

(2) corrective action plans required under the contract and the status of any active corrective action plan; and

(3) any liquidated damages assessed or collected under the contract.

(b) Each state agency shall verify:

(1) the accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and

(2) the delivery time of goods or services scheduled for delivery under the contract.

(c) Except as provided by Subsection (d), a state agency may enter into a contract for the purchase of goods or services that has a value exceeding $1 million only if:

(1) the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body; or
for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract.

(d) The governing body or governing official of a state agency, as appropriate, may delegate to the executive director of the agency the approval and signature authority under Subsection (c).

(e) A highway construction, engineering services, or maintenance contract that is in compliance with all applicable laws related to procuring engineering services or construction bidding and that is awarded by the Texas Department of Transportation under Subchapter A, Chapter 223, Transportation Code, is not required to be signed by a member of the Texas Transportation Commission or the executive director of the department. This exception does not apply to expedited highway improvement contracts under Subchapter C, Chapter 223, Transportation Code, a comprehensive development agreement entered into under Subchapter E, Chapter 223, Transportation Code, a design-build contract entered into under Subchapter F, Chapter 223, Transportation Code, or any other contract entered into by the Texas Department of Transportation.

Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING $5 MILLION.

For each state agency contract for the purchase of goods or services that has a value exceeding $5 million, the contract management office or procurement director of the agency must:

(1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and
(2) submit to the governing body of the agency, or
governing official of the agency if the agency is not governed by a
multimember governing body, information on any potential issue that
may arise in the solicitation, purchasing, or contractor selection
process.

Sec. 2261.256. ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE;
CONTRACT MANAGEMENT HANDBOOK. (a) Each state agency shall develop
and comply with a purchasing accountability and risk analysis
procedure. The procedure must provide for:

(1) assessing the risk of fraud, abuse, or waste in the
contractor selection process, contract provisions, and payment and
reimbursement rates and methods for the different types of goods
and services for which the agency contracts;

(2) identifying contracts that require enhanced
contract monitoring or the immediate attention of contract
management staff; and

(3) establishing clear levels of purchasing
accountability and staff responsibilities related to purchasing.

(b) Each state agency shall publish a contract management
handbook that establishes consistent contracting policies and
practices to be followed by the agency and that is consistent with
the comptroller's contract management guide. The agency's handbook
may include standard contract provisions and formats for the agency
to incorporate in contracts.

(c) Each state agency shall post on the agency's Internet
website the procedures described by Subsections (a)(2) and (3) and
submit to the comptroller a link to the web page that includes the
procedures. The comptroller shall post on the comptroller's Internet website the web page link submitted by each state agency.

Sec. 2261.257. CONTRACT DATABASE. (a) Each state agency that becomes a participant in the centralized accounting and payroll systems as authorized by Sections 2101.035 and 2101.036 shall use the system to identify and record each contract entered into by the agency as specified by the rules, policies, or procedures developed by the comptroller.

(b) The comptroller shall provide as necessary information and state agency contract data contained in the centralized accounting and payroll systems to other state agencies with oversight duties, including the Legislative Budget Board, the state auditor's office, and the Department of Information Resources.

SECTION 19. Section 2262.053(d), Government Code, is amended to read as follows:

(d) The comptroller shall administer training under this section and may assess a fee for the training in an amount sufficient to recover the comptroller's costs under this section.

SECTION 20. Section 2262.0535, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may assess a fee for the training provided under this section in an amount sufficient to recover the comptroller's costs under this section.

SECTION 21. Section 2262.055, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) The comptroller shall evaluate the vendor's performance
based on information reported by state agencies under Section 2155.089 and criteria established by the comptroller.

(b) The comptroller by rule shall establish an evaluation process that:

(1) rates vendors on an A through F scale, with A being the highest grade; and

(2) allows vendors who receive a grade lower than a C [an unfavorable performance review] to protest any classification given by the comptroller.

(d) A state agency shall use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the tracking system. The comptroller by rule shall establish the manner in which the rating scale established under Subsection (b) affects a vendor's eligibility for state contracts and the grades on the scale that disqualify a vendor from state contracting.

(e) The comptroller shall make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

SECTION 22. Section 51.9335(d), Education Code, is amended to read as follows:

(d) Subject to Section 51.9337, Subtitle D, Title 10, Government Code, and Subchapter B, Chapter 2254, Government Code, do not apply to the acquisition of goods and services under this section, except that an institution of higher education must comply with any provision of those laws, or a rule adopted under a provision of those laws, relating to contracting with historically underutilized businesses or relating to the procurement of goods.
and services from persons with disabilities. An institution of higher education may, but is not required to, acquire goods or services as provided by Subtitle D, Title 10, Government Code.

SECTION 23. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9337 to read as follows:

Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED STANDARDS. (a) An institution of higher education may not exercise the acquisition authority granted by Section 51.9335 or 73.115 unless the institution complies with this section. An institution that is determined under Subsection (j) to not be in compliance with this section is subject to the laws governing acquisition of goods and services by state agencies, including Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code.

(b) The board of regents of an institution of higher education by rule shall establish for each institution under the management and control of the board:

(1) a code of ethics for the institution's officers and employees, including provisions governing officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, subject to Subsection (c);

(2) policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an institutional or systemwide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent
applicable;

(3) a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure, subject to Subsection (d);

(4) contracting delegation guidelines, subject to Subsections (e) and (f);

(5) training for officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies; and

(6) internal audit protocols, subject to Subsection (g).

(c) The code of ethics governing an institution of higher education must include:

(1) general standards of conduct and a statement that each officer or employee is expected to obey all federal, state, and local laws and is subject to disciplinary action for a violation of those laws;

(2) policies governing conflicts of interest, conflicts of commitment, and outside activities, ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position;

(3) a conflict of interest policy that prohibits employees from having a direct or indirect financial or other interest, engaging in a business transaction or professional
activity, or incurring any obligation that is in substantial
counterminate with the proper discharge of the employee's duties related
to the public interest;

(4) a conflict of commitment policy that prohibits an
employee's activities outside the institution from interfering
with the employee's duties and responsibilities to the institution;

(5) a policy governing an officer's or employee's
outside activities, including compensated employment and board
service, that clearly delineates the nature and amount of
permissible outside activities and that includes processes for
disclosing the outside activities and for obtaining and documenting
institutional approval to perform the activities;

(6) a policy that prohibits an officer or employee
from acting as an agent for another person in the negotiation of the
terms of an agreement relating to the provision of money, services,
or property to the institution;

(7) a policy governing the use of institutional
resources; and

(8) a policy providing for the regular training of
officers and employees on the policies described by this
subsection.

(d) An institution of higher education shall establish
contract review procedures and a contract review checklist that
must be reviewed and approved by the institution's legal counsel
before implementation. The review procedures and checklist must
include:

(1) a description of each step of the procedure that an
institution must use to evaluate and process contracts;

(2) a checklist that describes each process that must be completed before contract execution; and

(3) a value threshold that initiates the required review by the institution's legal counsel unless the contract is a standard contract previously approved by the counsel.

(e) An institution of higher education's policies governing contracting authority must clearly specify the types and values of contracts that must be approved by the board of regents and the types and values of contracts for which contracting authority is delegated by the board to the chief executive officer and by the chief executive officer to other officers and employees of the institution. An officer or employee may not execute a document for the board unless the officer or employee has authority to act for the board and the authority is exercised in compliance with applicable conditions and restrictions.

(f) An institution of higher education may not enter into a contract with a value of more than $1 million, including any amendment, extension, or renewal of the contract that increases the value of the original contract to more than $1 million, unless the institution's board of regents approves the contract, expressly delegates authority to exceed that amount, or expressly adopts an exception for that contract. The board must approve any amendment, extension, or renewal of a contract with a value that exceeds 25 percent of the value of the original contract approved by the board unless the authority to exceed the approved amount is expressly delegated by the board or an exception is expressly adopted by the
board for that contract.

(g) The board of regents of an institution of higher education shall adopt standards for internal audits conducted by the institution to provide a systematic, disciplined approach to evaluate and improve the effectiveness of the institution's risk management, control, and governance processes related to contracts and to require risk-based testing of contract administration. The internal auditor must have full and unrestricted access to all institutional property, personnel, and records. An internal auditor must report directly to the board of regents in accordance with Chapter 2102, Government Code.

(h) The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor. In auditing the purchase of goods and services by the institution, the state auditor shall determine whether an institution has adopted the required rules and policies.

(i) If the state auditor determines that an institution of higher education has failed to adopt the required rules and policies, the auditor shall report that failure to the legislature and to the institution's board of regents and shall, in consultation with the institution, adopt a remediation plan to bring the institution into compliance. If the institution fails to comply within the time established by the state auditor, the auditor shall find the institution to be in noncompliance and report that finding to the legislature and comptroller.

(j) In accordance with a schedule adopted by the state
auditor in consultation with the comptroller, the authority of an
institution of higher education to acquire goods and services as
provided by Section 51.9335 or 73.115 is suspended if the
institution fails to comply with the remediation plan under
Subsection (i) within the time established by the state auditor. As
a result of the suspension, the laws, including Subtitle D, Title
10, Government Code, and Chapter 2254, Government Code, governing
acquisition of goods and services by state agencies from which the
institution is otherwise exempt, shall apply to the institution's
acquisition of goods and services.

SECTION 24. Subchapter Z, Chapter 51, Education Code, is
amended by adding Section 51.954 to read as follows:

Sec. 51.954. DISCLOSURE OF SPONSORS OF CONTRACTED RESEARCH
IN PUBLIC COMMUNICATIONS. (a) In any public communication the
content of which is based on the results of sponsored research, a
faculty member or other employee or appointee of an institution of
higher education who conducted or participated in conducting the
research shall conspicuously disclose the identity of each sponsor
of the research.

(b) In this section:

(1) "Institution of higher education" has the meaning
assigned by Section 61.003.

(2) "Public communication" means oral or written
communication intended for public consumption or distribution,
including:

(A) testimony in a public administrative,
legislative, regulatory, or judicial proceeding;
(B) printed matter including a magazine, journal, newsletter, newspaper, pamphlet, or report; or

(C) posting of information on a website or similar Internet host for information.

(3) "Sponsor" means an entity that contracts for or provides money or materials for research.

(4) "Sponsored research" means research:

(A) that is conducted under a contract with, or that is conducted under a grant awarded by and pursuant to a written agreement with, an individual or entity other than the institution conducting the research; and

(B) in which payments received or the value of materials received under that contract or grant, or under a combination of more than one such contract or grant, constitutes at least 50 percent of the cost of conducting the research.

SECTION 25. Sections 73.115(e) and (f), Education Code, are amended to read as follows:

(e) To the extent of any conflict, this section prevails over any other law relating to the purchasing of goods and services other than Section 51.9337 and [except] a law relating to contracting with historically underutilized businesses.

(f) Except as otherwise provided by this section and Section 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code, do not apply to purchases of goods and services made under this section.

SECTION 26. Section 2155.502(d), Government Code, is repealed.
SECTION 27. Section 572.069, Government Code, as added by this Act, applies only to a state officer or employee whose service or employment with a state agency ceases on or after the effective date of this Act.

SECTION 28. As soon as is practicable after the effective date of this Act, the comptroller of public accounts, and each affected state agency as necessary, shall adopt the rules, processes, and procedures and take the actions necessary to implement the changes in law made by this Act.

SECTION 29. Section 2262.055(d), Government Code, as added by this Act, applies only in relation to a contract for which the request for bids or proposals or other applicable expression of interest is made public on or after October 1, 2015.

SECTION 30. The changes in law made by this Act apply only to a contract entered into on or after the effective date of this Act. A contract entered into before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 31. This Act takes effect September 1, 2015.
AN ACT

RELATING TO SECRETARY OF STATE REPORTS; ESTABLISHING
REQUIREMENTS FOR THE ELECTRONIC REPORTING AND PUBLIC
ACCESSIBILITY OF REPORTS OF POLITICAL CONTRIBUTIONS AND
LOBBYING EXPENDITURES; CHANGING REPORTING REQUIREMENTS;
CREATING A FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 1-19-27 NMSA 1978 (being Laws 1979, Chapter 360, Section 3, as amended) is amended to read:

"1-19-27. REPORTS REQUIRED--ELECTRONIC REPORTING SYSTEM--CAMPAIGN REPORTING SYSTEM FUND.--

A. All reporting individuals shall file with the secretary of state reports of expenditures and contributions and statements of no activity when required by the Campaign Reporting Act in an electronic format prescribed by the secretary of state.

B. The secretary of state shall develop or contract for services to develop an electronic reporting system for reporting individuals to register with the secretary of state and file all reports of expenditures and contributions and statements of no activity as required by the Campaign Reporting Act. The electronic reporting system shall:

(1) enable a person to register and file
reports online by electronically submitting the relevant data
to the secretary of state's website;

(2) for the submission of data, use unique
identifiers and master drop-down lists of candidates,
political committees, lobbyists and, to the extent reasonably
possible, master lists of contributors, occupations,
expenditure types and contribution types;

(3) provide the data in open, structured
formats for easy search and download to allow for public
inspection of all report data from the secretary of state's
website;

(4) provide for cross-checking and
compliance features;

(5) provide for online registration and fee
payment for political committees and lobbyists;

(6) integrate, to the extent possible, with
the reporting required by the Lobbyist Regulation Act;

(7) to the extent possible, provide for a
mechanism to directly upload the required data from other
third-party tools; and

(8) provide for encrypted transmissions.

C. Registration fees collected by the secretary of
state from lobbyists and political committees shall be
deposited in the "campaign reporting system fund", which is
hereby created in the state treasury. Money in the fund is
appropriated to the secretary of state for the purposes of paying for upgrades, maintenance and operation of the electronic reporting system. Money remaining in the fund at the end of a fiscal year shall not revert to the general fund."

SECTION 2. Section 2-11-3 NMSA 1978 (being Laws 1977, Chapter 261, Section 3, as amended) is amended to read:

"2-11-3. REGISTRATION STATEMENT TO BE FILED--CONTENTS--MODIFICATION TO STATEMENT.--

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of fifty dollars ($50.00) for each of the lobbyist's employers and by filing a single registration statement under oath in an electronic format as prescribed by the secretary of state that states:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. Except as
required by Subsection D of Section 2-11-6 NMSA 1978, no expenditure report shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in the lobbyist's registration statement whether those circumstances apply to the lobbyist.

C. Upon receipt of the online registration and payment, the secretary of state shall publish the registration information on the secretary of state's lobbying disclosure website.

D. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) an affirmation from each of the lobbyist's employers authorizing the lobbyist to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or the lobbyist's employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the
Lobbyist Regulation Act.

E. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the fifty-dollar ($50.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

F. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state using the electronic registration system within one week of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination need be reported."

SECTION 3. Section 2-11-6 NMSA 1978 (being Laws 1977, Chapter 261, Section 6, as amended) is amended to read:

"2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--REPORTING PERIODS.--

A. Each lobbyist who receives compensation or lobbyist's employer who makes or incurs expenditures or makes political contributions for the benefit of or in opposition to
a state legislator or candidate for the state legislature, a
state public officer or candidate for state public office, a
board or commission member or state employee who is involved
in an official action affecting the lobbyist's employer or in
support of or in opposition to a ballot issue or pending
legislation or official action shall file an expenditure
report with the secretary of state using an electronic
reporting system approved by the secretary of state in
accordance with Section 2-11-7 NMSA 1978. The expenditure
report shall include a sworn statement that sets forth:

(1) each expenditure of one hundred dollars
($100.00) or more made or incurred by the employer or lobbyist
during the covered reporting period, indicating the amount
spent and a description of the expenditure. The list shall be
separated into the following categories:

    (a) meals and beverages;

    (b) other entertainment expenditures;

and

    (c) other expenditures;

(2) each political contribution made, and
whether the contribution is from the lobbyist's employer or
the lobbyist on the lobbyist's own behalf, identified by
amount, date and name of the candidate or ballot issue
supported or opposed; and

(3) the names, addresses, employers and
occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on the candidate's behalf.

B. The expenditure report shall be filed electronically and shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date,
location, name of the body invited and total expenses incurred shall be reported.

D. A lobbyist who accepts compensation for lobbying but does not incur expenditures or make political contributions during a reporting period may file a statement of no activity in lieu of a full report for that period in accordance with the reporting schedule in Subsection E of this section.

E. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

     (1) by 11:59 p.m. on January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

     (2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars ($500) or more;

     (3) by 11:59 p.m. on the first Wednesday after the first Monday in May for all expenditures and political contributions made or incurred through the first Monday in May of the current year and not previously reported; and

     (4) by 11:59 p.m. on the first Wednesday after the first Monday in October for all expenditures and political contributions made or incurred through the first Monday in October of the current year and not previously
reported.

F. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

G. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

H. A lobbyist's employer who also engages in lobbying shall also comply with the provisions of this section. A lobbyist and the lobbyist's employer shall coordinate their reporting to ensure that the contributions and expenditures that each have reported are not duplicative.

I. An organization of two or more persons, including an individual who makes any representation as being an organization, that within one calendar year expends funds
in excess of two thousand five hundred dollars ($2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars ($2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses, employers and occupations of the contributors, to the secretary of state on a prescribed form."

SECTION 4. Section 2-11-7 NMSA 1978 (being Laws 1977, Chapter 261, Section 7, as amended) is amended to read:

"2-11-7. REGISTRATION AND EXPENDITURE REPORT--PRESERVATION AS PUBLIC RECORD--ONLINE REPORTS.--

A. Each registration and expenditure report as required by the Lobbyist Regulation Act shall be archived and accessible on the secretary of state's lobbyist disclosure website for a period of at least ten years from the date of filing as a public record, open to public inspection at any
reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed ten years after the date of filing.

B. Lobbyist registrations and expenditure reports shall be kept and maintained on the secretary of state's lobbyist disclosure website and shall be available in searchable and downloadable formats.

C. With respect to the secretary of state's lobbyist disclosure website, all items in the records shall be easily searchable, sortable and downloadable by the public to the extent technically practicable.

D. The secretary of state shall ensure that contributions reported by persons pursuant to the Lobbyist Regulation Act are reported in a manner that is nonduplicative and as consistent as practicable with the reporting requirements of the Campaign Reporting Act. To the extent possible, the electronic reporting system used for registration and reporting required by the Lobbyist Regulation Act shall be integrated with the electronic reporting system used for compliance with the Campaign Reporting Act.

E. Reporting individuals under the Campaign Reporting Act shall receive automatic electronic notice of the contributions to them reported by lobbyists and lobbyists' employers within twenty-four hours of the filing of each expenditure report."
SECTION 5. Section 2-11-8.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 23, as amended) is amended to read:

"2-11-8.1. RESTRICTIONS ON CAMPAIGN ACTIVITIES AND CONTRIBUTIONS.--

A. No lobbyist may serve as a campaign chair, treasurer or fundraising chair for a candidate for the legislature or other state office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

(1) the day the session ends for:
   (a) any statewide elected official or candidate for statewide office except the governor; and
   (b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor.
or candidate for governor."

SECTION 6. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 3, 5 and 6 of this act is July 1, 2016.

B. The effective date of the provisions of Sections 1, 2 and 4 of this act is December 15, 2017.
Title 30.
Chapter 4D.
Article VI (New)
"Health Data"
§§1-8 -
C.30:4D-65 to
30:4D-72
§9 - Note

P.L.2015, CHAPTER 193, approved January 11, 2016
Senate, No. 3220 (First Reprint)

AN ACT concerning the establishment of a health data system process to integrate certain health data and other data from publicly supported programs for population health research and supplementing Title 30 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that:

a. Many New Jersey administrative departments and agencies, including, but not limited to, the Departments of Health, Human Services, Community Affairs, Corrections, and Agriculture, currently create, maintain, receive, and transmit individually identifiable data and aggregated data sets in order to perform necessary and vital administrative functions delegated to the agencies.

b. These administrative departments and agencies often lack the technological and operational resources necessary to create, receive, maintain, and transmit individually identifiable data and data sets created or maintained by other agencies or to execute linkages among data sets and conduct valid statistical analyses while protecting the privacy and security of such and data sets.

c. The creation of a mechanism process by which a State or federal administrative department or agency or an authorized researcher can access data and data sets created or maintained by a federal, State, or local administrative department or agency will help facilitate the development and evaluation of this data, reduce duplicative data collection and maintenance efforts, and allow for comparison of data for accuracy and reliability.

d. The linkage of multiple sources of State, federal, and local data and the application of valid statistical techniques can facilitate the identification of population trends and individual and community-level determinants directly related to the health, safety, security, and well-being of New Jersey residents.

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 SHH committee amendments adopted December 10, 2015.
The establishment of a secure, Statewide, integrated Population Health Data Project ("iPHD Project") containing certain data collected by New Jersey administrative departments and agencies, that includes data related to health and publicly supported programs, will facilitate approved, project-by-project analysis and research and the development of the most effective means for improving the health, safety, security, and well-being of New Jersey residents and the overall cost-efficiency of government programs.

The Medicaid Accountable Care Organization Demonstration Project established pursuant to P.L.2011, c.114 (C.30:4D-8.1 et seq.) requires the Rutgers Center for State Health Policy to analyze patient data received from the Department of Human Services and from certified Medicaid Accountable Care Organizations in order to evaluate the achievement of the health care quality improvement and cost containment goals of the Demonstration Project, and the Rutgers Center for State Health Policy currently has the technological and operational resources required to receive, maintain, and transmit individually identifiable data and data sets in a secure database.

The Rutgers Center for State Health Policy is responsible for evaluating New Jersey's Comprehensive Medicaid Waiver Demonstration Project with funding from the New Jersey Department of Human Services and the Robert Wood Johnson Foundation, whereby it receives comprehensive Medicaid enrollment data, fee-for-service claims data, and managed care encounter data, and conducts analyses of Medicaid claims and encounter data to inform recommendations to improve care and reduce costs for the top one percent of Medicaid beneficiaries who account for a disproportionate share of program spending.

As used in this act:

"Aggregated data" means information that has been combined into groups showing averages or other summary statistics, and that is not individually identifiable information as defined in this act.

"De-identified data" means information that does not identify an individual and for which there is no reasonable basis to believe that the information can be used to identify an individual, and which meets the requirements for de-identification of protected health information under HIPAA.

"Governing Board" or "Board" means the board charged with responsibility for governing the integrated population health data project established pursuant to section 3 of this act.

"Health data" means information that is created or received by a governmental department or agency that relates to the past, present, or future physical or mental health or condition of an individual or
the past, present, or future payment for the provision of health care to an individual.


“Individually identifiable information” means information that identifies an individual, or with respect to which there is a reasonable basis to believe the information can be used to identify an individual.

“IRB” means an institutional review board designated by the Governing Board and established pursuant to federal regulations (45 CFR 46) with a Federalwide Assurance for the Protection of Human Subjects approved by the U.S. Department of Health and Human Services, Office for Human Research Protections, to review and monitor research involving human subjects to ensure that the subjects are protected from harm and that the rights of subjects are adequately protected.

“iPHD Project” means the integrated population health data system project established pursuant to section 4 of this act.

“Medicaid Accountable Care Organization” means an organization established pursuant to P.L.2011, c.114 (C.30:4D-8.1 et seq.).

“Protected health information” has the same meaning as defined under HIPAA.

“Publicly supported programs data” means information relating to an individual’s receipt of services from or through public support programs administered by a federal, State, or local government or by a private entity, including, but not limited to, an individual’s participation in or eligibility for Medicaid benefits, Supplemental Nutrition Assistance Program benefits, Low Income Home Energy Assistance Program benefits, and Social Services for the Homeless program benefits.

“Research” means a systematic investigation, including research development, testing, and evaluation, which is designed to develop or contribute to generalizable knowledge as defined pursuant to 45 C.F.R. 46.102(d).

“Researcher” means a private entity or public entity that conducts research under the review and monitoring of an IRB and has received approval from the data steward for the purpose of requested data elements.

“Social services data” means information relating to an individual’s receipt of services from or through public support programs administered by a federal, State, or local government or by a private entity, including, but not limited to, an individual’s participation in or eligibility for Medicaid benefits, Supplemental Nutrition Assistance Program benefits, Low Income Home Energy Assistance Program benefits, and Social Services for the Homeless program benefits.
As Assistance Program benefits, and Social Services for the Homeless program benefits.

3. a. The iPHD Project Governing Board is hereby established in, but not of, the Department of [State] Health. The Governing Board shall consist of ten members: one of whom shall be the Director of the Rutgers Center for State Health Policy, who shall serve as a non-voting, ex-officio member; one of whom shall be a public member appointed by the President of the Senate, representing an organization capable of advocating on behalf of persons whose data may be received, maintained, or transmitted by the iPHD Project in accordance with this act; one of whom shall be a public member appointed by the Speaker of the General Assembly, with experience in human subjects research who is affiliated with a research university in New Jersey; and four two of whom shall be public members appointed by the Governor [with the advice and consent of the Senate], as follows:

(1) [An individual representing an organization capable of advocating on behalf of persons whose social services data may be received, maintained, or transmitted by the iPHD in accordance with this act;]

(2) [An individual with legal expertise and interest in protecting the privacy and security of individually identifiable information; and]

(3) [An individual with technical expertise and interest in the creation and maintenance of large data systems and data security; and]

(4) An individual with experience in human subjects research, who is affiliated with a research university in New Jersey.

The five remaining members shall be voting, ex-officio members representing the Commissioner of Health, who shall also serve as chair of the Board; the Commissioner of Human Services; the Commissioner of Health, State Treasurer; the Attorney General; and the Chief Information Officer for Rutgers, The State University of New Jersey; and the Secretary of State, who shall also serve as chair of the Board. Ex-officio members may be represented by designees.

Of the public members first appointed to the Governing Board, two shall be appointed to terms of three years, one shall be appointed to a term of two years, and one shall be appointed to a term of one year. Following the expiration of the initial terms, public members of the Board shall be appointed for terms of three years. The voting ex-officio members of the Board shall serve during their respective terms of office. Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment, but for the unexpired term only. The
Board shall meet at least quarterly, and at such other times as it
determines, in its judgment, to be necessary. The appointed
members of the Board shall serve without compensation but may be
reimbursed for necessary expenses incurred in the performance of
their duties. In addition, the Board shall be entitled to and avail
itself of the assistance and services of the staff of the Department of
[State] Health, and of the employees of any other State
department, board, bureau, commission, or agency, as it may
require and as may be available for its purposes.

b. A member of the Governing Board shall not, by reason of
the member’s performance of any duty, function, or activity
required of, or authorized to be undertaken by, the Board, be liable
in an action for damages to any person for any action taken or
recommendation made by the member within the scope of the
member’s duty, function, or activity as a member of the Board, if
the action or recommendation was taken or made without malice.
The members of the Board shall be indemnified and their defense of
any action provided for in the same manner and to the same extent
as employees of the State under the “New Jersey Tort Claims Act,"
[P.L.1972, c.45 (C.59:1-1 et seq.) N.J.S.59:1-1 et seq.], on the
basis of acts or omissions in the scope of their service.

c. A member of the Governing Board shall not participate in
deliberations or vote on any matter before the Board concerning an
individual or entity with which the member has, or within the last
12 months has had, any substantial ownership, employment,
medical staff, fiduciary, contractual, creditor, or consultative
relationship. A member who has or who has had such a relationship
with an individual or entity involved in any matter before the Board
shall make a written disclosure before any action is taken by the
Board with respect to the matter, and shall make the relationship
public in any meeting in which action on the matter is to be taken.

d. The iPHD Project Governing Board shall be a public body
for the purposes of the “Senator Byron M. Baer Open Public
Meetings Act,” P.L.1975, c.231 [(C.10:4-8)] (C.10:4-6 et seq.), and shall conduct its business in accordance with the provisions of
that act. [All proceedings of the Governing Board shall be subject
to P.L.2001, c.404 (C.47:1A-5 et al.).]

4. a. No later than 12 months after the effective date of this
act, the Rutgers Center for State Health Policy shall establish an
operational iPHD Project capable of securely receiving,
maintaining, and transmitting data in accordance with this act and
the HIPAA privacy and security standards applicable to this act.
The Rutgers Center for State Health Policy may employ staff to
assist with carrying out the functions associated with the
establishment and maintenance of the iPHD Project.
b. Notwithstanding any provision of this act to the contrary, the
iPHD 1Project shall seek to receive, maintain, and transmit de-
identified data wherever possible, and shall only receive, maintain,
and transmit individually identifiable information if permitted by
this section and other applicable law and if the information is in a
form and format that is secured to prevent disclosure of individually
identifiable information.

c. A consortium of researchers from New Jersey academic
institutions and from medical schools affiliated with New Jersey
universities will be organized by the Rutgers Center for State
Health Policy to facilitate actionable population health research to
help improve health outcomes for New Jersey residents, as well as
promote New Jersey’s research institutions as leaders in social
science research.

5. Oversight of the operations of the iPHD 1Project, established pursuant to section 4 of this act, shall be vested in the
Governing Board. The iPHD 1Project shall receive, maintain, and
transmit data only as permitted by this act and approved by the
Governing Board and agency or department whose data is
requested. The Governing Board’s responsibilities shall include:

a. Identification of publicly supported programs data that has been created, received, or maintained by
agencies that may be appropriate for receipt, maintenance, and
transmission by the iPHD 1Project in furtherance of the purposes
of this act;

b. Prior to the receipt of data by the iPHD 1Project, the review
and approval of the appropriateness of such receipt, including
consideration of the following factors:

(1) whether the transmitting department or agency has authority
to collect the data proposed to be received by the iPHD 1Project,
particularly if the data includes individually identifiable
information;

(2) whether collection of the data proposed to be received by the
iPHD 1Project is expected to further the purpose of this act,
namely, the improvement of public health, safety, security, [or]
and well-being of New Jersey residents [or] and the
improvement of the overall cost-efficiency of government
assistance programs; and

(3) whether reasonable efforts have been made to ensure that the
iPHD 1Project will receive only the appropriate data needed to
accomplish the purposes of this act;

c. Prior to the receipt or transmission of data by the iPHD
1Project, the review and approval of any necessary data use
agreements or business associate agreements with any person or
entity from which or to which information is received or transmitted
in compliance with all applicable privacy and security standards, including, but not limited to, HIPAA, when such data includes individually identifiable information that is protected health information as defined under HIPAA; and
d. Adopting and publishing policies and procedures for the efficient and transparent operation of the iPHD Project, including, but not limited to, the following:
(1) Privacy and data security policies and procedures that comply with the applicable federal and State privacy and security statutes and regulations, including HIPAA; and
(2) Data access policies and procedures that allow access by a public entity or a private entity, including a researcher, only when such access request meets the standards set forth in the data access policies and procedures and has been approved by the Governing Board and the appropriate agency or department. When data access is requested by any private entity, including a researcher, for the purpose of conducting research, the Governing Board shall only approve access to data after review and approval by an IRB, and such access shall be limited to data identified in approved IRB research protocols and only for the period of the approval. In no event shall the Governing Board approve access to health data that identifies, or that may be used to identify, rates of payment by a private entity for the provision of health care services to an individual unless the party seeking access agrees to keep such information confidential and to prevent public disclosure of such data or the rates of payment derived from such data.
(3) Data retention policies identifying that data shall be returned to sponsoring agencies or destroyed when it is no longer in the State’s interest to promote analysis of the data and in accordance with applicable HIPAA regulations, data use agreements, and provisions of IRB approvals;
(4) Policies to require researchers to consult with subject matter experts in the datasets being linked on a specific project. The purpose of such consultation shall be to help researchers understand and interpret the data being linked for a specific project; and
(5) Policies that establish processes to engage researchers and academic institutions across New Jersey to help set research priorities and promote the use of the iPHD Project to accelerate population health research in this State.

6. No later than 12 months following the receipt of data by the iPHD Project pursuant to this act, and on an annual basis thereafter, the Rutgers Center for State Health Policy, in consultation with the Governing Board, shall publish a report that is made available and accessible to the public and that contains the following information:
a. A description of the implementation of the iPHD Project, including identification of the sources and types of data received and maintained by the iPHD Project over the prior 12 months;

b. A list of all aggregated data maintained by the iPHD Project;

c. A description of each IRB-approved disclosure of data or data sets by the iPHD Project;

d. A description of disclosures to Medicaid Accountable Care Organizations recognized by the [state] State in accordance with P.L.2011, c.114 (C.30:4D-8.1 et seq.);

e. A list of publications and other reports based on iPHD Project data;

f. A strategic plan for achieving the purposes of this act during the successive 12 month period; and

g. Any other information deemed appropriate by the Governing Board.

7. The iPHD Project Governing Board and the Rutgers Center for State Health Policy may apply for and receive funding in relation to the iPHD Project from the following sources:

a. Grants or other financial assistance from State or local departments, agencies, authorities, and organizations;

b. Federal grants;

c. Grants from other public or research or other private entities; and

d. Fees paid by persons or entities requesting access to iPHD Project data or the performance of analyses by the iPHD Project, which fees have been approved by the Governing Board to support the cost of preparing data for access or the performance of analyses;

c. Federal grants; and

d. Grants or other financial assistance from State or local departments, agencies, authorities, and organizations at the discretion of these entities, for specific projects of interest to these entities.

8. Any department or agency that creates, receives, or maintains publicly supported programs data or health data shall, only after execution of an enforceable data use, data sharing, or other similar agreement that is acceptable to the department or agency, transmit or allow access to such data as is necessary and appropriate to further the goals of this act and shall cooperate with iPHD Project requests for receipt of, or access to, such data. Notwithstanding the foregoing, no department or agency shall be required to transmit data it creates, receives, or maintains to the iPHD Project, or to allow access to such data, if the Attorney
General’s review or the applicable department’s or agency’s review determines that such transmission or access would violate State or federal law. The Attorney General’s review shall include consideration of an analysis from the department or agency whose data is being requested. This section shall not prohibit the Rutgers Center for State Health Policy or any department or agency from creating, receiving, maintaining, or transmitting data in data systems that are separate and distinct from the iPHD Project.

This act shall take effect immediately and within 60 days after the effective date of this act, the Governor shall appoint four public members to the iPHD Project Governing Board in accordance with section 3 of this act.

Establishes a process to integrate certain health data and other data from publicly supported programs for population health research.
An Act relative to substance use, treatment, education and prevention.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to increase forthwith the availability of substance use treatment, education and prevention, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 118 of chapter 6 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following subsection:-

The municipal police training committee may establish a course within the recruit basic training curriculum for regional and municipal police training schools to train law enforcement officers on the application of section 34A of chapter 94C and section 12FF of chapter 112 and the procedures for response to calls for assistance for drug-related overdoses. The committee may periodically include within its in-service training curriculum a course of instruction on the application of said section 34A of said chapter 94C and the procedures for response to calls for assistance for drug-related overdoses. Upon request, the executive office of public safety and security, in collaboration with the department of public health, shall facilitate the collection and sharing of resources regarding the application of said section 34A of said chapter 94C.
SECTION 2. Section 4 of chapter 17 of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the following words:- with the advice of the advisory council on alcoholism and.

SECTION 3. Said section 4 of said chapter 17, as so appearing, is hereby further amended by striking out, in lines 14 and 15, the following words:- with the advice of the drug rehabilitation advisory board and.

SECTION 4. Section 13 of said chapter 17, as amended by section 5 of chapter 10 of the acts of 2015, is hereby further amended by adding the following subsection:-

(e) The commission shall also identify and publish a list of non-opioid drug products that have been approved by the United States Food and Drug Administration that are effective pain management alternatives and have a lesser potential for abuse than an opioid drug product contained in Schedules II and III of section 3 of chapter 94C.

The commission shall provide for distribution, including electronic distribution, of copies of the list and revisions to the list among all prescribers and dispensers licensed to practice in the commonwealth and to other appropriate individuals and shall supply a copy to any person on request and upon payment of the cost of printing.

The list shall be revised not less frequently than annually to include new pertinent information on non-opioid drug products approved for inclusion or non-opioid drug products to be deleted and to reflect current information as to the therapeutic efficacy of drugs and pharmaceuticals.

SECTION 5. Section 14 of said chapter 17, as so appearing, is hereby repealed.
SECTION 6. Section 19 of said chapter 17, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “treatment”, in line 16, the following words:-

including information on United States Food and Drug Administration-approved medication assisted-treatment and the availability of such treatments in each geographic region of the commonwealth.

SECTION 7. Said section 19 of said chapter 17, as so appearing, is hereby further amended by striking out, in lines 27 and 28, the words “and (6)” and inserting in place thereof the following words:-

(6) provide information to the patient prior to discharge about the patient’s option to file a voluntary non-opiate directive form pursuant to section 18B of chapter 94C; and

(7).

SECTION 8. Section 17M of chapter 32A of the General Laws, as so appearing, is hereby amended by inserting after the word “treatment” in line 3, the following words:-

; a substance abuse evaluation as defined in section 51½ of chapter 111.

SECTION 9. Section 17N of said chapter 32A, as so appearing, is hereby amended by inserting after the figure “7”, in line 28, the following words:- and provided further, that the commission shall provide to any active or retired employee of the commonwealth who is insured under the group insurance commission coverage for, without preauthorization, substance abuse evaluations ordered pursuant to section 51½ of chapter 111.

SECTION 10. Section 16 of chapter 38 of the General Laws, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-
(b) Acute hospitals, as defined in section 64 of chapter 118E, shall file a monthly report regarding the exposure of children to controlled substances with the commissioner of public health in a manner to be determined by the commissioner of public health. The report shall include, but not be limited to: (i) the number of infants born in the previous month identified by the hospital as having been exposed to a Schedule I or Schedule II controlled substance under chapter 94C or those controlled substances in Schedule III under said chapter 94C that the drug formulary commission, established by section 13 of chapter 17, has determined have a heightened level of public health risk due to the drug’s potential for abuse and misuse; and (ii) the number and specific causes of hospitalizations of children under the age of 11 caused by ingestion of a Schedule I or Schedule II controlled substance under said chapter 94C or those controlled substances in Schedule III under said chapter 94C that the drug formulary commission has determined have a heightened level of public health risk due to the drug’s potential for abuse and misuse.

SECTION 11. Section 1P of chapter 69 of the General Laws, as so appearing, is hereby amended by striking out, in line 97, the figure “18” and inserting in place thereof the following figure:- 19.

SECTION 12. Said section 1P of said chapter 69, as so appearing, is hereby further amended by striking out, in line 127, the figure “3” and inserting in place thereof the following figure: 4.

SECTION 13. Said section 1P of said chapter 69, as so appearing, is hereby further amended by inserting after the word “framework”, in line 133, the following words:- ; 1 of
whom shall be a representative of Massachusetts recovery high schools with expertise in adolescent substance use disorders.

SECTION 14. Section 13D of chapter 71 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

A driver education course shall include a module on the science related to addiction and addictive substances, including the impact of psychoactive substances on the brain and the effect of such substances on a person while operating a motor vehicle.

SECTION 15. Said chapter 71 is hereby further amended by striking out section 96, as so appearing, and inserting in place thereof the following 2 sections:-

Section 96. Each public school shall have a policy regarding substance use prevention and the education of its students about the dangers of substance abuse. The school shall notify the parents or guardians of all students attending the school of the policy and shall post the policy on the school's website. The policy, and any standards and rules enforcing the policy, shall be prescribed by the school committee in conjunction with the superintendent or the board of trustees of a charter school.

The department of elementary and secondary education, in consultation with the department of public health, shall provide guidance and recommendations to assist schools with developing and implementing effective substance use prevention and abuse education policies and shall make such guidance and recommendations publicly available on the department’s website. Guidance and recommendations may include educating parents or guardians on recognizing warning signs of substance abuse and providing available resources. Guidance and
recommendations shall be reviewed and regularly updated to reflect applicable research and best practices.

Each school district and charter school shall file its substance use prevention and abuse education policies with the department of elementary and secondary education in a manner and form prescribed by the department.

Section 97. (a) Subject to appropriation, each city, town, regional school district, charter school or vocational school district shall utilize a verbal screening tool to screen pupils for substance use disorders. Screenings shall occur on an annual basis and occur at 2 different grade levels as recommended by the department of elementary and secondary education, in consultation with the department of public health. Parents or guardians of a pupil to be screened pursuant to this section shall be notified prior to the start of the school year. Verbal screening tools shall be approved by the department of elementary and secondary education, in conjunction with the department of public health. De-identified screening results shall be reported to the department of public health, in a manner to be determined by the department of public health, not later than 90 days after completion of the screening.

(b) A pupil or the pupil’s parent or guardian may opt out of the screening by written notification at any time prior to or during the screening. A city, town, regional school district, charter school or vocational school district utilizing a verbal screening tool shall comply with the department of elementary and secondary education’s regulations relative to consent.

(c) Any statement, response or disclosure made by a pupil during a verbal substance use disorder screening shall be considered confidential information and shall not be disclosed by a person receiving the statement, response or disclosure to any other person without the prior
written consent of the pupil, parent or guardian, except in cases of immediate medical emergency or a disclosure is otherwise required by state law. Such consent shall be documented on a form approved by the department of public health and shall not be subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding. No record of any statement, response or disclosure shall be made in any form, written, electronic or otherwise, that includes information identifying the pupil.

(d) The department of elementary and secondary education shall notify each school district in writing of the requirement to screen students for substance use disorders pursuant to this section. School districts with alternative substance use screening policies may, on a form provided by the department, opt out of the required verbal screening tool. The form shall be signed by the school superintendent and provide a detailed description of the alternative substance use program the district has implemented and the reasons why the required verbal screening tool is not appropriate for the district.

(e) No person shall have a cause of action for loss or damage caused by an act or omission resulting from the implementation of this section.

SECTION 16. Section 8 of chapter 90 of the General Laws, as so appearing, is hereby amended by inserting after the word “course”, in line 50, the following words:- , including a module on the science related to addiction and addictive substances which shall also include the impact of psychoactive substances on the brain and the effect of such substances on a person while operating a motor vehicle.

SECTION 17. Said section 8 of said chapter 90, as so appearing, is hereby further amended by inserting after the word “curriculum”, in line 71, the following words:- , including a
module on the science related to addiction and addictive substances which shall also include the
impact of psychoactive substances on the brain and the effect of such substances on a person
while operating a motor vehicle.

SECTION 18. The nineteenth paragraph of section 32G of said chapter 90, as so
appearing, is hereby amended by inserting after the first sentence the following sentence:- The
curriculum shall include a module on the science related to addiction and addictive substances,
which shall also include the impact of psychoactive substances on the brain and the effect of
such substances on a person while operating a motor vehicle.

SECTION 19. Section 1 of chapter 94C of the General Laws is hereby amended by
inserting after the definition of “drug paraphernalia”, as so appearing, the following definition:-

“Extended-release long-acting opioid in a non-abuse deterrent form”, a drug that is: (i)
subject to the United States Food and Drug Administration’s extended release and long-acting
opioid analgesics risk evaluation and mitigation strategy; (ii) an opioid approved for medical use
that does not meet the requirements for listing as a drug with abuse deterrent properties pursuant
to section 13 of chapter 17; and (iii) identified by the drug formulary commission pursuant to
said section 13 of said chapter 17 as posing a heightened level of public health risk.

SECTION 20. Section 18 of said chapter 94C, as so appearing, is hereby amended by
striking out, in line 70, the words “A prescription” and inserting in place thereof the following
words:- Except as provided in section 18A, a prescription.

SECTION 21. Said section 18 of said chapter 94C, as so appearing, is hereby further
amended by inserting after subsection (d½) the following subsection:-
(d¾) A registered pharmacist filling a prescription for an opioid substance in schedule II of section 3 may dispense the prescribed substance in a lesser quantity than the recommended full quantity indicated on the prescription if requested by the patient provided that the prescription complies with subsection (c) of section 22. The remaining quantity in excess of the quantity requested by the patient shall be void. If the dispensed quantity is less than the recommended full quantity, the pharmacist or a designee shall, within a reasonable time following a reduction in quantity but not more than 7 days, notify the prescribing practitioner of the quantity actually dispensed. The notification shall be conveyed by a notation in the interoperable electronic health record of the patient as defined in section 1 of chapter 118I or, if the pharmacist does not have the ability to make a notation in the patient’s interoperable electronic health record, by facsimile, electronic transmission or by making a notation in the patient’s record maintained by the pharmacy which shall be accessible to the practitioner by request. Nothing in this subsection shall be interpreted to conflict with or supersede any other requirement established in this section for a prescription of an opiate substance or any requirements or conditions for drug substitutions established in chapter 112.

SECTION 22. Said section 18 of said chapter 94C, as so appearing, is hereby further amended by striking out subsection (e) and inserting in place thereof the following subsection:-

(e) Practitioners who prescribe controlled substances, except veterinarians, shall be required, as a prerequisite to obtaining or renewing their professional licenses, to complete appropriate training relative to: (i) effective pain management; (ii) the risks of abuse and addiction associated with opioid medication; (iii) identification of patients at risk for substance use disorders; (iv) counseling patients about the side effects, addictive nature and proper storage and disposal of prescription medications; (v) appropriate prescription quantities for prescription
184 medications that have an increased risk of abuse; and (vi) opioid antagonists, overdose
185 prevention treatments and instances in which a patient may be advised on both the use of and
186 ways to access opioid antagonists and overdose prevention treatments. The boards of registration
187 for each professional license that requires this training shall develop the standards for appropriate
188 training programs.
189
190 SECTION 23. Said chapter 94C is hereby further amended by inserting after section 18
191 the following 3 sections:-
192
193 Section 18A. (a) Prior to issuing an extended-release long-acting opioid in a non-abuse
194 deterrent form for outpatient use for the first time, a practitioner registered under section 7 shall:
195 (i) evaluate the patient’s current condition, risk factors, history of substance abuse, if any, and
196 current medications; and (ii) inform the patient and note in the patient’s medical record that the
197 prescribed medication, in the prescriber’s medical opinion, is an appropriate course of treatment
198 based on the medical need of the patient.
199
200 (b) In the event that a practitioner recommends that an extended-release long-acting
201 opioid be utilized during the course of long-term pain management, the practitioner registered
202 under section 7 shall enter into a written pain management treatment agreement with the patient
203 that appropriately addresses the benefits as well as the risk factors for abuse or misuse of the
204 prescribed substance under guidelines published by the department. Such an agreement shall be
205 filed in the patient’s medical record or included in the patient’s electronic health record.
206
207 Section 18B. (a) The department shall establish a voluntary non-opiate directive form.
208 The form shall indicate to all practitioners that an individual shall not be administered or offered
209 a prescription or medication order for an opiate. The form shall be posted on the department’s
An individual may execute and file a voluntary non-opiate directive form with a practitioner registered under section 7 or other authority authorized by the secretary to accept the voluntary non-opiate directive form for filing. An individual may revoke the voluntary non-opiate directive form for any reason and may do so by written or oral means.

(b) The department shall promulgate regulations for the implementation of the voluntary non-opiate directive form which shall include, but not be limited to:

(i) procedures to record the voluntary non-opiate directive form in the individual’s interoperable electronic health record and in the prescription drug monitoring program established in section 24A;

(ii) a standard form for the recording and transmission of the voluntary non-opiate directive form, which shall include verification by a practitioner registered under section 7 and which shall comply with the written consent requirements of the Public Health Service Act, 42 U.S.C. § 290dd-2(b), and 42 CFR Part 2; provided, however, that the voluntary non-opiate directive form shall also provide the basic procedures necessary to revoke the voluntary non-opiate directive form;

(iii) requirements for an individual to appoint a duly authorized guardian or health care proxy to override a previously recorded voluntary non-opiate directive form;

(iv) procedures to ensure that any recording, sharing or distribution of data relative to the voluntary non-opiate directive form complies with all state and federal confidentiality laws; and

(v) appropriate exemptions for emergency medical personnel.
(c) A written prescription that is presented at an outpatient pharmacy or a prescription that is electronically transmitted to an outpatient pharmacy shall be presumed to be valid for the purposes of this section and a pharmacist in an outpatient setting shall not be held in violation of this section for dispensing a controlled substance in contradiction to a voluntary non-opiate directive form, except upon evidence that the pharmacist acted knowingly against the voluntary non-opiate directive form.

(d) No health care provider or employee of a health care provider acting in good faith shall be subject to criminal or civil liability or be considered to have engaged in unprofessional conduct for failing to offer or administer a prescription or medication order for an opiate under the voluntary non-opiate directive form.

No person acting as an agent pursuant to a health care proxy shall be subject to criminal or civil liability for making a decision under clause (iii) of subsection (b) in good faith.

(e) Any board of professional licensure may limit, condition or suspend the license of or assess fines against a licensed health care provider who recklessly or negligently fails to comply with a person’s voluntary non-opiate directive form.

Section 18C. Prior to issuing a prescription for an opioid contained in Schedule II of section 3, a practitioner registered under section 7 shall: (i) consult with a the patient regarding the quantity of the opioid and a patient’s option to fill the prescription in a lesser quantity; and (ii) inform the patient of the risks associated with the opioid prescribed.

SECTION 24. Said chapter 94C is hereby amended by inserting after section 19C the following section:-
Section 19D. (a) When issuing a prescription for an opiate to an adult patient for outpatient use for the first time, a practitioner shall not issue a prescription for more than a 7-day supply. A practitioner shall not issue an opiate prescription to a minor for more than a 7-day supply at any time and shall discuss with the parent or guardian of the minor the risks associated with opiate use and the reasons why the prescription is necessary.

(b) Notwithstanding subsection (a), if, in the professional medical judgment of a practitioner, more than a 7-day supply of an opiate is required to treat the adult or minor patient’s acute medical condition or is necessary for the treatment of chronic pain management, pain associated with a cancer diagnoses or for palliative care, then the practitioner may issue a prescription for the quantity needed to treat such acute medical condition, chronic pain, pain associated with a cancer diagnosis or pain experienced while the patient is in palliative care. The condition triggering the prescription of an opiate for more than a 7-day supply shall be documented in the patient’s medical record and the practitioner shall indicate that a non-opiate alternative was not appropriate to address the medical condition.

(c) Notwithstanding subsections (a) and subsection (b), this section shall not apply to medications designed for the treatment of substance abuse or opioid dependence.

SECTION 25. Section 21 of said chapter 94C, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “drugs”, in line 19, the following words:- , specifically opiates,

SECTION 26. Section 22 of said chapter 94C, as so appearing, is hereby amended by adding the following subsection:-
(c) Any prescription issued by a practitioner for an opioid substance contained in Schedule II of section 3 shall include a notation on the prescription that the patient may fill, upon request, the prescription in compliance with subsection (d ¾) of section 18 in an amount not to exceed the recommended full quantity indicated.

SECTION 27. The second paragraph of subsection (c) of section 24A of said chapter 94C, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The department shall promulgate rules and regulations relative to the use of the prescription monitoring program by registered participants which shall include the requirement that prior to issuance, participants shall utilize the prescription monitoring program each time a prescription for a narcotic drug that is contained in Schedule II or III is issued.

SECTION 28. Said section 24A of said chapter 94C is hereby further amended by striking out subsection (h), as so appearing, and inserting in place thereof the following subsection:-

(h) The department may provide de-identified information to a public or private entity for statistical research or educational purposes.

SECTION 29. Said chapter 94C is hereby further amended by inserting after section 24A the following section:-

Section 24B. The department shall annually determine, through the prescription drug monitoring system established in section 24A, the mean and median quantity and volume of prescriptions for opiates contained in Schedules II and III of section 3 issued by practitioners registered under section 7; provided, however, that mean and median prescription quantities and
volumes shall be determined within categories of practitioners of a similar specialty or practice type as determined by the department.

The department shall work in conjunction with the respective boards of licensure to annually determine each practitioner’s Schedule II and Schedule III opiate prescribing quantity and volume and the practitioner’s standing with regard to the mean and median quantity and volume for the practitioner’s category of specialty or practice type; provided, however, that the practitioner’s standing shall be expressed as a percentile ranking for the practitioner within the practitioner’s category. Each practitioner whose prescribing exceeds the mean or median within the practitioner’s category shall be sent notice of the practitioner’s percentile ranking in a manner determined by the department. Any practitioner may request the practitioner’s own percentile ranking within the practitioner’s own category of practice. The ranking determined for each practitioner shall be confidential, and shall be distributed by the department or by the relevant board of licensure only to the practitioner to which the information pertains. Such information shall not; (a) constitute a public record as defined in clause twenty-sixth of section 7 of chapter 4; (b) be admissible as evidence in a civil or criminal proceeding; or (c) be the sole basis for investigation by a licensure board.

The department shall also coordinate with the respective boards of licensure to make resources available to prescribers regarding ways to change prescribing practices and incorporate alternative pain management options into a prescriber’s practice.

SECTION 30. Subsection (b) of Class B of section 31 of said chapter 94C, as so appearing, is hereby amended by striking out clause (1) and inserting in place thereof the following 2 clauses:-
SECTION 31. The General Laws are hereby further amended by inserting after chapter 94F the following chapter:-

CHAPTER 94G.

DRUG STEWARDSHIP PROGRAM.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Covered drug”, any brand name or generic opioid drug placed in Schedule II or Schedule III of section 3 of chapter 94C; provided, however, that “covered drug” shall also include benzodiazepines; provided, further, that “covered drug” shall not include: (i) drugs intended for use solely in veterinary care; (ii) substances that are regulated as cosmetic products under the United States Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.; (iii) drugs that are compounded under a specialty license pursuant to sections 39G to 39J, inclusive, of chapter 112; (iv) hypodermic needles, lancets or other sharps products subject to collection and disposal procedures established in section 27A of chapter 94C; or (v) drugs approved and used primarily for medication-assisted substance use disorder treatment.

“Department”, the department of public health.

“Drug stewardship program”, a program financed by a pharmaceutical product manufacturer or a group of manufacturers to collect, secure, transport and safely dispose of unwanted drugs.
“Pharmaceutical product manufacturer” or “manufacturer”, an entity that manufactures a
controlled substance under a United States Food and Drug Administration manufacturer’s
license, except for an institutional pharmacy, as defined in section 39D of chapter 112 or a
wholesaler.

“Prescription drug”, any drug product which may be dispensed pursuant to chapter 94C
under a written prescription by an authorized prescriber.

“Stewardship organization”, an organization designated by a manufacturer or a group of
manufacturers to act as an agent on behalf of the manufacturer or the group of manufacturers to
implement and operate a drug stewardship program.

“Unwanted drug”, a covered drug: (i) that is no longer wanted or intended to be
consumed, or that is abandoned, discarded, expired or surrendered by the person to whom it was
prescribed; or (ii) voluntarily deposited at collection points co-located with a law enforcement
agency; provided, however, that “unwanted drug” shall not include: (A) waste or unused drug
products from a pharmacy, hospital or health clinic or other commercial sources that the
department may determine by regulation to be a nonresidential source; or (B) drug products
seized by law enforcement officers in the course of their law enforcement duties.

“Wholesaler”, an entity licensed pursuant to section 36B of chapter 112.

Section 2. (a) Any pharmaceutical product manufacturer selling or distributing a covered
drug to consumers in the commonwealth, whether directly or through a wholesaler, retailer or
other agent, shall: (i) operate a drug stewardship program approved by the department
individually or jointly with other manufacturers; (ii) enter into an agreement with a stewardship
organization that shall operate a drug stewardship program approved by the department; or (iii) enter into an agreement with the department to operate an alternative plan under section 6. (b) The department shall establish a process to review applications for approval and renewal of a manufacturer’s drug stewardship plan. The department shall consult with the Massachusetts Biotechnology Council, the Interagency Council on Substance Abuse and other interested parties in developing the requirements of a drug stewardship program. (c) Each operator of a drug stewardship program shall file an annual written report to the department describing the program’s activities for the prior year and the volume and type of unwanted drugs collected not later than March 1. (d) The department shall review for renewal each drug stewardship program at a frequency to be determined by the department. (e) The department shall publish and make publicly available a list and description of each approved drug stewardship program and shall update this list at a frequency determined by the department. (f) The department may promulgate regulations to implement this chapter. Section 3. A manufacturer or stewardship organization seeking approval for a drug stewardship program shall submit, in a manner and form determined by the department, a plan that meets, but is not limited to, the following requirements: (i) a collection system to provide convenient, ongoing collection services to all persons seeking to dispose of unwanted drugs; provided, however, that the collection system may accept any covered drug and any other prescription drug in a pill formulation regardless of its schedule,
brand or source of manufacture; provided further, that the collection system shall include 2
methods as recommended by the department, which may include, but not be limited to: (A) a
mail-back program that provides prepaid and preaddressed packaging for a pharmacy to
distribute when filling a prescription for a covered drug or upon request by a consumer; (B)
collection kiosks; (C) drop-off day events at regional locations; (D) in-home disposal methods
that render a product safe from misuse and that comply with applicable controlled substance
regulations and environmental safety regulations; or (E) any other method recommended
pursuant to United States Drug Enforcement Administration guidelines;
(ii) adequate provisions for the security of unwanted drugs throughout the collection
process and the safety of any person involved in monitoring, staffing or servicing the
stewardship program;
(iii) a plan for public outreach and education about the drug stewardship program;
(iv) a plan for the manufacturer or stewardship organization that provides the operational
and administrative costs associated with the program; provided, however, that no point-of-sale,
point-of-collection, processing fees or other drug cost increases may be charged to individual
consumers to recoup program costs;
(v) an attestation that the program shall comply with all applicable state and federal
requirements for the collection, security, transport and disposal of drug products, including any
requirements established by rule or regulation of either the United States Drug Enforcement
Administration or the United States Environmental Protection Agency; and
(vi) any other requirements established by the department for the safe and effective
administration of a drug stewardship program.
Section 4. (a) The department shall send a notice to a pharmaceutical product manufacturer that sells or distributes a covered drug in the commonwealth that has not submitted an application for approval under section 2, informing the manufacturer of the requirements to comply with this chapter. Any manufacturer in receipt of a notice shall submit an application for approval under said section 2 within 180 calendar days of receipt of such initial notice.

(b) Upon becoming aware that a pharmaceutical product manufacturer has discontinued its drug stewardship program or has altered the program such that the program no longer fulfills the requirements of this chapter, the department shall send a notice of noncompliance to the manufacturer. A manufacturer in receipt of a notice of noncompliance shall take all required corrective steps to reestablish compliance with this chapter or submit a written appeal of the notice of noncompliance to the department within 90 days of receipt of the notice of noncompliance.

(c) If after consideration of an appeal or if the manufacturer does not appeal within 90 days of receipt of the notice of noncompliance the department determines that the manufacturer continues to be in noncompliance with this chapter, the department may assess the manufacturer a penalty in a manner to be determined by the department. If the department plans to assess a noncompliance penalty against a manufacturer pursuant to this section, the department shall send notice of the penalty and the right to appeal the penalty to the manufacturer.

Section 5. (a) The requirements established by the department, in consultation with Massachusetts Biotechnology Council, the Interagency Council on Substance Abuse and other stakeholders, may exceed, but shall not conflict with, any obligations imposed on a manufacturer
by a risk evaluation and mitigation strategy approved by the United States Food and Drug
Administration.

(b) Nothing in this chapter shall require a retail pharmacy or a pharmacist practicing in a
retail setting to participate in the collection, securing, transport or disposal of unwanted drugs.

(c) No stewardship program shall require an outpatient pharmacy to participate in the
collection, securing, transport or disposal of unwanted drugs or to provide a space for or to
maintain a collection kiosk within an outpatient pharmacy unless the pharmacy certifies, in
writing, that this participation is voluntary.

Section 6. The department shall, in consultation with the Massachusetts Biotechnology
Council, the Interagency Council on Substance Abuse and other interested parties, develop an
alternative plan to the drug stewardship program established under sections 2 to 5, inclusive. A
manufacturer who opts into a plan established under this section shall be exempt from sections 2
to 5, inclusive.

A plan established under this section may permit contributions by manufacturers to the
Substance Abuse Services Fund established in section 2I of chapter 111, in a manner determined
by the department. A manufacturer participating in a plan established under this section shall not
pass the cost of any contribution on to the consumer or a health insurance carrier.

SECTION 32. Chapter 111 of the General Laws, as appearing in the 2014 Official
Edition, is hereby amended by inserting after section 51 the following section:-

Section 51½. (a) For the purposes of this section, the following words shall have the
following meanings:-
“Acute-care hospital”, any hospital licensed under section 51 that contains a majority of medical-surgical, pediatric, obstetric, and maternity beds, as defined by the department and the teaching hospital of the University of Massachusetts Medical School.

“Licensed mental health professional”, a licensed physician who specializes in the practice of psychiatry or addiction medicine, a licensed psychologist, a licensed independent social worker, a licensed mental health counselor, a licensed psychiatric clinical nurse specialist or a licensed alcohol and drug counselor I as defined in section 1 of chapter 111J.

“Satellite emergency facility”, a health care facility that operates on a 7-day per week, 24-hour per day basis that is located off the premises of a hospital, but is listed on the license of a hospital, and is authorized to accept patients transported to the facility by ambulance.

“Substance abuse evaluation”, an evaluation ordered pursuant to subsection (b) that is conducted by a licensed mental health professional or through an emergency services program, which shall include, but not be limited to, the following information: (1) history of the patient’s use of alcohol, tobacco and other drugs, including age of onset, duration, patterns and consequences of use; (2) the use of alcohol, tobacco and other drugs by family members; (3) types of and responses to previous treatment for substance use disorders or other psychological disorders; (4) an assessment of the patient’s psychological status including co-occurring disorders, trauma history and history of compulsive behaviors; and (4) an assessment of the patient’s human immunodeficiency virus, hepatitis C, and tuberculosis risk status.

(b) A person presenting in an acute-care hospital or a satellite emergency facility who is reasonably believed by the treating clinician to be experiencing an opiate-related overdose, or who has been administered naloxone prior to arriving at the hospital or facility, shall receive a
substance abuse evaluation within 24 hours of receiving emergency room services. A substance abuse evaluation shall conclude with a diagnosis of the status and nature of the patient’s substance use disorder, using standardized definitions as set forth in the Diagnostic and Statistical Manual of Mental Disorders as published by the American Psychiatric Association a diagnosis of a mental or behavioral disorder due to the use of psychoactive substances, as defined and coded by the World Health Organization. Each patient shall be presented with the findings of the evaluation in person and in writing, and the findings shall include recommendations for further treatment, if necessary, with an assessment of the appropriate level of care needed. Findings from the evaluation shall be entered into the patient’s medical record.

No acute-care hospital or satellite emergency facility shall permit early discharge, defined as less than 24 hours after presentation or before the conclusion of a substance abuse evaluation, whichever occurs sooner. If a patient does not receive an evaluation within 24 hours, the treating clinician shall note in the medical record the reason the evaluation did not take place and authorize the discharge of the patient. No clinician shall be held liable in a civil suit for releasing a patient who does not wish to remain in the emergency department after stabilization, but before a substance abuse evaluation has taken place.

(c) After a substance abuse evaluation has been completed pursuant to subsection (b) a patient may consent to further treatment. Treatment may occur within the acute-care hospital or satellite emergency facility, if appropriate services are available; provided, however, that if the hospital or satellite emergency facility is unable to provide such services, the hospital or satellite emergency facility shall refer the patient to treatment center outside of the hospital or satellite emergency facility. Medical necessity for further treatment shall be determined by the treating clinician in consultation with the patient and noted in the medical record. If a patient refuses
further treatment after the evaluation is complete, and is otherwise medically stable, the hospital or satellite emergency facility may initiate discharge proceedings. All patients receiving an evaluation under subsection (b) shall receive, upon discharge, information on local and statewide treatment options, providers and other relevant information as deemed appropriate by the treating clinician.

(d) If a person has received a substance abuse evaluation within the past 3 months, further treatment and the need for a further evaluation shall be determined by the treating clinician according to best practices and procedures.

(e) If a person under 18 years of age is ordered to undergo a substance abuse evaluation, a parent or guardian shall be notified that the minor has suffered from an opiate-related overdose and that an evaluation has been ordered. A parent or guardian may be present when the findings of the evaluation are presented to the minor.

(f) Upon discharge of a patient who experienced an opiate-related overdose, the acute-care hospital or satellite emergency facility shall notify the patient’s primary care physician, if known, of the opiate-related overdose and any recommendations for further treatment.

(g) Upon discharge of a patient who experienced an opiate-related overdose, the acute-care hospital or satellite emergency facility shall record the opiate-related overdose on the patient’s electronic medical record.

(h) Nothing in this section shall interfere with an individual’s right to refuse medical care.

SECTION 33. Subsection (a) of section 222 of said chapter 111, as so appearing, is hereby amended by adding the following paragraph:-
The bureau of substance abuse services shall provide educational materials on the dangers of opiate use and misuse to those persons participating in the annual head injury safety program required by this section. The educational materials shall also be distributed in written form to all students participating in an extracurricular athletic activity prior to the commencement of their athletic seasons.

SECTION 34. Section 1 of chapter 111E of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the definition of ‘advisory board’.

SECTION 35. Section 3 of said chapter 111E, as so appearing, is hereby repealed.

SECTION 36. Section 4 of said chapter 111E, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words “the advisory board,“.

SECTION 37. Chapter 112 of the General Laws, is hereby amended by inserting after section 12EE the following section:-

Section 12FF. Any person who, in good faith, attempts to render emergency care by administering naloxone or any other opioid antagonist, as defined in section 19B of chapter 94C, to a person reasonably believed to be experiencing an opiate-related overdose, shall not be liable for acts or omissions resulting from the attempt to render this emergency care; provided, however, that this section shall not apply to acts of gross negligence or willful or wanton misconduct.

SECTION 38. Said chapter 112 is hereby further amended by inserting after section 24G the following section:-
Section 24H. (a) The board of registration in pharmacy shall establish a rehabilitation program for registered pharmacists, pharmacy interns and pharmacy technicians who have a substance use issue.

(b) The rehabilitation program shall: (i) serve as a voluntary alternative to traditional disciplinary actions; (ii) establish criteria for the acceptance, denial or termination of registered pharmacists, pharmacy interns and pharmacy technicians in the program; and (iii) establish an outreach program to identify registered pharmacists, pharmacy interns and pharmacy technicians who may have a substance use disorder and to provide education about the rehabilitation program.

Only a registered pharmacist, pharmacy intern or pharmacy technician who has requested rehabilitation and supervision shall be eligible to participate in the program.

(c) The board shall appoint a rehabilitation evaluation committee, 2 of whom shall be registered pharmacists with demonstrated experience in the field of substance use disorders, 1 of whom shall be a medical doctor with experience in the treatment of substance use disorders, 1 of whom shall be a pharmacy technician with demonstrated experience in the field of substance use disorders, 1 of whom shall be a registered pharmacist who has recovered from drug or alcohol addiction and has been drug and alcohol free for a minimum of 5 years and 2 of whom shall be representatives of the public who are knowledgeable about substance use disorders or mental health. Three members of the committee shall constitute a quorum. The committee shall elect a chairperson and a vice chairperson. Members of the committee shall serve for terms of 4 years. At the time of appointment or reappointment to the committee, no member of the committee who is licensed to practice by the department of public health, division of professional licensure or by
the board of registration in medicine shall have had any type of disciplinary or enforcement
action taken against them by their respective licensing board, the United States Food and Drug
Administration or the United States Drug Enforcement Administration during the 5 years
preceding their appointment to the committee. No member of the board of registration in
pharmacy shall serve on the committee. Meetings of the committee shall not be subject to
sections 18 to 25, inclusive, of chapter 30A.

(d) The board shall employ a pharmacist supervisor with demonstrated professional
expertise in the field of substance use disorders to oversee participants in the rehabilitation
program. The supervisor shall serve as a liaison among the board, the committee, approved
treatment programs and providers and participants. Following consultation with members of the
committee, the supervisor may authorize and implement changes to a participant’s individualized
rehabilitation program based on information that the supervisor may receive concerning a
participant’s failure to comply with the participant’s individualized rehabilitation program as
necessary to protect public health, safety and welfare; provided, however, that the changes shall
remain in effect until review by the board takes place. Any information obtained by a supervisor
pursuant to this section shall be exempt from disclosure and shall be confidential, subject to
subsections (f) and (g).

(e) All rehabilitation evaluation committee findings shall be submitted to the board as
recommendations and shall be subject to final approval of the board. The committee shall have
the following duties and responsibilities:

(i) to evaluate, according to guidelines established by the board, registered pharmacists,
pharmacy interns or pharmacy technicians who request to participate in the program and
consider the recommendations of the pharmacist supervisor regarding the admission of a
registered pharmacist, pharmacy intern or pharmacy technician into the program;

(ii) to review and designate treatment facilities and services to which participants may be
referred;

(iii) to receive and review information concerning a participant in the program;

(iv) to consider, for each participant, whether the participant may continue or may resume
practice within the full scope of the participant’s license;

(v) to call meetings as necessary to review the request of a registered pharmacist,
pharmacy intern or pharmacy technician to participate in the program and review reports
regarding participants;

(vi) to prepare reports to be submitted to the board;

(vii) to provide each participant with an individualized rehabilitation plan with
requirements for supervision and surveillance; and

(viii) to provide information to pharmacists, pharmacy interns or pharmacy technicians
who request to participate in the program.

(f) A registered pharmacist, pharmacy intern or pharmacy technician who requests to
participate in the program shall agree to cooperate with the individualized rehabilitation plan
recommended by the rehabilitation evaluation committee and approved by the board. Any failure
to comply with the rehabilitation program may result in termination of the participant from the
rehabilitation program. The committee shall report to the board the name and license number of a
registered pharmacist, pharmacy intern or pharmacy technician terminated from the program for failure to comply with the provisions of an individualized rehabilitation plan.

(g) After the committee, in its discretion, has determined that a registered pharmacist, pharmacy intern or pharmacy technician has successfully completed an individualized rehabilitation plan through the program, the board shall seal all records pertaining to the participation of the registered pharmacist, pharmacy intern or pharmacy technician in the program; provided, however, that no record shall be sealed sooner than 5 years from the participant’s date of entry into the program. All board and committee records and records of a participant’s involvement in the program shall be kept confidential and shall not be subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding without the prior written consent of the participant.

SECTION 39. Section 10H of chapter 118E of the General Laws, as added by section 19 of chapter 258 of the acts of 2014, is hereby amended by inserting after the figure “7”, in line 45, the following words:—; and provided further, that the division and its contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third party administrators under contract to a Medicaid managed care organization or primary care clinician plan shall cover, without preauthorization, substance abuse evaluations ordered pursuant to section 51½ of chapter 111.

SECTION 40. The third paragraph of section 35 of chapter 123 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out the fifth sentence inserting in place thereof the following sentence:— If such person is not immediately presented before a judge of the district court, the warrant shall continue day after day for up to 5
consecutive days, excluding Saturdays, Sundays and legal holidays, or until such time as the
person is presented to the court, whichever is sooner; provided, however that an arrest on such
warrant shall not be made unless the person may be presented immediately before a judge of the
district court.

SECTION 41. Section 1 of chapter 138 of the General Laws, as so appearing, is hereby amended by inserting after the definition of “malt beverages”, the following definition:-

“Powdered alcohol”, a nonmedicinal product in powdered or crystalline form that contains alcohol and is intended for consumption by direct use or when mixed with water or another substance.

SECTION 42. Said chapter 138 is hereby further amended by inserting after section 2 the following section:-

Section 2A. No person shall sell, offer for sale, manufacture or possess powdered alcohol. Whoever violates this section shall be punished by a fine of not less than $100 or more than $1,000.

SECTION 43. Section 47FF of chapter 175 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “treatment”, in line 3, the following words:- ; a substance abuse evaluation, as defined in section 51½ of chapter 111.

SECTION 44. Section 47GG of said chapter 175, as so appearing, is hereby amended by striking out, in line 21, the word ‘118M’ and inserting in place thereof the following word:-

111M.
SECTION 45. Section 47GG of said chapter 175, as so appearing, is hereby amended by inserting after the figure “7”, in line 29, the following words:- ; provided further, any policy, contract, agreement, plan or certificate of insurance issued, delivered or renewed within the commonwealth, which is considered creditable coverage pursuant to section 1 of chapter 111M, shall cover, without preauthorization, a substance abuse evaluation ordered pursuant to section 51½ of chapter 111.

SECTION 46. Section 8HH of chapter 176A of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “treatment”, in line 3, the following words:- ; a substance abuse evaluation, as defined in section 51½ of chapter 111.

SECTION 47. Section 8II of said chapter 176A, as so appearing, is hereby amended by inserting after the figure ‘7’, in line 28, the following words:- ; provided further, any contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued or renewed within the commonwealth, shall cover, without preauthorization, a substance abuse evaluation ordered pursuant to section 51½ of chapter 111.

SECTION 48. Section 4HH of chapter 176B of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “treatment”, in line 3, the following words:- ; a substance abuse evaluation, as defined in section 51½ of chapter 111.

SECTION 49. Section 4II of said chapter 176B, as so appearing, is hereby amended by inserting after the words figure ‘7’, in line 28, the following words:- ; provided further, any subscription certificate under an individual or group medical service agreement delivered, issued or renewed within the commonwealth shall provide coverage for, without preauthorization, a substance abuse evaluation ordered pursuant to section 51½ of chapter 111.
SECTION 50. Section 4Z of chapter 176G of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word “treatment”, in line 3, the following words:- ; a substance abuse evaluation, as defined in section 51½ of chapter 111.

SECTION 51. Section 4AA of said chapter 176G, as so appearing, is hereby amended by inserting after the figure ‘7’, in line 27, the following words:- ; provided further, an individual or group health maintenance contract that is issued or renewed shall provide coverage for, without preauthorization, a substance abuse evaluation ordered pursuant to section 51½ of chapter 111.

SECTION 52. Section 7 of chapter 176O of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 59, the word “and”.

SECTION 53. Said section 7 of said chapter 176O, as so appearing, is hereby further amended by inserting after the word “age”, in line 68, the following words:- ; and

(5) a report detailing for the previous calendar year the total number of: (i) medical or surgical claims submitted to the carrier; (ii) medical or surgical claims denied by the carrier; (iii) mental health or substance use disorder claims submitted to the carrier; (iv) mental health or substance use disorder claims denied by the carrier; and (v) medical or surgical claims and mental health or substance use disorder claims denied by the carrier because: (A) the insured failed to obtain pre-treatment authorization or referral for services; (B) the service was not medically necessary; (C) the service was experimental or investigational; (D) the insured was not covered or eligible for benefits at the time services occurred; (E) the carrier does not cover the service or the provider under the insured’s plan; (F) duplicate claims had been submitted; (G) incomplete claims had been submitted; (H) coding errors had occurred; or (I) of any other specified reason.
SECTION 54. Subsection (b) of section 24 of said chapter 176O, as so appearing, is hereby amended by adding the following sentence:- The decision on the appeal shall prominently provide information on the patient’s right to appeal the decision to the office of patient protection including, but not limited to: (i) contact information for the office of patient protection.; (ii) a notice of a patient’s right to file a grievance with the office of patient protection; and (iii) information on how to file a grievance with the office of patient protection.

SECTION 55. Chapter 94G of the General Laws is hereby repealed.

SECTION 56. Item 4000-0005 of section 2 of chapter 46 of the acts of 2015 is hereby amended by inserting after the word “programs,” the second time it appears, the following words:- provided further, that any grant awarded may also be used to target youth and adult substance misuse.

SECTION 57. The health policy commission, in consultation with the department of public health and the department of mental health, shall conduct a study on the availability of health care providers that serve patients with dual diagnoses of substance use disorder and mental illness, in inpatient and outpatient settings. The study shall include: (i) an inventory of health care providers with the capability of caring for patients with dual diagnoses, including the location and nature of services offered at each such provider; (ii) an inventory of health care providers specializing in caring for child and adolescent patients with dual diagnoses, including the location and nature of services offered at each such provider; and (iii) an assessment of the sufficiency of dual diagnosis resources in the commonwealth considering multiple factors, including but not limited to population density, geographic barriers to access, insurance coverage and network design, incidence of mental illness and substance use disorders and the needs of
individuals with dual diagnoses. The study shall also consider barriers to access to comprehensive mental health and substance use disorder treatment for adults, seniors, children and adolescents and shall include recommendations to reduce barriers to treatment for patients with dual diagnoses, including the appropriate supply and distribution of health care providers with such capability. The commission shall report to the joint committee on mental health and substance abuse and the house and senate committees on ways and means not later than 12 months following the completion of the study.

SECTION 58. (a) There shall be a special commission to study the incorporation of safe and effective pain treatment and prescribing practices into the professional training of students, except veterinarian students, that may prescribe controlled substances.

(b) The special commission shall consist of the following members or their designees: the chancellor of the University of Massachusetts medical school; the dean of Harvard Medical School; the dean of Boston University School of Medicine; the dean of Tufts University School of Medicine; a representative of The Massachusetts Association of Physician Assistants, Inc.; a representative of the Massachusetts Nurses Association; a representative of the Massachusetts Medical Society; a representative of The Massachusetts Hospital Association, Inc.; a representative of the Massachusetts Pain Initiative; and 6 members to be appointed by the governor, 2 of whom shall be representatives of the pharmacy industry, 1 of whom shall be a representative of a nursing school and 1 of whom shall be a representative of a physician assistant training program. The governor shall appoint a chair of the committee; provided, however, that the first meeting of the commission shall take place on or before than June 1, 2016.
(c) The special commission shall develop recommendations to ensure future prescribers have an understanding of: (i) pain treatment; (ii) the development of a pain management treatment plan and safe prescribing practices of controlled substances; (iii) the effective use of the prescription monitoring program; (iv) substance use disorder symptoms and treatment options; (v) alternative pain management options; and (vi) state and federal laws and regulations related to controlled substances.

(d) The special commission shall submit its recommendations, together with drafts of any legislation, to the clerks of the house of representative and the senate, the chairs of the joint committee on higher education and the chairs of the joint committee on mental health and substance abuse on or before December 1, 2016.

SECTION 59. (a) There shall be a special commission to examine the feasibility of establishing a pain management access program, with the goal of increasing access to pain management for patients in need of comprehensive pain management resources.

(b) The commission shall review: (i) the development of a referral process to make pain management specialists accessible to primary care providers, including a process similar to the Massachusetts child psychiatry access project; (ii) the establishment of a pain management specialty certification through the board of registration in medicine to refer a primary care provider through the referral system described in clause (i); (iii) ways to incorporate a full spectrum of pain management methods into provider care practices including, but not limited to, acupuncture, exercise and other non-pharmaceutical interventions; (iv) the current coverage of pain management through commercial and public insurers; and (v) ways to ensure a full
spectrum of pain management interventions are covered through commercial and public insurance health plans.

(c) The special commission shall consist of the following members or their designees: the secretary of health and human services, who shall serve as co-chair; the chancellor of the University of Massachusetts medical school, who shall serve as co-chair; the assistant director of Medicaid; the commissioner of the group insurance commission; the commissioner of insurance; the executive director of the health policy commission; the executive director of the center for health information and analysis; the commissioner of public health; the chair of the board of registration in medicine; the chair of the board of registration in nursing; 1 representative of the Massachusetts Association of Health Plans, Inc.; 1 representative of the Massachusetts Medical Society; 1 representative of the Massachusetts Hospital Association, Inc.; 1 representative of the Massachusetts Pain Initiative; a representative of the Massachusetts Chiropractic Society, Inc.; and 6 members who shall be appointed by the governor, 1 of whom shall be an oncologist, 1 of whom shall be a physician, 1 of whom shall be an advanced practice nurse, 1 of whom shall be a health economist, 1 of whom shall be a physician specializing in pain management and 1 of whom shall be a professor of medicine.

(d) The special commission shall file an initial report of its recommendations and drafts of proposed legislation or regulations, if any, on clauses (i) and (ii) of subsection (b) with the clerks of the house of representatives and the senate, the chairs of the joint committee on health care financing, the chairs of the joint committee on mental health and substance abuse, the chairs of the joint committee on public health and the chairs of the house and senate committees on ways and means on or before November 1, 2016. The special commission shall file a final report providing a full report regarding said subsection (b) on or before November 1, 2017.
SECTION 60. There shall be a special commission to investigate and study state licensed addiction treatment centers.

The commission shall consist of: the secretary of health and human services or a designee, who shall serve as chair; the commissioner of mental health or a designee; the commissioner of public health or a designee; the director of medicaid or a designee; the inspector general or a designee; and 6 members who shall be appointed by the secretary of health and human services: 3 of whom shall be advocates from the addiction treatment community and 3 of whom shall be a family members of individuals who have been treated at a state licensed addiction treatment center.

The commission shall: (1) solicit information and input from addiction treatment service providers, consumers, families and any other parties or entities the commission considers appropriate; (2) examine the effectiveness of addiction treatment services in promoting successful outcomes of recovery and wellness; (3) examine ways to encourage engagement from individuals in recovery from substance use disorders in policy development related to service delivery and the training and evaluation of services; (4) consider best practice models of delivery and the provision of recovery oriented services in other states; (6) examine mental health considerations when an individual enters an addiction treatment center, including, but not limited to, patient access to mental health services; and (7) recommend legislation to improve services for people in a state licensed addiction treatment center.

The commission shall submit a report to the general court of the results of its investigation and its recommendations, if any, together with any drafts of proposed legislation, with the clerks of the senate and the house of representatives, the chairs of the joint committee on
mental health and substance abuse, and the chairs of the senate and house committees on ways and means not later than January 1, 2017.

SECTION 61. Notwithstanding any general or special law to the contrary, the Massachusetts behavioral health access (MABHA) website, operated by the office of medicaid’s behavioral health vendor, shall post contact information for all insurance payers, including a phone number which is accessible 24 hours per day, for the purpose of enhancing communication between payers and providers.

SECTION 62. Notwithstanding any general or special law to the contrary, the department of public health shall consult with the secretary of public safety, the superintendent of the department of state police, the Massachusetts Chiefs of Police Association Incorporated and others as necessary to develop an education and training program on the statewide centralized substance abuse service referral and education system. The education and training program shall enable municipal police officers to obtain information by phone or online regarding referral to treatment for individuals seeking treatment at local police departments. The department of public health shall ensure that the program provides daily updates and that the program is fully implemented under the second and third sentences of subsection (b) and section (c) of section 18 of chapter 17 of the General Laws.

SECTION 63. Each city, town, regional school district, charter school or vocational school district shall implement the verbal substance use disorder screenings required by section 97 of chapter 71 of the General Laws by the 2017-2018 school year.
SECTION 64. The department of elementary and secondary education, in consultation with the department of public health, shall create a notice and opt out form relative to substance use disorder screenings required by section 97 of chapter 71 of the General Laws.

SECTION 65. Not later than 180 days after the effective date of this act, the division of insurance shall develop and implement regulations providing that there shall be no financial penalty for a patient’s choice to receive a lesser quantity of an opioid contained in schedule II or III of section 3 of chapter 94C of the General Laws.

SECTION 66. Not later than July 1, 2016, the Massachusetts Association of School Committees, Inc., the Massachusetts Association of School Superintendents, Inc. and the Massachusetts Charter Public School Association, Inc. shall each provide an update to the department of elementary and secondary education, the joint committee on education, and the joint committee on mental health and substance abuse on their ongoing efforts to ensure compliance with the requirements set forth in section 96 of chapter 71 of the General Laws.

SECTION 67. The division of insurance, in consultation with the department of mental health, the department of public health and the bureau of substance abuse services, shall recommend a universal intake form to streamline the administrative process for intake of a behavioral health or substance use disorder patient. The form shall: (i) ensure adequate recordkeeping; (ii) lessen the current documentation burden for providers of behavioral health or substance use disorder services; and (iii) be available in electronic form. The form may be incorporated by all payers of behavioral health and substance use disorder services. The division shall hold not fewer than 4 public hearings on the development of the universal intake form. The division shall post the universal intake form on its website not later than October 1, 2016.
SECTION 68. The department of public health shall promulgate rules and regulations relative to practitioners, as defined in section 1 of chapter 94C of the General Laws, advertising opiates, benzodiazepines, and narcotics on their premises by posting or distributing written material.

For the purposes of this section, the following terms shall have the following meanings:

- narcotic shall mean “narcotic” as defined in said section 1 of said chapter 94C;
- opiate shall mean “opiate” as defined in said section 1 of said chapter 94C;
- benzodiazepine shall mean any substance or drug which contains a benzene ring fused to a 7 member diazepine ring, results in the depression of the central nervous system and is primarily intended to treat insomnia and anxiety, including alprazolam, clonazepam, diazepam, lorazepam, and temazepam.

SECTION 69. The department of public health shall promulgate regulations to classify gabapentin and its chemical equivalents as “additional drugs” for the purposes of section 24A of chapter 94C of the General Laws.

SECTION 70. The first distribution to individual practitioners of the prescribing trends and profiles set forth in section 29 shall occur not later than March 1, 2017. The department of public health shall establish educational resources on prescribing practices and alternative pain management options not later than March 1, 2017.

SECTION 71. Sections 8, 9, 32, 39 and 43 to 51, inclusive, shall take effect July 1, 2016.

SECTION 72. Section 4 shall take effect September 1, 2016.

SECTION 73. Section 27 shall take effect October 15, 2016.
SECTION 74. Section 18B of chapter 94C of the General Laws, as inserted by section 23 of this act, shall take effect December 1, 2016.

SECTION 75. Sections 7, 29 and 69 shall take effect on December 1, 2016.

SECTION 76. Section 31 shall take effect January 1, 2017.

SECTION 77. Section 55 shall take effect on December 31, 2021.
AN ACT to amend the public health law, in relation to enacting the internet system for tracking over-prescribing (I-STOP) act and creating a prescription monitoring program registry (Part A); to amend the public health law and the education law, in relation to prescription drug forms, electronic prescribing and language assistance; and to repeal section 21 of the public health law, relating thereto (Part B); to amend the public health law and the penal law, in relation to schedules of controlled substances; and to repeal certain provisions of the public health law relating thereto (Part C); to amend the public health law, in relation to continuing education for practitioners and pharmacists in prescription pain medication awareness and the duties of the prescription pain management awareness workgroup (Part D); and to amend the public health law, in relation to the safe disposal of controlled substances (Part E).

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. The legislature finds that prescription drugs, particularly controlled substances, are increasingly subject to criminal diversion and abuse, which can result in addiction, adverse drug events, accidental death due to overdose, violent or self-injurious behavior, family conflicts, and increased costs to businesses and the health care system. The legislature further finds that such diversion and abuse will be mitigated by: establishing a prescription monitoring program registry containing data about controlled substances dispensed to individuals, reported on a real time basis; requiring health care practitioners and permitting pharmacists to access such registry before prescribing or dispensing additional such substances; and requiring that prescriptions be transmitted electronically from practitioners to pharmacists. Therefore, the legislature finds it appropriate and necessary to establish a

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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prescription monitoring program registry that is designed to utilize real time data, integrate electronic prescribing, combat overprescribing and doctor-shopping, and curtail abuse and illegal diversion without compromising access to controlled substances for legitimate health care purposes. The legislature further finds that these objectives will be promoted by updating the state's schedules of controlled substances, establishing a program for the safe disposal of controlled substances by consumers, and enhancing opportunities to promote education about controlled substances for the public and practitioners.

S 2. This act enacts into law major components of legislation which are necessary to implement fundamental changes to the way controlled substances are prescribed, dispensed and monitored in this state. Each component is wholly contained within a Part identified as Parts A through E. The effective date of each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

PART A

Section 1. This act shall be known and may be cited as the "Internet System for Tracking Over-Prescribing (I-STOP) Act".

S 2. The public health law is amended by adding a new section 3343-a to read as follows:

S 3343-A. PRESCRIPTION MONITORING PROGRAM REGISTRY. 1. ESTABLISHMENT OF SYSTEM. (A) THE COMMISSIONER SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, ESTABLISH AND MAINTAIN AN ELECTRONIC SYSTEM FOR COLLECTING, MONITORING AND REPORTING INFORMATION CONCERNING THE PRESCRIBING AND DISPENSING OF CONTROLLED SUBSTANCES, TO BE KNOWN AS THE PRESCRIPTION MONITORING PROGRAM REGISTRY. THE REGISTRY SHALL INCLUDE INFORMATION REPORTED BY PHARMACIES ON A REAL TIME BASIS, AS SET FORTH IN SUBDIVISION FOUR OF SECTION THIRTY-THREE HUNDRED THIRTY-THREE OF THIS ARTICLE.

(B) THE REGISTRY SHALL INCLUDE, FOR EACH PERSON TO WHOM A PRESCRIPTION FOR CONTROLLED SUBSTANCES HAS BEEN DISPENSED, ALL PATIENT-SPECIFIC INFORMATION COVERING SUCH PERIOD OF TIME AS IS DEEMED APPROPRIATE AND FEASIBLE BY THE COMMISSIONER, BUT NO LESS THAN SIX MONTHS AND NO MORE THAN FIVE YEARS. SUCH PATIENT-SPECIFIC INFORMATION SHALL BE OBTAINED FROM THE PRESCRIPTION INFORMATION REPORTED BY PHARMACIES PURSUANT TO SUBDIVISION FOUR OF SECTION THIRTY-THREE HUNDRED THIRTY-THREE OF THIS ARTICLE AND BY PRACTITIONERS WHO DISPENSE PURSUANT TO SUBDIVISION SIX OF SECTION THIRTY-THREE HUNDRED THIRTY-ONE OF THIS ARTICLE, AND SHALL BE PROCESSED AND INCLUDED IN THE REGISTRY BY THE DEPARTMENT WITHOUT UNDUE DELAY. FOR PURPOSES OF THIS ARTICLE, "PATIENT-SPECIFIC INFORMATION" MEANS INFORMATION PERTAINING TO INDIVIDUAL PATIENTS INCLUDED IN THE REGISTRY, WHICH SHALL INCLUDE THE FOLLOWING INFORMATION AND SUCH OTHER INFORMATION AS IS REQUIRED BY THE DEPARTMENT IN REGULATION:

(I) THE PATIENT'S NAME;
(II) THE PATIENT'S RESIDENTIAL ADDRESS;
(III) THE PATIENT'S DATE OF BIRTH;
(IV) THE PATIENT'S GENDER;
(V) THE DATE ON WHICH THE PRESCRIPTION WAS ISSUED;
The date on which the controlled substance was dispensed; 
the metric quantity of the controlled substance dispensed; 
the number of days supply of the controlled substance dispensed; 
the name of the prescriber; 
the prescriber’s identification number, as assigned by the drug enforcement administration; 
the name or identifier of the drug that was dispensed; and 
the payment method.

The registry shall be secure, easily accessible by practitioners and pharmacists, and compatible with the electronic transmission of prescriptions for controlled substances, as required by section two hundred eighty-one of this chapter, and section sixty-eight hundred ten of the education law, and any regulations promulgated pursuant thereto. To the extent practicable, implementation of the electronic transmission of prescriptions for controlled substances shall serve to streamline consultation of the registry by practitioners and reporting of prescription information by pharmacists. The registry shall be interoperable with other similar registries operated by federal or state governments, to the extent deemed appropriate by the commissioner, and subject to the provisions of section thirty-three hundred seventy-one-a of this article.

The department shall establish and implement such protocols as are reasonably necessary to ensure that information contained in the registry is maintained in a secure and confidential manner and is accessible only by practitioners, pharmacists or their designees for the purposes established in subdivisions two and three of this section, or as otherwise set forth in sections thirty-three hundred seventy-one and thirty-three hundred seventy-one-a of this article. Such protocols shall include a mechanism for the department to monitor and record access to the registry, which shall identify the authorized individual accessing and each controlled substance history accessed.

Every practitioner shall consult the prescription monitoring program registry prior to prescribing or dispensing any controlled substance listed on schedule ii, iii or iv of section thirty-three hundred six of this article, for the purpose of reviewing a patient’s controlled substance history as set forth in such registry; provided, however, that nothing in this section shall preclude an authorized practitioner, other than a veterinarian, from consulting the registry at his or her option prior to prescribing or dispensing any controlled substance. The duty to consult the registry shall not apply to:

(i) veterinarians;
(ii) a practitioner dispensing pursuant to subdivision three of section thirty-three hundred fifty-one of this article;
(iii) a practitioner administering a controlled substance;
(iv) a practitioner prescribing or ordering a controlled substance for use on the premises of an institutional dispenser pursuant to section thirty-three hundred forty-two of this title;
(v) a practitioner prescribing a controlled substance in the emergency department of a general hospital, provided that the quantity of controlled substance prescribed does not exceed a five day supply if the controlled substance were used in accordance with the directions for use;
(VI) A PRACTITIONER PRESCRIBING A CONTROLLED SUBSTANCE TO A PATIENT UNDER THE CARE OF A HOSPICE, AS DEFINED BY SECTION FOUR THOUSAND TWO OF THIS CHAPTER;

(VII) A PRACTITIONER WHEN:

(A) IT IS NOT REASONABLY POSSIBLE FOR THE PRACTITIONER TO ACCESS THE REGISTRY IN A TIMELY MANNER;

(B) NO OTHER PRACTITIONER OR DESIGNEE AUTHORIZED TO ACCESS THE REGISTRY, PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, IS REASONABLY AVAILABLE; AND

(C) THE QUANTITY OF CONTROLLED SUBSTANCE PRESCRIBED DOES NOT EXCEED A FIVE DAY SUPPLY IF THE CONTROLLED SUBSTANCE WERE USED IN ACCORDANCE WITH THE DIRECTIONS FOR USE;

(VIII) A PRACTITIONER ACTING IN COMPLIANCE WITH REGULATIONS THAT MAY BE PROMULGATED BY THE COMMISSIONER AS TO CIRCUMSTANCES UNDER WHICH CONSULTATION OF THE REGISTRY WOULD RESULT IN A PATIENT’S INABILITY TO OBTAIN A PRESCRIPTION IN A TIMELY MANNER, THEREBY ADVERSELY IMPACTING THE MEDICAL CONDITION OF SUCH PATIENT;

(IX) A SITUATION WHERE THE REGISTRY IS NOT OPERATIONAL AS DETERMINED BY THE DEPARTMENT OR WHERE IT CANNOT BE ACCESSED BY THE PRACTITIONER DUE TO A TEMPORARY TECHNOLOGICAL OR ELECTRICAL FAILURE, AS SET FORTH IN REGULATION; OR

(X) A PRACTITIONER WHO HAS BEEN GRANTED A WAIVER DUE TO TECHNOLOGICAL LIMITATIONS THAT ARE NOT REASONABLY WITHIN THE CONTROL OF THE PRACTITIONER, OR OTHER EXCEPTIONAL CIRCUMSTANCE DEMONSTRATED BY THE PRACTITIONER, PURSUANT TO A PROCESS ESTABLISHED IN REGULATION, AND IN THE DISCRETION OF THE COMMISSIONER.

(B) FOR PURPOSES OF THIS SECTION, A PRACTITIONER MAY AUTHORIZE A DESIGNEE TO CONSULT THE PRESCRIPTION MONITORING PROGRAM REGISTRY ON HIS OR HER BEHALF, PROVIDED THAT: (I) THE DESIGNEE SO AUTHORIZED IS EMPLOYED BY THE SAME PROFESSIONAL PRACTICE OR IS UNDER CONTRACT WITH SUCH PRACTICE; (II) THE PRACTITIONER TAKES REASONABLE STEPS TO ENSURE THAT SUCH DESIGNEE IS SUFFICIENTLY COMPETENT IN THE USE OF THE REGISTRY; (III) THE PRACTITIONER REMAINS RESPONSIBLE FOR ENSURING THAT ACCESS TO THE REGISTRY BY THE DESIGNEE IS LIMITED TO AUTHORIZED PURPOSES AND OCCURS IN A MANNER THAT PROTECTS THE CONFIDENTIALITY OF THE INFORMATION OBTAINED FROM THE REGISTRY, AND REMAINS RESPONSIBLE FOR ANY BREACH OF CONFIDENTIALITY; AND (IV) THE ULTIMATE DECISION AS TO WHETHER OR NOT TO PRESCRIBE OR DISPENSE A CONTROLLED SUBSTANCE REMAINS WITH THE PRACTITIONER AND IS REASONABLY INFORMED BY THE RELEVANT CONTROLLED SUBSTANCE HISTORY INFORMATION OBTAINED FROM THE REGISTRY. THE COMMISSIONER SHALL ESTABLISH IN REGULATION REASONABLE PARAMETERS WITH REGARD TO A PRACTITIONER’S ABILITY TO AUTHORIZE DESIGNEES PURSUANT TO THIS SECTION, WHICH SHALL INCLUDE PROCESSES NECESSARY TO ALLOW THE DEPARTMENT TO: (A) GRANT ACCESS TO THE REGISTRY IN A REASONABLY PROMPT MANNER TO AS MANY DESIGNEES AS ARE AUTHORIZED BY PRACTITIONERS, UP TO THE NUMBER DEEMED APPROPRIATE BY THE COMMISSIONER FOR PARTICULAR PROFESSIONAL PRACTICES OR TYPES OF PRACTICES, TAKING INTO ACCOUNT THE NEED TO MAINTAIN SECURITY OF THE REGISTRY AND THE PATIENT-SPECIFIC INFORMATION MAINTAINED THEREIN, AND THE OBJECTIVE OF MINIMIZING BURDENS TO PRACTITIONERS TO THE EXTENT PRACTICABLE; (B) REQUIRE THAT PRACTITIONERS NOTIFY THE DEPARTMENT UPON TERMINATING THE AUTHORIZATION OF ANY DESIGNEE; AND (C) ESTABLISH A MECHANISM TO PREVENT SUCH TERMINATED DESIGNEES FROM ACCESSING THE REGISTRY IN A REASONABLY PROMPT MANNER FOLLOWING SUCH NOTIFICATION.

3. AUTHORITY TO CONSULT PRESCRIPTION MONITORING PROGRAM REGISTRY; PHARMACISTS. (A) A PHARMACIST MAY CONSULT THE PRESCRIPTION MONITORING PROGRAM REGISTRY IN ORDER TO REVIEW THE CONTROLLED SUBSTANCE HISTORY OF
AN INDIVIDUAL FOR WHOM ONE OR MORE PRESCRIPTIONS FOR CONTROLLED
SUBSTANCES IS PRESENTED TO SUCH PHARMACIST.

(B) FOR PURPOSES OF THIS SECTION, A PHARMACIST MAY DESIGNATE ANOTHER
PHARMACIST, A PHARMACY INTERN, AS DEFINED BY SECTION SIXTY-EIGHT HUNDRED
SIX OF THE EDUCATION LAW, OR OTHER INDIVIDUAL AS MAY BE PERMITTED BY THE
COMMISSIONER IN REGULATION, TO CONSULT THE PRESCRIPTION MONITORING
PROGRAM REGISTRY ON THE PHARMACIST'S BEHALF, PROVIDED THAT SUCH DESIGNEE
IS EMPLOYED BY THE SAME PHARMACY OR IS UNDER CONTRACT WITH SUCH PHARMA-
CY. THE COMMISSIONER SHALL ESTABLISH IN REGULATION REASONABLE PARAME-
TERS WITH REGARD TO A PHARMACIST'S ABILITY TO AUTHORIZE DESIGNEES PURSU-
ANT TO THIS SECTION, WHICH SHALL INCLUDE PROCESSES NECESSARY TO ALLOW
THE DEPARTMENT TO: (A) GRANT ACCESS TO THE REGISTRY IN A REASONABLY
PROMPT MANNER TO AS MANY DESIGNEES AS ARE AUTHORIZED BY PHARMACISTS, UP
TO THE NUMBER DEEMED APPROPRIATE BY THE COMMISSIONER FOR PARTICULAR
PHARMACIES, TAKING INTO ACCOUNT THE NEED TO MAINTAIN SECURITY OF THE
REGISTRY AND THE PATIENT-SPECIFIC INFORMATION MAINTAINED THEREIN, AND
THE OBJECTIVE OF MINIMIZING BURDENS TO PHARMACISTS TO THE EXTENT PRACTI-
CABLE; (B) REQUIRE THAT PHARMACISTS NOTIFY THE DEPARTMENT UPON TERMINAT-
ing THE AUTHORIZATION OF ANY DESIGNEE; AND (C) ESTABLISH A MECHANISM TO
PREVENT SUCH TERMINATED DESIGNEES FROM ACCESSING THE REGISTRY IN A
REASONABLY PROMPT MANNER FOLLOWING SUCH NOTIFICATION.

4. IMMUNITY. NO PRACTITIONER OR PHARMACIST, AND NO PERSON ACTING ON
BEHALF OF SUCH PRACTITIONER OR PHARMACIST AS PERMITTED UNDER THIS
SECTION, ACTING WITH REASONABLE CARE AND IN GOOD FAITH SHALL BE SUBJECT
TO CIVIL LIABILITY ARISING FROM ANY FALSE, INCOMPLETE OR INACCURATE
INFORMATION SUBMITTED TO OR REPORTED BY THE REGISTRY OR FOR ANY RESULT-
ING FAILURE OF THE SYSTEM TO ACCURATELY OR TIMELY REPORT SUCH INFORMA-
TION; PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE
DEEMED TO ALTER THE OBLIGATION TO SUBMIT OR REPORT PRESCRIPTION INFORMA-
TION TO THE DEPARTMENT AS OTHERWISE SET FORTH IN THIS ARTICLE OR IN
REGULATIONS PROMULGATED PURSUANT THERETO.

5. GUIDANCE TO PRACTITIONERS AND PHARMACISTS. THE COMMISSIONER SHALL,
in consultation with the commissioner of education, provide guidance to
PRACTITIONERS, PHARMACISTS, AND PHARMACIES REGARDING THE PURPOSES AND
USES OF THE REGISTRY ESTABLISHED BY THIS SECTION AND THE MEANS BY WHICH
PRACTITIONERS AND PHARMACISTS CAN ACCESS THE REGISTRY. SUCH GUIDANCE
SHALL REFERENCE EDUCATIONAL INFORMATION AVAILABLE PURSUANT TO THE
PRESCRIPTION PAIN MEDICATION AWARENESS PROGRAM ESTABLISHED PURSUANT TO
SECTION THIRTY-THREE HUNDRED NINE-A OF THIS ARTICLE.

6. INDIVIDUAL ACCESS TO CONTROLLED SUBSTANCE HISTORIES. THE COMMI-
sioner shall establish procedures by which an individual may: (A)
Request and obtain his or her own controlled substances history consist-
ing of patient-specific information or, in appropriate circumstances,
that of a patient who lacks capacity to make health care decisions and
for whom the individual has legal authority to make such decisions and
would have legal access to the patient's health care records; or (B)
Seek review of any part of his or her controlled substances history or,
in appropriate circumstances, that of a patient who lacks capacity to
make health care decisions and for whom the individual has legal author-
ity to make such decisions and would have legal access to the patient's
health care records, that such individual disputes. Such procedures
shall require the department to promptly revise any information accessi-
ble through the registry that the department determines to be inaccu-
rate. Such procedures shall be described on the department's website and
included with the controlled substances history provided to an individ-
ual pursuant to a request made under this subdivision or under SUBPARA-
1 GRAPH (IV) OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION THIRTY-THREE
2 HUNDRED SEVENTY-ONE OF THIS ARTICLE.
3 7. DEPARTMENT ANALYSIS OF DATA. THE DEPARTMENT SHALL PERIODICALLY
4 ANALYZE DATA CONTAINED IN THE PRESCRIPTION MONITORING PROGRAM REGISTRY
5 TO IDENTIFY INFORMATION THAT INDICATES THAT A VIOLATION OF LAW OR BREACH
6 OF PROFESSIONAL STANDARDS MAY HAVE OCCURRED AND, AS WARRANTED, PROVIDE
7 ANY RELEVANT INFORMATION TO APPROPRIATE ENTITIES AS PERMITTED UNDER
8 SECTION THIRTY-THREE HUNDRED SEVENTY-ONE OF THIS ARTICLE. THE DEPART-
9 MENT SHALL KEEP A RECORD OF THE INFORMATION PROVIDED, INCLUDING, BUT NOT
10 LIMITED TO, THE SPECIFIC INFORMATION PROVIDED AND THE AGENCY TO WHICH
11 SUCH INFORMATION WAS PROVIDED, INCLUDING THE NAME AND TITLE OF THE
12 PERSON TO WHOM SUCH INFORMATION WAS PROVIDED AND AN ATTESTATION FROM
13 SUCH PERSON THAT HE OR SHE HAS AUTHORITY TO RECEIVE SUCH INFORMATION.
14 8. FUNDING THE PRESCRIPTION MONITORING PROGRAM REGISTRY. (A) THE
15 COMMISSIONER SHALL MAKE REASONABLE EFFORTS TO APPLY FOR MONIES AVAILABLE
16 FROM THE FEDERAL GOVERNMENT AND OTHER INSTITUTIONS, TO THE EXTENT DEEMED
17 APPROPRIATE BY THE COMMISSIONER, AND USE ANY MONIES SO OBTAINED TO
18 SUPPLEMENT ANY OTHER MONIES MADE AVAILABLE FOR THE PURPOSES OF THIS
19 TITLE.
20 (B) OPERATION OF THE REGISTRY ESTABLISHED BY THIS SECTION SHALL NOT BE
21 FUNDED, IN WHOLE OR IN PART, BY FEES IMPOSED SPECIFICALLY FOR SUCH
22 PURPOSES UPON PRACTITIONERS, PHARMACISTS, DESIGNEES OR PATIENTS SUBJECT
23 TO THIS SECTION.
24 9. RULES AND REGULATIONS. THE COMMISSIONER SHALL PROMULGATE SUCH RULES
25 AND REGULATIONS AS ARE NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS
26 SECTION, IN CONSULTATION WITH THE WORK GROUP ESTABLISHED PURSUANT TO
27 SUBDIVISION THREE OF SECTION THIRTY-THREE HUNDRED NINE-A OF THIS ARTI-
28 CLE.
29 S 3. Subdivision 4 of section 3333 of the public health law, as
30 amended by chapter 178 of the laws of 2010, is amended to read as
31 follows:
32 4. The endorsed original prescription shall be retained by the propri-
33 etor of the pharmacy for a period of five years. The proprietor of the
34 pharmacy shall file OR CAUSE TO BE FILED such prescription information
35 with the department by electronic means [in such manner and detail] ON A
36 REAL TIME BASIS as the commissioner in consultation with the commissio-
37 ner of education shall, by regulation, require; PROVIDED, HOWEVER, THAT
38 THE COMMISSIONER MAY, PURSUANT TO A PROCESS ESTABLISHED IN REGULATION,
39 GRANT A WAIVER ALLOWING A PHARMACY TO MAKE SUCH FILINGS WITHIN A LONGER
40 PERIOD OF TIME IF AND TO THE EXTENT THAT THE COMMISSIONER FINDS IT
41 WARRANTED, IN HIS OR HER DISCRETION, DUE TO ECONOMIC HARDSHIP, TECHNO-
42 LOGICAL LIMITATIONS THAT ARE NOT REASONABLY WITHIN THE CONTROL OF THE
43 PHARMACY, OR OTHER EXCEPTIONAL CIRCUMSTANCE DEMONSTRATED BY THE
44 PHARMACY; AND PROVIDED, FURTHER, HOWEVER, THAT SUCH REGULATIONS SHALL
45 SPECIFY THE MANNER IN WHICH SUCH REQUIREMENTS SHALL APPLY TO THE DELIV-
46 ERY OF CONTROLLED SUBSTANCES TO INDIVIDUALS IN THIS STATE BY MEANS OF
47 MAIL OR LICENSED EXPRESS DELIVERY SERVICES.
48 S 4. Paragraphs (d) and (e) of subdivision 1 of section 3371 of the
49 public health law, as amended by chapter 178 of the laws of 2010, are
50 amended and five new paragraphs (f), (g), (h), (i) and (j) are added to
51 read as follows:
52 (d) to [a central] THE PRESCRIPTION MONITORING PROGRAM registry
53 [established pursuant to this article; and] AND TO AUTHORIZED USERS OF
54 SUCH REGISTRY AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION;
55 (e) to a practitioner to inform him or her that a patient may be under
56 treatment with a controlled substance by another practitioner[.] FOR THE
PURPOSES OF SUBDIVISION TWO OF THIS SECTION, AND TO FACILITATE THE
DEPARTMENT'S REVIEW OF INDIVIDUAL CHALLENGES TO THE ACCURACY OF
CONTROLLED SUBSTANCES HISTORIES PURSUANT TO SUBDIVISION SIX OF SECTION
THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE;

(F) TO A PHARMACIST TO PROVIDE INFORMATION REGARDING PRESCRIPTIONS FOR
CONTROLLED SUBSTANCES PRESENTED TO THE PHARMACIST FOR THE PURPOSES OF
SUBDIVISION TWO OF THIS SECTION AND TO FACILITATE THE DEPARTMENT'S
REVIEW OF INDIVIDUAL CHALLENGES TO THE ACCURACY OF CONTROLLED SUBSTANCES
HISTORIES PURSUANT TO SUBDIVISION SIX OF SECTION THIRTY-THREE HUNDRED
FORTY-THREE-A OF THIS ARTICLE;

(G) TO THE DEPUTY ATTORNEY GENERAL FOR MEDICAID FRAUD CONTROL, OR HIS
OR HER DESIGNEE, IN FURTHERANCE OF AN INVESTIGATION OF FRAUD, WASTE OR
ABUSE OF THE MEDICAID PROGRAM, PURSUANT TO AN AGREEMENT WITH THE DEPART-
MENT;

(H) TO A LOCAL HEALTH DEPARTMENT FOR THE PURPOSE OF CONDUCTING PUBLIC
HEALTH RESEARCH OR EDUCATION: (I) PURSUANT TO AN AGREEMENT WITH THE
COMMISSIONER; (II) WHEN THE RELEASE OF SUCH INFORMATION IS DEEMED APPROP-
RIATE BY THE COMMISSIONER; (III) FOR USE IN ACCORDANCE WITH MEASURES
REQUIRED BY THE COMMISSIONER TO ENSURE THAT THE SECURITY AND CONFIDEN-
TIALITY OF THE DATA IS PROTECTED; AND (IV) PROVIDED THAT DISCLOSURE IS
RESTRICTED TO INDIVIDUALS WITHIN THE LOCAL HEALTH DEPARTMENT WHO ARE
ENGAGED IN THE RESEARCH OR EDUCATION;

(I) TO A MEDICAL EXAMINER OR CORONER WHO IS AN OFFICER OF OR EMPLOYED
BY A STATE OR LOCAL GOVERNMENT, PURSUANT TO HIS OR HER OFFICIAL DUTIES;

(J) TO AN INDIVIDUAL FOR THE PURPOSE OF PROVIDING SUCH INDIVIDUAL WITH
HIS OR HER OWN CONTROLLED SUBSTANCE HISTORY OR, IN APPROPRIATE CIRCUM-
STANCES, IN THE CASE OF A PATIENT WHO LACKS CAPACITY TO MAKE HEALTH CARE
DECISIONS, A PERSON WHO HAS LEGAL AUTHORITY TO MAKE SUCH DECISIONS FOR
THE PATIENT AND WHO WOULD HAVE LEGAL ACCESS TO THE PATIENT'S HEALTH CARE
RECORDS, IF REQUESTED FROM THE DEPARTMENT PURSUANT TO SUBDIVISION SIX OF
SECTION THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE OR FROM A
TREATING PRACTITIONER PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (A) OF
SUBDIVISION TWO OF THIS SECTION.

5. Subdivision 2 of section 3371 of the public health law is renum-
erbered subdivision 4 and two new subdivisions 2 and 3 are added to read
as follows:

2. THE PRESCRIPTION MONITORING PROGRAM REGISTRY MAY BE ACCESSED, UNDER
SUCH TERMS AND CONDITIONS AS ARE ESTABLISHED BY THE DEPARTMENT FOR
PURPOSES OF MAINTAINING THE SECURITY AND CONFIDENTIALITY OF THE INFORMA-
TION CONTAINED IN THE REGISTRY, BY:

(A) A PRACTITIONER, OR A DESIGNEE AUTHORIZED BY SUCH PRACTITIONER
Pursuant to paragraph (B) of subdivision two of section thirty-three
hundred forty-three-a of this article, for the purposes of: (I) INFORM-
ING THE PRACTITIONER THAT A PATIENT MAY BE UNDER TREATMENT WITH A
CONTROLLED SUBSTANCE BY ANOTHER PRACTITIONER; (II) PROVIDING THE PRACTI-
TIONER WITH NOTIFICATIONS OF CONTROLLED SUBSTANCE ACTIVITY AS DEEMED
RELEVANT BY THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO A NOTIFICATION
MADE AVAILABLE ON A MONTHLY OR OTHER PERIODIC BASIS THROUGH THE REGISTRY
OF CONTROLLED SUBSTANCES ACTIVITY PERTAINING TO HIS OR HER PATIENT;
(III) ALLOWING THE PRACTITIONER, THROUGH CONSULTATION OF THE
PRESCRIPTION MONITORING PROGRAM REGISTRY, TO REVIEW HIS OR HER PATIENT'S
CONTROLLED SUBSTANCES HISTORY AS REQUIRED BY SECTION THIRTY-THREE
HUNDRED FORTY-THREE-A OF THIS ARTICLE; AND (IV) PROVIDING TO HIS OR HER
PATIENT, OR PERSON AUTHORIZED PURSUANT TO PARAGRAPH (J) OF SUBDIVISION
ONE OF THIS SECTION, UPON REQUEST, A COPY OF SUCH PATIENT'S CONTROLLED
SUBSTANCE HISTORY AS IS AVAILABLE TO THE PRACTITIONER THROUGH THE PRESCRIPTION MONITORING PROGRAM REGISTRY; OR
(B) A PHARMacist, PHARMACY INTERN OR OTHER DESIGNEE AUTHORIZED BY THE PHARMacist PURSUANT TO PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE, FOR THE PURPOSES OF:
(I) CONSULTING THE PRESCRIPTION MONITORING PROGRAM REGISTRY TO REVIEW THE CONTROLLED SUBSTANCES HISTORY OF AN INDIVIDUAL FOR WHOM ONE OR MORE PRESCRIPTIONS FOR CONTROLLED SUBSTANCES IS PRESENTED TO THE PHARMacist, PURSUANT TO SECTION THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE; AND (II) RECEIVING FROM THE DEPARTMENT SUCH NOTIFICATIONS OF CONTROLLED SUBSTANCE ACTIVITY AS ARE MADE AVAILABLE BY THE DEPARTMENT.
3. WHERE IT HAS REASON TO BELIEVE THAT A CRIME RELATED TO THE DIVERSION OF CONTROLLED SUBSTANCES HAS BEEN COMMITTED, THE DEPARTMENT MAY NOTIFY APPROPRIATE LAW ENFORCEMENT AGENCIES AND PROVIDE RELEVANT INFORMATION ABOUT THE SUSPECTED CRIMINAL ACTIVITY, INCLUDING CONTROLLED SUBSTANCES PRESCRIBED OR DISPENSED, AS REASONABLY APPEARS TO BE NECESSARY. THE DEPARTMENT SHALL KEEP A RECORD OF THE INFORMATION PROVIDED, INCLUDING, BUT NOT LIMITED TO: THE SPECIFIC INFORMATION PROVIDED AND THE AGENCY TO WHICH SUCH INFORMATION WAS PROVIDED, INCLUDING THE NAME AND TITLE OF THE PERSON TO WHOM SUCH INFORMATION WAS PROVIDED AND AN ATTERTATION FROM SUCH PERSON THAT HE OR SHE HAS AUTHORITY TO RECEIVE SUCH INFORMATION.
S 6. Section 3302 of the public health law is amended by adding a new subdivision 41 to read as follows:
41. "REGISTRY" OR "PRESCRIPTION MONITORING PROGRAM REGISTRY" MEANS THE PRESCRIPTION MONITORING PROGRAM REGISTRY ESTABLISHED PURSUANT TO SECTION THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE.
S 7. This act shall take effect one year after it shall have become a law; provided, however, that:
(a) the commissioners of health and education are authorized to add, amend or repeal any rule or regulation necessary and take other action necessary for the implementation of such provisions on such effective date;
(b) prior to such effective date, to the extent practicable, the department of health shall authorize practitioners, pharmacists and designees to access the prescription monitoring registry as set forth in this act and shall permit such access prior to such effective date, to the extent practicable; and
(c) nothing in subdivision (b) of this section shall require a practitioner to consult the registry prior to the effective date of this act.

PART B

Section 1. Sections 270 through 276 and section 277 of article 2-A of the public health law are designated title I and a new title heading is added to read as follows:
PREFERRED DRUG AND CLINICAL DRUG REVIEW PROGRAMS
S 1-a. Sections 276-a and 276-b of article 2-A of the public health law are renumbered sections 278 and 279, respectively, and such sections and section 280 of such article are designated title II and a new title heading is added to read as follows:
PRESCRIPTION DRUGS; VARIOUS PROVISIONS
S 2. Article 2-A of the public health law is amended by adding a new title III to read as follows:
TITLE III
PRESCRIPTION FORMS, ELECTRONIC PRESCRIBING AND LANGUAGE ASSISTANCE
SECTION 281. OFFICIAL NEW YORK STATE PRESCRIPTION FORMS.

S 281. OFFICIAL NEW YORK STATE PRESCRIPTION FORMS. 1. IN ADDITION TO
the requirements of Section Sixty-Eight Hundred Ten of the Education Law
or Article Thirty-Three of this Chapter, all prescriptions written in
this State by a person authorized by this State to issue such
prescriptions shall be on serialized official New York State
prescription forms provided by the Department. Such forms shall be
furnished to practitioners authorized to write prescriptions and to
institutional dispensers, and shall be non-reproducible and non-trans-
erable. The Commissioner, in consultation with the Commissioner of
Education, may promulgate emergency regulations for the electronic tran-
smission of prescriptions from prescribers to pharmacists or for order-
ing and filling requirements of prescription drugs for prescriptions
written for recipients eligible for medical assistance pursuant to Title
Eleven of Article Five of the Social Services Law, for participants in
the Program for Elderly Pharmaceutical Insurance Coverage pursuant to
Title Three of Article Two of the Elder Law and for prescriptions writ-
ten pursuant to Article Thirty-Three of this Chapter. Nothing in this
section shall prohibit the Commissioner in consultation with the Commis-
sioner of Education from promulgating any additional emergency regu-
lations in furtherance of this subdivision.

2. The Commissioner, in consultation with the Commissioner of Educa-
tion, shall promulgate regulations requiring that prescription forms and
electronic prescriptions include: (A) A section wherein prescribers may
indicate whether an individual is limited English proficient, as defined
in Section Sixty-Eight Hundred Twenty-Nine of the Education Law; and (B)
if the patient is limited English proficient, a line where the prescri-
ber may specify the preferred language indicated by the patient. Fail-
ture to include such indication on the part of the prescriber shall not
invalidate the prescription.

3. On or before December Thirty-First, Two Thousand Twelve, the
Commissioner shall promulgate regulations, in consultation with the
Commissioner of Education, establishing standards for electronic
prescriptions. Notwithstanding any other provision of this section or
any other law to the contrary, effective two years subsequent to the
date on which such regulations are promulgated, no person shall issue
any prescription in this State unless such prescription is made by elec-
tronic prescription from the person issuing the prescription to a phar-
macy in accordance with such regulatory standards, except for
prescriptions: (A) Issued by veterinarians; (B) Issued in circumstances
where electronic prescribing is not available due to temporary techno-
logical or electrical failure, as set forth in regulation; (C) Issued by
practitioners who have received a waiver or a renewal thereof for a
specified period determined by the Commissioner, not to exceed one year,
from the requirement to use electronic prescribing, pursuant to a proc-
ess established in regulation by the Commissioner, in consultation with
the Commissioner of Education, due to economic hardship, technological
limitations that are not reasonably within the control of the practi-
titioner, or other exceptional circumstance demonstrated by the practi-
tioner; (D) Issued by a practitioner under circumstances where, notwith-
standing the practitioner's present ability to make an electronic
prescription as required by this subdivision, such practitioner reason-
ably determines that it would be impractical for the patient to obtain
substances prescribed by electronic prescription in a timely manner, and
such delay would adversely impact the patient's medical condition,
provided that if such prescription is for a controlled substance, the
QUANTITY OF CONTROLLED SUBSTANCES DOES NOT EXCEED A FIVE DAY SUPPLY IF THE CONTROLLED SUBSTANCE WERE USED IN ACCORDANCE WITH THE DIRECTIONS FOR USE; OR (E) ISSUED BY A PRACTITIONER TO BE DISPENSED BY A PHARMACY LOCATED OUTSIDE THE STATE, AS SET FORTH IN REGULATION.

4. IN THE CASE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE ISSUED BY A PRACTITIONER UNDER PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION, THE PRACTITIONER SHALL FILE INFORMATION ABOUT THE ISSUANCE OF SUCH PRESCRIPTION WITH THE DEPARTMENT AS SOON AS PRACTICABLE, AS SET FORTH IN REGULATION.

5. IN THE CASE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE ISSUED BY A PRACTITIONER UNDER PARAGRAPH (D) OR (E) OF SUBDIVISION THREE OF THIS SECTION, THE PRACTITIONER SHALL, UPON ISSUING SUCH PRESCRIPTION, FILE INFORMATION ABOUT THE ISSUANCE OF SUCH PRESCRIPTION WITH THE DEPARTMENT BY ELECTRONIC MEANS, AS SET FORTH IN REGULATION.

6. THE WAIVER PROCESS ESTABLISHED IN REGULATION PURSUANT TO PARAGRAPH (C) OF SUBDIVISION THREE OF THIS SECTION SHALL PROVIDE THAT A PRACTITIONER PRESCRIBING UNDER A WAIVER MUST NOTIFY THE DEPARTMENT IN WRITING PROMPTLY UPON GAINING THE CAPABILITY TO USE ELECTRONIC PRESCRIBING, AND THAT A WAIVER SHALL TERMINATE WITHIN A SPECIFIED PERIOD OF TIME AFTER THE PRACTITIONER GAINS SUCH CAPABILITY.

S 3. Section 6810 of the education law is amended by adding four new subdivisions 10, 11, 12 and 13 to read as follows:

10. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR ANY OTHER LAW TO THE CONTRARY, EFFECTIVE TWO YEARS SUBSEQUENT TO THE DATE ON WHICH REGULATIONS ESTABLISHING STANDARDS FOR ELECTRONIC PRESCRIPTIONS ARE PROMULGATED BY THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE COMMISSIONER PURSUANT TO SUBDIVISION THREE OF SECTION TWO HUNDRED EIGHTY-ONE OF THE PUBLIC HEALTH LAW, NO PRACTITIONER SHALL ISSUE ANY PRESCRIPTION IN THIS STATE, UNLESS SUCH PRESCRIPTION IS MADE BY ELECTRONIC PRESCRIPTION FROM THE PRACTITIONER TO A PHARMACY, EXCEPT FOR PRESCRIPTIONS: (A) ISSUED BY VETERINARIANS; (B) ISSUED OR DISPENSED IN CIRCUMSTANCES WHERE ELECTRONIC PRESCRIBING IS NOT AVAILABLE DUE TO TEMPORARY TECHNOLOGICAL OR ELECTRICAL FAILURE, AS SET FORTH IN REGULATION; (C) ISSUED BY PRACTITIONERS WHO HAVE RECEIVED A WAIVER OR A RENEWAL THEREOF FOR A SPECIFIED PERIOD DETERMINED BY THE COMMISSIONER OF HEALTH, NOT TO EXCEED ONE YEAR, FROM THE REQUIREMENT TO USE ELECTRONIC PRESCRIBING, PURSUANT TO A PROCESS ESTABLISHED IN REGULATION BY THE COMMISSIONER OF HEALTH, IN CONSULTATION WITH THE COMMISSIONER DUE TO ECONOMIC HARDSHIP, TECHNOLOGICAL LIMITATIONS THAT ARE NOT REASONABLY WITHIN THE CONTROL OF THE PRACTITIONER, OR OTHER EXCEPTIONAL CIRCUMSTANCE DEMONSTRATED BY THE PRACTITIONER; (D) ISSUED BY A PRACTITIONER UNDER CIRCUMSTANCES WHERE, NOTWITHSTANDING THE PRACTITIONER'S PRESENT ABILITY TO MAKE AN ELECTRONIC PRESCRIPTION AS REQUIRED BY THIS SUBDIVISION, SUCH PRACTITIONER REASONABLY DETERMINES THAT IT WOULD BE IMPRUDENT FOR THE PATIENT TO OBTAIN SUBSTANCES PRESCRIBED BY ELECTRONIC PRESCRIPTION IN A TIMELY MANNER, AND SUCH DELAY WOULD ADVERSELY IMPACT THE PATIENT'S MEDICAL CONDITION, PROVIDED THAT IF SUCH PRESCRIPTION IS FOR A CONTROLLED SUBSTANCE, THE QUANTITY THAT DOES NOT EXCEED A FIVE DAY SUPPLY IF THE CONTROLLED SUBSTANCE WAS USED IN ACCORDANCE WITH THE DIRECTIONS FOR USE; OR (E) ISSUED BY A PRACTITIONER TO BE DISPENSED BY A PHARMACY LOCATED OUTSIDE THE STATE, AS SET FORTH IN REGULATION.

11. IN THE CASE OF A PRESCRIPTION ISSUED BY A PRACTITIONER UNDER PARAGRAPH (B) OF SUBDIVISION TEN OF THIS SECTION, THE PRACTITIONER SHALL BE REQUIRED TO FILE INFORMATION ABOUT THE ISSUANCE OF SUCH PRESCRIPTION WITH THE DEPARTMENT OF HEALTH AS SOON AS PRACTICABLE, AS SET FORTH IN REGULATION.
12. IN THE CASE OF A PRESCRIPTION ISSUED BY A PRACTITIONER UNDER PARAGRAPH (D) OR (E) OF SUBDIVISION TEN OF THIS SECTION, THE PRACTITIONER SHALL, UPON ISSUING SUCH PRESCRIPTION, FILE INFORMATION ABOUT THE ISSUANCE OF SUCH PRESCRIPTION WITH THE DEPARTMENT OF HEALTH BY ELECTRONIC MEANS, AS SET FORTH IN REGULATION.

13. THE WAIVER PROCESS ESTABLISHED IN REGULATION PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TEN OF THIS SECTION SHALL PROVIDE THAT A PRACTITIONER PRESCRIBING UNDER A WAIVER MUST NOTIFY THE DEPARTMENT IN WRITING PROMPTLY UPON GAINING THE CAPABILITY TO USE ELECTRONIC PRESCRIBING, AND THAT A WAIVER SHALL TERMINATE WITHIN A SPECIFIED PERIOD OF TIME AFTER THE PRACTITIONER GAINS SUCH CAPABILITY.

S 4. Section 21 of the public health law is REPEALED.

S 5. This act shall take effect immediately; provided, however, that the provisions of subdivision 2 of section 281 of the public health law, as added by section two of this act, shall take effect March 30, 2013, except that as of such date, the commissioner of health, the commissioner of education and the state board of pharmacy are immediately authorized and directed to take actions necessary to implement such provisions as of such date; provided, further, that any rules or regulations that have been adopted or proposed prior to the effective date of this act which are applicable to section 21 of the public health law shall now apply to section 281 of the public health law as added by section two of this act; and provided, further, that any rules or regulations that have been adopted or proposed prior to the effective date of this act which are applicable to sections 276-a and 276-b of the public health law shall now apply to sections 278 and 279 of the public health law, respectively, renumbered by section one-a of this act.

PART C

Section 1. Paragraph 1 of subdivision (b) of schedule II of section 3306 of the public health law, as amended by chapter 457 of the laws of 2006, is amended to read as follows:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

1. Raw opium.
2. Opium extracts.
3. Opium fluid.
4. Powdered opium.
5. Granulated opium.
6. Tincture of opium.
7. Codeine.
8. Ethylmorphine.
11. Hydromorphone.
12. Metopon.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.
18. ORIPAVINE.
Schedule II of section 3306 of the public health law is amended by adding a new subdivision (b-1) to read as follows:

(B-1) UNLESS SPECIFICALLY EXCEPTED OR UNLESS LISTED IN ANOTHER SCHEDULE, ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY OF THE FOLLOWING, OR THEIR SALTS CALCULATED AS THE FREE ANHYDROUS BASE OR ALKALOID, IN LIMITED QUANTITIES AS SET FORTH BELOW:

(1) NOT MORE THAN THREE HUNDRED MILLIGRAMS OF DIHYDROCODINE (HYDROCODONE) PER ONE HUNDRED MILLILITERS OR NOT MORE THAN FIFTEEN MILLIGRAMS PER DOSAGE UNIT, WITH A FOURFOLD OR GREATER QUANTITY OF AN ISOQUINOLINE ALKALOID OF OPIUM.

(2) NOT MORE THAN THREE HUNDRED MILLIGRAMS OF DIHYDROCODINE (HYDROCODONE) PER ONE HUNDRED MILLILITERS OR NOT MORE THAN FIFTEEN MILLIGRAMS PER DOSAGE UNIT, WITH ONE OR MORE ACTIVE NONNARCOTIC INGREDIENTS IN RECOGNIZED THERAPEUTIC AMOUNTS.

Section 3307 of the public health law is amended by adding a new subdivision 5 to read as follows:

5. THE COMMISSIONER SHALL ESTABLISH MINIMUM STANDARDS FOR THE STORAGE, REPORTING, ORDERING AND RECORD KEEPING OF CONTROLLED SUBSTANCES SPECIFIED IN SUBDIVISION (B-1) OF SCHEDULE II OF SECTION THIRTY-THREE HUNDRED SIX OF THIS ARTICLE BY MANUFACTURERS AND DISTRIBUTORS AS IF SUCH SUBSTANCES WERE SET FORTH IN SCHEDULE III OF SECTION THIRTY-THREE HUNDRED SIX OF THIS ARTICLE.

Paragraph 6 of subdivision (b) of schedule II of section 3306 of the public health law is REPEALED.

Subdivision (c) of schedule II of section 3306 of the public health law is amended by adding a new paragraph 28 to read as follows:

(28) TAPENTADOL.

Subdivision (d) of schedule II of section 3306 of the public health law, as added by chapter 664 of the laws of 1985, paragraph 5 as added by chapter 178 of the laws of 2010, is amended to read as follows:

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS:

(1) Amphetamine[, its salts, optical isomers, and salts of its optical isomers].
(2) Methamphetamine[, its salts, isomers, and salts of its isomers].
(3) Phenmetrazine [and its salts].
(4) Methylphenidate.
(5) Lisdexamfetamine.

Subdivision (g) of schedule II of section 3306 of the public health law is amended by adding a new paragraph 3 to read as follows:

(3) IMMEDIATE PRECURSOR TO FENTANYL:
(I) 4-ANILINO-N-PHENETHYL-4-PIPERIDINE (ANPP).

Subdivision (h) of schedule II of section 3306 of the public health law, as amended by chapter 178 of the laws of 2010, is amended to read as follows:

(h) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, "anabolic steroid" shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids and dehydroepiandrosterone) [that promotes muscle growth, or any material, compound, mixture, or preparation which contains any amount of the following substances] AND INCLUDES:

(1) 3{beta}, 17-dihydroxy-5a-androstan-3-one.
(2) 3{alpha}, 17{beta}-dihydroxy-5a-androstane.
(3) 5{alpha}-androstan-3,17-dione.
(4) 1-androstenediol (3{beta}, 17{beta}-dihydroxy-5{alpha}-androst-1-ene).
(5) 1-androstenediol (3{alpha}, 17{beta}-dihydroxy-5{alpha}-androst-1-ene).
(6) 4-androstenediol (3{beta}, 17{beta}-dihydroxy-androst-4-ene).
(7) 5-androstenedione (3{beta}, 17{beta}-dihydroxy-androst-5-ene).
(8) 1-androstenedione (5{alpha})-androst-1-en-3, 17-dione).
(9) 4-androstenedione (androst-4-en-3, 17-dione).
(10) 5-androstenedione (androst-5-en-3, 17-dione).
(11) Bolasterone (7{alpha}, 17{alpha}-dimethyl-17{beta}-hydroxyandrost-1-en-3-one).
(12) Boldenone (17{beta}-hydroxyandrost-1, 4, 6-diene-3-one).
(13) BOLDIONE (ANDROSTA-1, 4-DIENE-3, 17-DIONE).
(14) Calusterone (7{beta}, 17{alpha}-dimethyl-17{beta}-hydroxyandrost-1-en-3-one).
[[14] (15) Clostebol (4-chloro-17{beta}-hydroxyandrost-4-en-3-one).
[[15] (16) Dehydrochloromethyltestosterone [(4-chloro-17{beta}-hydroxy-17{alpha}-methyl-androst-1-en-3-one).
[[16] (17) {Delta} 1-dihydrotestosterone (a.k.a. '1-testosterone')
[[17] (18) 4-dihydrotestosterone (17{beta}-hydroxy-androstan-3-one).
[[18] (19) Drostanolone (17{beta}-hydroxy-2{alpha}-methyl-5{alpha}-androstan-3-one).
[[19] (20) Ethylestrenol (17{alpha}-ethyl-17{beta}-hydroxyestr-4-ene).
[[20] (21) Fluoxymesterone (9-fluoro-17{alpha}-methyl-11{beta}, 17{beta})-dihydroxandrost-4-en-3-one).
[[21] (22) Formebolone (2-formyl-17{alpha}-methyl-11{beta}, 17{beta})-dihydroxyandrost-4-en-3-one).
[[22] (23) Furazabol (17{alpha}-methyl-17{beta}-hydroxyandrostan-2, 3-c-furazan).
[[23] (24) 13{beta}-ethyl-17{alpha}-hydroxygon-4-en-3-one]
[[24] (25) 4-hydroxytestosteronne [(4, 17{beta})-dihydroxyandrost-4-en-3-one].
[[25] (26) 4-hydroxy-19-nortestosterone (4, 17{beta})-dihydroxy-estr-4-en-3-one).
[[26] (27) DESOXYMETHYLTETOSTERONE (17{alpha}-methyl-17{beta}-hydroxy-5-androstan-3-one).
[[27] (28) Mestanolone (17{alpha}-methyl-17{beta}-hydroxy-5-androstan-3-one).
[[28] (29) Mesterolone (1{alpha})-methyl-17{beta}-hydroxy-androst-5-en-3-one).
[[29] (30) Methandienone (17{alpha}-methyl-17{beta}-hydroxyandrost-1, 4-dien-3-one).
[[30] (31) Methandriol (17{alpha}-methyl-3{beta}, 17{beta})-dihydroxyandrost-5-ene).
[[31] (32) Methenolone (1-methyl-17{beta}-hydroxy-5{alpha}-androst-1-en-3-one).
[[32] (33) 17{alpha}-methyl-3{beta}, 17{beta})-dihydroxy-5a-androstane.
[[33] (34) 17{alpha}-methyl-3{alpha}, 17{beta})-dihydroxy-5a-androstane.
[(34)] (36) 17(α)-methyl-4-hydroxynandrolone (17(α)-methyl-4-
hydroxy-17(β)-hydroxyestr-4-en-3-one).
[(35)] (37) Methyldienolone (17(α)-methyl-17(β)-hydroxyestra-
4,9(10)-dien-3-one).
[(36)] (38) Methyltrienolone (17(α)-methyl-17(β)-hydroxyestr-
4,9(10)-dien-3-one).
[(37)] (39) Methyltestosterone (17(α)-methyl-17(β)-hydroxyandrost-
4-en-3-one).
[(38)] (40) Mibolerone (7(α),17(α)-dimethyl-17(β)-hydroxyestr-
4-en-3-one).
[(39)] (41) 17(α)-methyl-Δ1-dihydrotestosterone (a.k.a. '17-
(α)-methyl-1-testosterone').
[(40)] (42) Nandrolone (17(β)-hydroxyestr-4-en-3-one).
[(41)] (43) 19-nor-4-androstenediol (3(β),17(β)-dihydroxyestr-
4-ene).
[(42)] (44) 19-nor-4-androstenediol (3(α),17(β)-dihydroxyestr-
4-ene).
[(43)] (45) 19-nor-5-androstenediol (3(β),17(β)-dihydroxyestr-
5-ene).
[(44)] (46) 19-nor-5-androstenediol (3(α),17(β)-dihydroxyestr-
5-ene).
[(45)] (47) 19-NOR-4,9(10)-ANDROSTADIENEDIONE
[(46)] (48) 19-nor-4-androstenedione (estr-4-en-3,17-dione).
[(47)] (49) 19-nor-5-androstenedione (estr-5-en-3,17-dione).
[(48)] (50) Norbolethone (13(β),17(α)-diethyl-17(β)
-hydroxygon-4-en-3-one).
[(49)] (51) Norclostebol (4-chloro-17(β)-hydroxyestr-4-en-3-one).
[(50)] (52) Norethandrolone (17(α)-ethyl-17(β)-
hydroxyestr-4-en-3-one).
[(51)] (53) Normethandrolone (17(α)-methyl-17(β)
-hydroxyestr-4-en-3-one).
[(52)] (54) Oxandrolone (17(α)-methyl-17(β)-hydroxy-2-oxa-
{5(α)}-androstan-3-one).
[(53)] (55) Oxymesterone (17(α)-methyl-4,17(β)-dihydroxy[–]
androst-4-en-3-one).
[(54)] (56) Oxymetholone (17 {α}-methyl-2-hydroxymethylene-17
(beta)-hydroxy-{5(α)}-androstan-3-one).
[(55)] (57) Stanozolol (17(α)-methyl-17(β)-hydroxy-{5(α)})-
androst-2-eno(3,2-c)-pyrazole).
[(56)] (58) Stenbolone (17(β)-hydroxy-2-methyl-{5(α)}-androst-
1-en-3-one).
[(57)] (59) Testolactone (13-hydroxy-3-oxo-13, 17-secoandrost-1,
4-dien-17-oic acid lactone).
[(58)] (60) Testosterone (17(β)-hydroxyandrost-4-en-3-one).
[(59)] (61) Tetrahydrogestrinone (13(β), 17(α)-diethyl
-17(β)-hydroxygon-4, 9, 11-trien-3-one).
[(60)] (62) Trenbolone (17(β)-hydroxyestr-4, 9, 11-trien-3-one).
[(61)] (63) Any salt, ester or ether of a drug or substance described
or listed in this subdivision.
S 9. The opening paragraph of subdivision (c) of schedule III of
section 3306 of the public health law, as added by chapter 664 of the
laws of 1985, is amended to read as follows:
Unless specifically excepted or unless listed in another schedule, any
material, compound, mixture, or preparation which contains any quantity
of the following substances having a depressant effect on the central nervous system, INCLUDING ITS SALTS, ISOMERS, AND SALTS OF ISOMERS:

Subdivision (e) of schedule III of section 3306 of the public health law, as added by chapter 664 of the laws of 1985, paragraphs 3 and 4 as amended by chapter 589 of the laws of 1996 and paragraph 9 as added by chapter 457 of the laws of 2006, is amended to read as follows:

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

1. Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.8 grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Subdivision (f) of schedule III of section 3306 of the public health law, as amended by chapter 178 of the laws of 2010, is amended to read as follows:

(f) (i) Dronabinol (SYNTHETIC) in sesame oil and encapsulated in a soft gelatin capsule in a [drug product approved for marketing by the] U.S. Food and Drug Administration [(FDA)] APPROVED PRODUCT.
(ii) Any drug product in tablet or capsule form containing natural dronabinol derived from the cannabis (plant) or synthetic dronabinol (produced from synthetic materials) for which an abbreviated new drug application (ANDA) has been approved by the FDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act which references as its listed drug the drug product referred to in paragraph (i) of this subdivision.

Some other names for dronabinol include: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo(b,d) pyran-1-ol, or (-)-delta-9-(trans) - tetrahydrocannabinol.
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1 S 12. Subdivision (c) of schedule IV of section 3306 of the public health law is amended by adding two new paragraphs 52 and 53 to read as follows:
2 (52) FOSPROFOFOL.
3 (53) CARISOPRODOL.
4 S 13. Paragraph 11 of subdivision (e) of schedule IV of section 3306 of the public health law, as added by chapter 457 of the laws of 2006, is amended to read as follows:
5 (11) [Modafanil] MODAFINIL.
6 S 14. Subdivision (f) of schedule IV of section 3306 of the public health law is amended by adding a new paragraph 3 to read as follows:
7 (3) TRAMADOL IN ANY QUANTITIES.
8 S 15. Subdivision (b) of schedule V of section 3306 of the public health law, as added by chapter 664 of the laws of 1985, is amended to read as follows:
9 (b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal [qualities] QUALITIES other than those possessed by narcotic drugs alone:
10 (1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.
11 (2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.
12 (3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.
13 (4) Not more than 2.5 milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.
14 (5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.
15 (6) Not more than 0.5 milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.
16 S 16. Subdivision (d) of schedule V of section 3306 of the public health law, as added by chapter 178 of the laws of 2010, is amended to read as follows:
17 (d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, ISOMERS, AND SALTS OF ISOMERS:
18 (1) EZOGABINE {N-{2-AMINO-4-(4-FLUOROBENZYLAMINO)-PHENYL}-CARBAMIC ACID ETHYL ESTER}.
19 (2) LACOSAMIDE {{(R)-2-ACETOAMIDO-N-BENZYL-3-METHOXY-PROPIONAMIDE}.
20 (3) Pregabalin [{{(S)-3-(aminomethyl)-5-methylhexanoic acid[]}].
21 S 17. Subdivision 7 of section 3331 of the public health law, as amended by chapter 640 of the laws of 1990, is amended to read as follows:
22 7. A practitioner may not administer, prescribe or dispense any substance referred to in subdivision (h) [or subdivision (j)] of Schedule II, AND SUBDIVISION (G) OF SCHEDULE III, of section three thousand three hundred six of this article for other than therapeutic purposes. A practitioner may not administer, prescribe or dispense any such substance to any individual without first obtaining the informed consent
of such individual, or where the individual lacks capacity to give such consent, a person legally authorized to consent on his or her behalf.

S 18. Subdivision 8 of section 220.00 of the penal law, as amended by chapter 664 of the laws of 1985, is amended to read as follows:

8. "Narcotic preparation" means any controlled substance listed in schedule II (B-1), III (d) or III (e).

S 19. This act shall take effect on the ninetieth day after it shall have become a law; provided that sections two, three, ten, fourteen and eighteen shall take effect on the one hundred eightieth day after it shall have become a law; and provided that sections fifteen and seventeen of this act shall take effect immediately.

PART D

Section 1. Subparagraphs (i), (ii) and (iii) of paragraph (b) of subdivision 2 of section 3309-a of the public health law, as added by section 52 of part D of chapter 56 of the laws of 2012, are amended and a new subparagraph (iv) is added to read as follows:

(i) Report to the commissioner regarding the development of recommendations and model courses for continuing medical education, refresher courses and other training materials for licensed health care professionals on appropriate use of prescription pain medication. Such recommendations, model courses and other training materials shall be submitted to the commissioner, who shall make such information available for the use in medical education, residency programs, fellowship programs, and for use in continuing medication education programs no later than January first, two thousand thirteen. SUCH RECOMMENDATIONS ALSO SHALL INCLUDE RECOMMENDATIONS ON: (A) EDUCATIONAL AND CONTINUING MEDICAL EDUCATION REQUIREMENTS FOR PRACTITIONERS APPROPRIATE TO ADDRESS PRESCRIPTION PAIN MEDICATION AWARENESS AMONG HEALTH CARE PROFESSIONALS; (B) CONTINUING EDUCATION REQUIREMENTS FOR PHARMACISTS RELATED TO PRESCRIPTION PAIN MEDICATION AWARENESS; AND (C) CONTINUING EDUCATION IN PALLIATIVE CARE AS IT RELATES TO PAIN MANAGEMENT, FOR WHICH PURPOSE THE WORK GROUP SHALL CONSULT THE NEW YORK STATE PALLIATIVE CARE EDUCATION AND TRAINING COUNCIL;

(ii) No later than January first, two thousand thirteen, provide outreach and assistance to health care professional organizations to encourage and facilitate continuing medical education training programs for their members regarding appropriate prescribing practices FOR THE BEST PATIENT CARE and the risks associated with [prescription] OVERPRESCRIBING AND UNDERPRESCRIBING pain medication; [and]

(iii) Provide information to the commissioner for use in the development and continued update of the public awareness campaign, including information, resources, and active web links that should be included on the website[.]; AND

(IV) CONSIDER OTHER ISSUES DEEMED RELEVANT BY THE COMMISSIONER, INCLUDING HOW TO PROTECT AND PROMOTE THE ACCESS OF PATIENTS WITH A LEGITIMATE NEED FOR CONTROLLED SUBSTANCES, PARTICULARLY MEDICATIONS NEEDED FOR PAIN MANAGEMENT BY ONCOLOGY PATIENTS, AND WHETHER AND HOW TO ENCOURAGE OR REQUIRE THE USE OR SUBSTITUTION OF OPIOID DRUGS THAT EMPLOY TAMPER-RESISTANCE TECHNOLOGY AS A MECHANISM FOR REDUCING ABUSE AND DIVERSION OF OPIOID DRUGS.

S 2. Subdivision 3 of section 3309-a of the public health law, as added by section 52 of part D of chapter 56 of the laws of 2012, is amended to read as follows:

4. The commissioner shall report to the governor, the temporary president of the senate and the speaker of the assembly no later than March first, two thousand thirteen, and annually thereafter, on the work group's findings. The report shall include information on opioid overdose deaths, emergency room utilization for the treatment of opioid overdose, the utilization of pre-hospital addiction services and recommendations to reduce opioid addiction and the consequences thereof. THE REPORT SHALL ALSO INCLUDE A RECOMMENDATION AS TO WHETHER SUBDIVISION TWO OF SECTION THIRTY-THREE HUNDRED FORTY-THREE-A OF THIS ARTICLE SHOULD BE AMENDED TO REQUIRE PRACTITIONERS PRESCRIBING OR DISPENSING CERTAIN IDENTIFIED SCHEDULE V CONTROLLED SUBSTANCES TO COMPLY WITH THE CONSULTATION REQUIREMENTS OF SUCH SUBDIVISION.

S 3. This act shall take effect immediately.

PART E

Section 1. The public health law is amended by adding a new section 3343-b to read as follows:

S 3343-B. SAFE DISPOSAL OF UNUSED CONTROLLED SUBSTANCES. THE DEPARTMENT SHALL ESTABLISH A PROGRAM FOR THE SAFE DISPOSAL OF UNUSED CONTROLLED SUBSTANCES BY CONSUMERS IN ACCORDANCE WITH FEDERAL LAW. THE PROGRAM SHALL PERMIT INDIVIDUAL MEMBERS OF THE PUBLIC TO VOLUNTARILY SURRENDER CONTROLLED SUBSTANCES LISTED ON SCHEDULE II, III, IV OR V OF SECTION THIRTY-THREE HUNDRED SIX OF THIS ARTICLE IN A SECURE MANNER, WITHOUT IDENTIFYING THEMSELVES, AND SHALL BE PUBLICIZED CONSISTENT WITH THE PRESCRIPTION PAIN MEDICATION AWARENESS PROGRAM ESTABLISHED PERSUANT TO SECTION THIRTY-THREE HUNDRED NINE-A OF THIS ARTICLE. THE SURRENDER OF A CONTROLLED SUBSTANCE PERSUANT TO THE PROGRAM ESTABLISHED PERSUANT TO THIS SECTION SHALL NOT CONSTITUTE THE POSSESSION, TRANSFER OR SALE OF SUCH CONTROLLED SUBSTANCE FOR PURPOSES OF THIS ARTICLE OR THE PENAL LAW. IN DEVELOPING SUCH PROGRAM, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING: APPROPRIATE SITES FOR DISPOSAL THROUGHOUT THE STATE; THE ROLE OF LAW ENFORCEMENT AND FEDERAL AUTHORITIES, AS APPROPRIATE; AND THE MANNER IN WHICH POTENTIAL COSTS TO LOCALITIES OR TO THE STATE WILL BE ADDRESSED. DISPOSAL SITES SHALL BE OPERATED BY LAW ENFORCEMENT AGENCIES ON A VOLUNTARY BASIS IN COLLABORATION WITH THE DEPARTMENT. NOTHING IN THIS SECTION SHALL REQUIRE ANY POLITICAL SUBDIVISION OF THE STATE TO PARTICIPATE IN THE PROGRAM ESTABLISHED IN THIS SECTION.

S 2. This act shall take effect immediately.

S 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment
shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 4. This act shall take effect immediately; provided, however, that the applicable effective date of Parts A through E of this act shall be as specifically set forth in the last section of such Parts.
(a) "Another adult authorized to consent to the minor's medical treatment" means an adult to whom a minor's parent or guardian has given written authorization to consent to the minor's medical treatment.

(b) "Medical emergency" means a situation that in a prescriber's good faith medical judgment creates an immediate threat of serious risk to the life or physical health of a minor.

(c) "Minor" means an individual under eighteen years of age who is not emancipated.

(2) For purposes of this section, an individual under eighteen years of age is emancipated only if the individual has married, entered the armed services of the United States, became employed and self-sustaining, or has otherwise become independent from the care and control of the individual's parent, guardian, or custodian.

(B) Except as provided in division (C) of this section, before issuing for a minor the first prescription in a single course of treatment for a particular compound that is a controlled substance containing an opioid, regardless of whether the dosage is modified during that course of treatment, a prescriber shall do all of the following:

(1) As part of the prescriber's examination of the minor, assess whether the minor has ever suffered, or is currently suffering, from mental health or substance abuse disorders and whether the minor has taken or is currently taking prescription drugs for treatment of those disorders;

(2) Discuss with the minor and the minor's parent, guardian, or another adult authorized to consent to the minor's medical treatment all of the following:

(a) The risks of addiction and overdose associated with the compound;

(b) The increased risk of addiction to controlled substances of individuals suffering from both mental and substance abuse disorders;

(c) The dangers of taking controlled substances containing opioids with benzodiazepines, alcohol, or other central nervous system depressants;

(d) Any other information in the patient counseling information section of the labeling for the compound required under 21 C.F.R. 201.57(c)(18).

(3) Obtain written consent for the prescription from the minor's parent, guardian, or, subject to division (E) of this section, another adult authorized to consent to the minor's medical treatment.

The prescriber shall record the consent on a form, which shall be known as the "Start Talking!" consent form. The form shall be separate from any other document the prescriber uses to obtain informed consent for other treatment provided to the minor. The form shall contain all of the following:

(a) The name and quantity of the compound being prescribed and the
amount of the initial dose;

(b) A statement indicating that a controlled substance is a drug or other substance that the United States drug enforcement administration has identified as having a potential for abuse;

(c) A statement certifying that the prescriber discussed with the minor and the minor's parent, guardian, or another adult authorized to consent to the minor's medical treatment the matters described in division (B)(2) of this section;

(d) The number of refills, if any, authorized by the prescription;

(e) The signature of the minor's parent, guardian, or another adult authorized to consent to the minor's medical treatment and the date of signing.

(C)(1) The requirements in division (B) of this section do not apply if the minor's treatment with a compound that is a controlled substance containing an opioid meets any of the following criteria:

(a) The treatment is associated with or incident to a medical emergency.

(b) The treatment is associated with or incident to surgery, regardless of whether the surgery is performed on an inpatient or outpatient basis.

(c) In the prescriber's professional judgment, fulfilling the requirements of division (B) of this section with respect to the minor's treatment would be a detriment to the minor's health or safety.

(d) Except as provided in division (D) of this section, the treatment is rendered in a hospital, ambulatory surgical facility, nursing home, pediatric respite care program, residential care facility, freestanding rehabilitation facility, or similar institutional facility.

(2) The requirements in division (B) of this section do not apply to a prescription for a compound that is a controlled substance containing an opioid that a prescriber issues to a minor at the time of discharge from a facility or other location described in division (C)(1)(d) of this section.

(D) The exemption in division (C)(1)(d) of this section does not apply to treatment rendered in a prescriber's office that is located on the premises of or adjacent to a facility or other location described in that division.

(E) If the individual who signs the consent form required by division (B)(3) of this section is another adult authorized to consent to the minor's medical treatment, the prescriber shall prescribe not more than a single, seventy-two-hour supply and indicate on the prescription the quantity that is to be dispensed pursuant to the prescription.

(F) A signed "Start Talking!" consent form obtained under this section shall be maintained in the minor's medical record.

Sec. 4715.30. (A) An applicant for or holder of a certificate or license
director's action.

(F) Notwithstanding any other provision of this section, the director may void the board's granting of a waiver or variance issued under this section. The director shall notify the board and the maternity home in writing of the director's action not later than forty-five days after the decision to void.

Sec. 3711.30. (A) As used in this section, "opioid" means opium, opium derivatives, and synthetic opium substitutes.

(B) Each maternity unit, newborn care nursery, and maternity home shall report to the department of health the number of newborns born to residents of this state in the unit, nursery, or home during the preceding calendar quarter that were diagnosed as opioid dependent at birth. The reports shall be submitted not later than thirty days after the end of each quarter and shall not include any patient-identifying information.

(C) The department shall establish standards and procedures for reporting the information required by this section. The information reported under this section shall not be used for law enforcement purposes or disclosed to law enforcement authorities.

(D) The department shall compile the information submitted under this section and make a summary of that information available to the public not later than ninety days after the end of each calendar year.

Sec. 3719.41. Controlled substance schedules I, II, III, IV, and V are hereby established, which schedules include the following, subject to amendment pursuant to section 3719.43 or 3719.44 of the Revised Code.

SCHEDULE I

(A) Narcotics-opiates

Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
2. Acetylmethadol;
3. Allylprodine;
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
5. Alphameprodine;
6. Alphamethadol;
7. Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide);
AN ACT relating to public health; requiring a provider of health care who provides certain services to patients located in this State through telehealth to have a valid license or certificate in this State; making persons who provide such services through telehealth to patients subject to the laws and jurisdiction of this State; requiring certain insurers to provide coverage to insureds for services provided through telehealth to the same extent as though provided in person; authorizing a hospital to provide staff privileges to certain providers of health care to provide services through telehealth; requiring the Commissioner of Insurance to consider health care services that may be provided by providers through telehealth when evaluating certain network plans; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes certain providers of health care to provide certain health care services electronically, telephonically or by fiber optics. (NRS 630.020, 630.261, 630.275, 632.237, 633.165, 639.0727, 639.235) Section 3 of this bill defines “telehealth” as the delivery of health care services from a provider of health care to a patient at a different location through the use of information and audio-visual communication technology, not including standard telephone, facsimile or electronic mail. Section 3 also prohibits a provider of health care, except for an employee or contractor of certain nonprofit organizations that administer health programs for American Indians, from using telehealth to direct or manage care, render a diagnosis or write a treatment order or prescription for a patient located in this State without a valid license or certificate to practice his or her profession in this State. Finally, section 3 provides that any person who provides such services through telehealth to a patient located in this State: (1) is subject to the laws, including regulations, and jurisdiction of this State; and (2) is required to comply with all federal and state laws that would apply if the person were providing services from a location in this State. Sections 6-18 of this bill clarify that certain provisions regulating the provision of health care services electronically, telephonically or by fiber optics apply to health care services provided through telehealth. Section 44 of this bill repeals certain requirements of existing law concerning the use of telemmedicine by an osteopathic physician because it is addressed by sections 3, 10 and 11. Sections 27-32, 36-39 and 41-43 of this bill require any policy of health insurance, a policy of industrial insurance that provides benefits for injuries and the State Plan for Medicaid to include coverage for health care services provided to a covered person through telehealth to the same extent as though provided in person.

Existing federal regulations allow the governing body of a hospital at which patients receive services through telemedicine to have its medical staff rely upon the credentialing and privileging decisions made by the staff of a facility from which services are provided when deciding whether to extend staff privileges to a
provider of health care who provides services through telemedicine from that facility. (42 C.F.R. §§ 482.12, 482.22, 485.616) Section 22 of this bill authorizes a hospital to grant staff privileges to a provider of health care who is at another location so that the provider may provide services through telehealth to patients at the hospital as prescribed in federal regulations.

Existing law requires the Commissioner of Insurance to make certain determinations concerning the adequacy of a network plan that an insurer proposes to offer and approve the network plan before the network plan is issued. Existing law also requires the Commissioner to make an annual determination concerning the availability and accessibility of the health care services of any existing network plan. (NRS 687B.490) Section 28 of this bill requires the Commissioner to consider health care services that may be provided by providers through telehealth pursuant to the network plan when making such a determination.

EXPLANATION – Matter in bolded italics is new; matter between brackets [omitted material] is material to be omitted.

WHEREAS, Shortages of primary providers of health care and providers of health care who specialize in certain areas and the distances some people must travel to reach a provider of health care affects the ability of many people to obtain the health care services they need; and

WHEREAS, Parts of this State have experienced difficulty attracting and retaining providers of health care and supporting health care facilities that provide the necessary variety of health care services to persons; and

WHEREAS, Providers of health care located in underserved areas may not have access to mentors and colleagues to support them personally and professionally or information resources that may assist them in their practices; and

WHEREAS, Telehealth is a mode of delivering health care and public health services using information and audio-visual communication technology to enable diagnosis, consultation, treatment, care management and provision of information to patients from providers of health care at other locations; and

WHEREAS, Telehealth may help to address the problem of an inadequate distribution of providers of health care and develop health care systems in underserved areas of the State; and

WHEREAS, Telehealth can reduce the costs of providing health care and increase the quality of and access to health care in underserved areas of the State; and

WHEREAS, Telehealth provides economic benefits to underserved areas by reducing the need for persons to leave those areas to obtain health care services and preserving and creating jobs relating to the provision of health care in those areas; and
WHEREAS, Patients receive many benefits from telehealth, including increased access to providers of health care, the ability to receive health care services in a faster and more convenient manner, increased continuity of care, reduction of lost work time and travel costs and the ability to remain near family and friends while receiving health care services; and

WHEREAS, Without the assurance that providers of health care will be reimbursed by insurers for services provided through telehealth and the resolution of other legal barriers to the provision of services through telehealth, the full benefits of telehealth cannot be realized; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 629 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. The Legislature hereby finds and declares that:
1. Health care services provided through telehealth are often as effective as health care services provided in person;
2. The provision of services through telehealth does not detract from, and often improves, the quality of health care provided to patients and the relationship between patients and providers of health care; and
3. It is the public policy of this State to:
   (a) Encourage and facilitate the provision of services through telehealth to improve public health and the quality of health care provided to patients and to lower the cost of health care in this State; and
   (b) Ensure that services provided through telehealth are covered by policies of insurance to the same extent as though provided in person or by other means.

Sec. 3. 1. Except as otherwise provided in this subsection, before a provider of health care who is located at a distant site may use telehealth to direct or manage the care or render a diagnosis of a patient who is located at an originating site in this State or write a treatment order or prescription for such a patient, the provider must hold a valid license or certificate to practice his or her profession in this State, including, without limitation, a special purpose license issued pursuant to NRS 630.261. The requirements of this subsection do not apply to a provider of health care who is providing services within the scope of his or her employment by or pursuant to a contract entered into with an urban Indian organization, as defined in 25 U.S.C. § 1603.
2. The provisions of this section must not be interpreted or construed to:
   (a) Modify, expand or alter the scope of practice of a provider of health care; or
   (b) Authorize a provider of health care to provide services in a setting that is not authorized by law or in a manner that violates the standard of care required of the provider of health care.

3. A provider of health care who is located at a distant site and uses telehealth to direct or manage the care or render a diagnosis of a patient who is located at an originating site in this State or write a treatment order or prescription for such a patient:
   (a) Is subject to the laws and jurisdiction of the State of Nevada, including, without limitation, any regulations adopted by an occupational licensing board in this State, regardless of the location from which the provider of health care provides services through telehealth.
   (b) Shall comply with all federal and state laws that would apply if the provider were located at a distant site in this State.

4. As used in this section:
   (a) “Distant site” means the location of the site where a telehealth provider of health care is providing telehealth services to a patient located at an originating site.
   (b) “Originating site” means the location of the site where a patient is receiving telehealth services from a provider of health care located at a distant site.
   (c) “Telehealth” means the delivery of services from a provider of health care to a patient at a different location through the use of information and audio-visual communication technology, not including standard telephone, facsimile or electronic mail.

Sec. 4. Chapter 630 of NRS is hereby amended by adding thereto a new section to read as follows:

“Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 5. NRS 630.005 is hereby amended to read as follows:

630.005  As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 630.007 to 630.026, inclusive, and section 4 of this act have the meanings ascribed to them in those sections.

Sec. 6. NRS 630.020 is hereby amended to read as follows:

630.020  “Practice of medicine” means:

1. To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other
condition, physical or mental, by any means or instrumentality, including, but not limited to, the performance of an autopsy.

2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such conditions.

3. To perform any of the acts described in subsections 1 and 2 by using equipment that transfers information concerning the medical condition of the patient electronically, telephonically or by fiber optics, including, without limitation, through telehealth, from within or outside this State or the United States.

4. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.

Sec. 7. NRS 630.261 is hereby amended to read as follows:

630.261 1. Except as otherwise provided in NRS 630.161, the Board may issue:

(a) A locum tenens license, to be effective not more than 3 months after issuance, to any physician who is licensed and in good standing in another state, who meets the requirements for licensure in this State and who is of good moral character and reputation. The purpose of this license is to enable an eligible physician to serve as a substitute for another physician who is licensed to practice medicine in this State and who is absent from his or her practice for reasons deemed sufficient by the Board. A license issued pursuant to the provisions of this paragraph is not renewable.

(b) A special license to a licensed physician of another state to come into this State to care for or assist in the treatment of his or her own patient in association with a physician licensed in this State. A special license issued pursuant to the provisions of this paragraph is limited to the care of a specific patient. The physician licensed in this State has the primary responsibility for the care of that patient.

(c) A restricted license for a specified period if the Board determines the applicant needs supervision or restriction.

(d) A temporary license for a specified period if the physician is licensed and in good standing in another state and meets the requirements for licensure in this State, and if the Board determines that it is necessary in order to provide medical services for a community without adequate medical care. A temporary license issued pursuant to the provisions of this paragraph is not renewable.

(e) A special purpose license to a physician who is licensed in another state to perform any of the acts described in subsections 1 and 2 of NRS 630.020 by using equipment that transfers information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics, including, without limitation, through telehealth, from within or outside this
State or the United States. A physician who holds a special purpose license issued pursuant to this paragraph:

(1) Except as otherwise provided by specific statute or regulation, shall comply with the provisions of this chapter and the regulations of the Board; and

(2) To the extent not inconsistent with the Nevada Constitution or the United States Constitution, is subject to the jurisdiction of the courts of this State.

2. For the purpose of paragraph (e) of subsection 1, the physician must:
   (a) Hold a full and unrestricted license to practice medicine in another state;
   (b) Not have had any disciplinary or other action taken against him or her by any state or other jurisdiction; and
   (c) Be certified by a specialty board of the American Board of Medical Specialties or its successor.

3. Except as otherwise provided in this section, the Board may renew or modify any license issued pursuant to subsection 1.

Sec. 8. NRS 630.275 is hereby amended to read as follows:

630.275 The Board shall adopt regulations regarding the licensure of a physician assistant, including, but not limited to:
1. The educational and other qualifications of applicants.
2. The required academic program for applicants.
3. The procedures for applications for and the issuance of licenses.
4. The tests or examinations of applicants by the Board.
5. The medical services which a physician assistant may perform, except that a physician assistant may not perform those specific functions and duties delegated or restricted by law to persons licensed as dentists, chiropractors, podiatric physicians and optometrists under chapters 631, 634, 635 and 636, respectively, of NRS, or as hearing aid specialists.
6. The duration, renewal and termination of licenses.
7. The grounds and procedures respecting disciplinary actions against physician assistants.
8. The supervision of medical services of a physician assistant by a supervising physician, including, without limitation, supervision that is performed electronically, telephonically or by fiber optics from within or outside this State or the United States.
9. A physician assistant’s use of equipment that transfers information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics, including,
without limitation, through telehealth, from within or outside this State or the United States.

Sec. 9. NRS 632.237 is hereby amended to read as follows:

632.237 1. The Board may issue a license to practice as an advanced practice registered nurse to a registered nurse who:
   (a) Has completed an educational program designed to prepare a registered nurse to:
       (1) Perform designated acts of medical diagnosis;
       (2) Prescribe therapeutic or corrective measures; and
       (3) Prescribe controlled substances, poisons, dangerous drugs and devices;
   (b) Except as otherwise provided in subsection 5, submits proof that he or she is certified as an advanced practice registered nurse by the American Board of Nursing Specialties, the National Commission for Certifying Agencies of the Institute for Credentialing Excellence, or their successor organizations, or any other nationally recognized certification agency approved by the Board; and
   (c) Meets any other requirements established by the Board for such licensure.

2. An advanced practice registered nurse may:
   (a) Engage in selected medical diagnosis and treatment; and
   (b) If authorized pursuant to NRS 639.2351 and subject to the limitations set forth in subsection 3, prescribe controlled substances, poisons, dangerous drugs and devices.

An advanced practice registered nurse shall not engage in any diagnosis, treatment or other conduct which the advanced practice registered nurse is not qualified to perform.

3. An advanced practice registered nurse who is authorized to prescribe controlled substances, poisons, dangerous drugs and devices pursuant to NRS 639.2351 shall not prescribe a controlled substance listed in schedule II unless:
   (a) The advanced practice registered nurse has at least 2 years or 2,000 hours of clinical experience; or
   (b) The controlled substance is prescribed pursuant to a protocol approved by a collaborating physician.

4. An advanced practice registered nurse may perform the acts described in subsection 2 by using equipment that transfers information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics, including, without limitation, through telehealth, as defined in section 3 of this act, from within or outside this State or the United States.

5. The Board shall adopt regulations:
(a) Specifying any additional training, education and experience necessary for licensure as an advanced practice registered nurse.
(b) Delineating the authorized scope of practice of an advanced practice registered nurse.
(c) Establishing the procedure for application for licensure as an advanced practice registered nurse.

6. The provisions of paragraph (b) of subsection 1 do not apply to an advanced practice registered nurse who obtains a license before July 1, 2014.

Sec. 10. NRS 633.511 is hereby amended to read as follows:
633.511 The grounds for initiating disciplinary action pursuant to this chapter are:
1. Unprofessional conduct.
2. Conviction of:
   (a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;
   (b) A felony relating to the practice of osteopathic medicine or practice as a physician assistant;
   (c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;
   (d) Murder, voluntary manslaughter or mayhem;
   (e) Any felony involving the use of a firearm or other deadly weapon;
   (f) Assault with intent to kill or to commit sexual assault or mayhem;
   (g) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;
   (h) Abuse or neglect of a child or contributory delinquency; or
   (i) Any offense involving moral turpitude.
3. The suspension of a license to practice osteopathic medicine or to practice as a physician assistant by any other jurisdiction.
4. Malpractice or gross malpractice, which may be evidenced by a claim of malpractice settled against a licensee.
5. Professional incompetence.
6. Failure to comply with the requirements of NRS 633.527.
7. Failure to comply with the requirements of subsection 3 of NRS 633.471.
8. Failure to comply with the provisions of NRS 633.694.
9. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:
   (a) The license of the facility is suspended or revoked; or
(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

This subsection applies to an owner or other principal responsible for the operation of the facility.

10. Failure to comply with the provisions of subsection 2 of NRS 633.322.

11. Signing a blank prescription form.

12. Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:
   (a) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;
   (b) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or
   (c) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.

13. Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.

14. Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.

15. In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.

16. Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.

17. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

18. Engaging in any act that is unsafe in accordance with regulations adopted by the Board.
19. Failure to comply with the provisions of [NRS 633.165.] section 3 of this act.

20. Failure to supervise adequately a medical assistant pursuant to the regulations of the Board.

Sec. 11. NRS 633.711 is hereby amended to read as follows:

633.711  1. The Board, through an officer of the Board or the Attorney General, may maintain in any court of competent jurisdiction a suit for an injunction against any person:
   (a) Practicing osteopathic medicine or practicing as a physician assistant without a valid license to practice osteopathic medicine or to practice as a physician assistant; or
   (b) [Engaging in telemedicine] Providing services through telehealth, as defined in section 3 of this act, without a valid license. [pursuant to NRS 633.165.]

2. An injunction issued pursuant to subsection 1:
   (a) May be issued without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure.
   (b) Must not relieve such person from criminal prosecution for practicing without such a license.

Sec. 12. Chapter 639 of NRS is hereby amended by adding thereto a new section to read as follows:

“Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 13. NRS 639.001 is hereby amended to read as follows:

639.001  As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 639.0015 to 639.016, inclusive, and section 12 of this act have the meanings ascribed to them in those sections.

Sec. 14. NRS 639.0151 is hereby amended to read as follows:

639.0151  “Remote site” means:
   1. A pharmacy staffed by a pharmaceutical technician and equipped to facilitate communicative access to a pharmacy and its registered pharmacists; or
   2. An office of a dispensing practitioner that is staffed by a dispensing technician and equipped to facilitate communicative access to the dispensing practitioner, electronically, telephonically or by fiber optics, including, without limitation, through telehealth, during regular business hours from within or outside this State or the United States.
Sec. 15. NRS 639.0153 is hereby amended to read as follows:
639.0153 “Satellite consultation site” means a site that only dispenses filled prescriptions which are delivered to that site after the prescriptions are prepared:
1. At a pharmacy where a registered pharmacist provides consultation to patients; or
2. At an office of a dispensing practitioner where the dispensing practitioner provides consultation to patients,
electronically, telephonically or by fiber optics, including, without limitation, through telehealth, during regular business hours from within or outside this State or the United States.

Sec. 16. NRS 639.0154 is hereby amended to read as follows:
639.0154 “Telepharmacy” means:
1. A pharmacy; or
2. An office of a dispensing practitioner,
that is accessible by a remote site or a satellite consultation site electronically, telephonically or by fiber optics, including, without limitation, through telehealth, from within or outside this State or the United States.

Sec. 17. NRS 639.0727 is hereby amended to read as follows:
639.0727 The Board shall adopt regulations:
1. As are necessary for the safe and efficient operation of remote sites, satellite consultation sites and telepharmacies;
2. To define the terms “dispensing practitioner” and “dispensing technician,” to provide for the registration and discipline of dispensing practitioners and dispensing technicians, and to set forth the qualifications, powers and duties of dispensing practitioners and dispensing technicians;
3. To authorize registered pharmacists to engage in the practice of pharmacy electronically, telephonically or by fiber optics, including, without limitation, through telehealth, from within or outside this State; and
4. To authorize prescriptions to be filled and dispensed to patients as prescribed by practitioners electronically, telephonically or by fiber optics, including, without limitation, through telehealth, from within or outside this State or the United States.

Sec. 18. NRS 639.235 is hereby amended to read as follows:
639.235 1. No person other than a practitioner holding a license to practice his or her profession in this State may prescribe or write a prescription, except that a prescription written by a person who is not licensed to practice in this State, but is authorized by the laws of another state to prescribe, shall be deemed to be a legal
prescription unless the person prescribed or wrote the prescription in violation of the provisions of NRS 453.3611 to 453.3648, inclusive.

2. If a prescription that is prescribed by a person who is not licensed to practice in this State, but is authorized by the laws of another state to prescribe, calls for a controlled substance listed in:

(a) Schedule II, the registered pharmacist who is to fill the prescription shall establish and document that the prescription is authentic and that a bona fide relationship between the patient and the person prescribing the controlled substance did exist when the prescription was written.

(b) Schedule III or IV, the registered pharmacist who is to fill the prescription shall establish that the prescription is authentic and that a bona fide relationship between the patient and the person prescribing the controlled substance did exist when the prescription was written. This paragraph does not require the registered pharmacist to inquire into such a relationship upon the receipt of a similar prescription subsequently issued for that patient.

3. A pharmacist who fills a prescription described in subsection 2 shall record on the prescription or in the prescription record in the pharmacy’s computer:

(a) The name of the person with whom the pharmacist spoke concerning the prescription;

(b) The date and time of the conversation; and

(c) The date and time the patient was examined by the person prescribing the controlled substance for which the prescription was issued.

4. For the purposes of subsection 2, a bona fide relationship between the patient and the person prescribing the controlled substance shall be deemed to exist if the patient was examined in person, electronically, telephonically or by fiber optics, including, without limitation, through telehealth, within or outside this State or the United States by the person prescribing the controlled substances within the 6 months immediately preceding the date the prescription was issued.

Sec. 19. NRS 287.010 is hereby amended to read as follows:

287.010 1. The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada may:

(a) Adopt and carry into effect a system of group life, accident or health insurance, or any combination thereof, for the benefit of its officers and employees, and the dependents of officers and employees who elect to accept the insurance and who, where
necessary, have authorized the governing body to make deductions from their compensation for the payment of premiums on the insurance.

(b) Purchase group policies of life, accident or health insurance, or any combination thereof, for the benefit of such officers and employees, and the dependents of such officers and employees, as have authorized the purchase, from insurance companies authorized to transact the business of such insurance in the State of Nevada, and, where necessary, deduct from the compensation of officers and employees the premiums upon insurance and pay the deductions upon the premiums.

(c) Provide group life, accident or health coverage through a self-insurance reserve fund and, where necessary, deduct contributions to the maintenance of the fund from the compensation of officers and employees and pay the deductions into the fund. The money accumulated for this purpose through deductions from the compensation of officers and employees and contributions of the governing body must be maintained as an internal service fund as defined by NRS 354.543. The money must be deposited in a state or national bank or credit union authorized to transact business in the State of Nevada. Any independent administrator of a fund created under this section is subject to the licensing requirements of chapter 683A of NRS, and must be a resident of this State. Any contract with an independent administrator must be approved by the Commissioner of Insurance as to the reasonableness of administrative charges in relation to contributions collected and benefits provided. The provisions of NRS 687B.408, 689B.030 to 689B.050, inclusive, and 689B.287 and section 31 of this act apply to coverage provided pursuant to this paragraph.

(d) Defray part or all of the cost of maintenance of a self-insurance fund or of the premiums upon insurance. The money for contributions must be budgeted for in accordance with the laws governing the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada.

2. If a school district offers group insurance to its officers and employees pursuant to this section, members of the board of trustees of the school district must not be excluded from participating in the group insurance. If the amount of the deductions from compensation required to pay for the group insurance exceeds the compensation to which a trustee is entitled, the difference must be paid by the trustee.

3. In any county in which a legal services organization exists, the governing body of the county, or of any school district,
municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada in the county, may enter into a contract with the legal services organization pursuant to which the officers and employees of the legal services organization, and the dependents of those officers and employees, are eligible for any life, accident or health insurance provided pursuant to this section to the officers and employees, and the dependents of the officers and employees, of the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency.

4. If a contract is entered into pursuant to subsection 3, the officers and employees of the legal services organization:
   (a) Shall be deemed, solely for the purposes of this section, to be officers and employees of the county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency with which the legal services organization has contracted; and
   (b) Must be required by the contract to pay the premiums or contributions for all insurance which they elect to accept or of which they authorize the purchase.

5. A contract that is entered into pursuant to subsection 3:
   (a) Must be submitted to the Commissioner of Insurance for approval not less than 30 days before the date on which the contract is to become effective.
   (b) Does not become effective unless approved by the Commissioner.
   (c) Shall be deemed to be approved if not disapproved by the Commissioner within 30 days after its submission.

6. As used in this section, “legal services organization” means an organization that operates a program for legal aid and receives money pursuant to NRS 19.031.

Sec. 20. NRS 287.04335 is hereby amended to read as follows:
287.04335 If the Board provides health insurance through a plan of self-insurance, it shall comply with the provisions of NRS 689B.255, 695G.150, 695G.160, 695G.164, 695G.1645, 695G.167, 695G.170, 695G.171, 695G.173, 695G.177, 695G.200 to 695G.230, inclusive, 695G.241 to 695G.310, inclusive, and 695G.405, and section 43 of this act in the same manner as an insurer that is licensed pursuant to title 57 of NRS is required to comply with those provisions.
Sec. 21. Chapter 422 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Director shall include in the State Plan for Medicaid:
   (a) A requirement that the State, and, to the extent applicable, any of its political subdivisions, shall pay for the nonfederal share of expenses for services provided to a person through telehealth to the same extent as though provided in person or by other means; and
   (b) A provision prohibiting the State from:
      (1) Requiring a person to obtain prior authorization that would not be required if a service were provided in person or through other means, establish a relationship with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to paying for services as described in paragraph (a). The State Plan for Medicaid may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or through other means.
      (2) Requiring a provider of health care to demonstrate that it is necessary to provide services to a person through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to paying for services as described in paragraph (a).
      (3) Refusing to pay for services as described in paragraph (a) because of the distant site from which a provider of health care provides services through telehealth or the originating site at which a person who is covered by the State Plan for Medicaid receives services through telehealth.
      (4) Requiring services to be provided through telehealth as a condition to paying for such services.

2. The provisions of this section do not:
   (a) Require the Director to include in the State Plan for Medicaid coverage of any service that the Director is not otherwise required by law to include; or
   (b) Require the State or any political subdivision thereof to:
      (1) Ensure that covered services are available to a recipient of Medicaid through telehealth at a particular originating site; or
      (2) Provide coverage for a service that is not included in the State Plan for Medicaid or provided by a provider of health care that does not participate in Medicaid.

3. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
(b) “Originating site” has the meaning ascribed to it in section 3 of this act.

c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.

d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 22. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

A hospital may grant staff privileges to a provider of health care who is at another location for the purpose of providing services through telehealth, as defined in section 3 of this act, to patients at the hospital in the manner prescribed in 42 C.F.R. §§ 482.12, 482.22 and 485.616.

Sec. 23. NRS 449.0302 is hereby amended to read as follows:

449.0302  1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.030 to 449.2428, inclusive, and section 22 of this act and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may provide certain care in his or her home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

d) Regulations establishing a procedure for the indemnification by the Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

e) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.030 to 449.2428, inclusive, and section 22 of this act.

2. The Board shall adopt separate regulations governing the licensing and operation of:

(a) Facilities for the care of adults during the day; and

(b) Residential facilities for groups,

which provide care to persons with Alzheimer’s disease.

3. The Board shall adopt separate regulations for:
(a) The licensure of rural hospitals which take into consideration the unique problems of operating such a facility in a rural area.
(b) The licensure of facilities for refractive surgery which take into consideration the unique factors of operating such a facility.
(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. In addition to the training requirements prescribed pursuant to NRS 449.093, the Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:
   (a) The ultimate user’s physical and mental condition is stable and is following a predictable course.
   (b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.
   (c) A written plan of care by a physician or registered nurse has been established that:
      (1) Addresses possession and assistance in the administration of the medication; and
      (2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.
   (d) The prescribed medication is not administered by injection or intravenously.
   (e) The employee has successfully completed training and examination approved by the Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The Board shall not allow the
licensing of a facility as a residential facility for groups which provides assisted living services and a residential facility for groups shall not claim that it provides “assisted living services” unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident’s stay at the facility.

(b) The residents of the facility reside in their own living units which:

1. Except as otherwise provided in subsection 8, contain toilet facilities;
2. Contain a sleeping area or bedroom; and
3. Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

1. The facility is designed to create a residential environment that actively supports and promotes each resident’s quality of life and right to privacy;
2. The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident’s individual needs;
3. The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and the resident’s personal choice of lifestyle;
4. The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident’s need for autonomy and the right to make decisions regarding his or her own life;
5. The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal relationships with fellow residents and with persons in the general community;
6. The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and
7. The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.
8. The Division may grant an exception from the requirement of subparagraph (1) of paragraph (b) of subsection 7 to a facility which is licensed as a residential facility for groups on or before July 1, 2005, and which is authorized to have 10 or fewer beds and was originally constructed as a single-family dwelling if the Division finds that:
   (a) Strict application of that requirement would result in economic hardship to the facility requesting the exception; and
   (b) The exception, if granted, would not:
       (1) Cause substantial detriment to the health or welfare of any resident of the facility;
       (2) Result in more than two residents sharing a toilet facility; or
       (3) Otherwise impair substantially the purpose of that requirement.
9. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:
   (a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;
   (b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;
   (c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and
   (d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.
10. The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:
    (a) Facilities that only provide a housing and living environment;
    (b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and
    (c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and
living environment and providing or arranging for the provision of other supportive services.

The regulations must provide that if a facility was originally constructed as a single-family dwelling, the facility must not be authorized for more than eight beds.

11. As used in this section, “living unit” means an individual private accommodation designated for a resident within the facility.

Sec. 24. NRS 449.0306 is hereby amended to read as follows:

449.0306 1. Money received from licensing medical facilities and facilities for the dependent must be forwarded to the State Treasurer for deposit in the State General Fund.

2. The Division shall enforce the provisions of NRS 449.030 to 449.245, inclusive, and section 22 of this act and may incur any necessary expenses not in excess of money appropriated for that purpose by the State or received from the Federal Government.

Sec. 25. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.030 to 449.2428, inclusive, and section 22 of this act upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.030 to 449.245, inclusive, and section 22 of this act, or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.

(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to NRS 449.001 to 449.430, inclusive, and section 22 of this act, and 449.435 to 449.965, inclusive, if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:
(a) Is convicted of violating any of the provisions of NRS 202.470;
(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or
(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Division shall maintain a log of any complaints that it receives relating to activities for which the Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Division shall provide to a facility for the care of adults during the day:
   (a) A summary of a complaint against the facility if the investigation of the complaint by the Division either substantiates the complaint or is inconclusive;
   (b) A report of any investigation conducted with respect to the complaint;
   (c) A report of any disciplinary action taken against the facility.

   The facility shall make the information available to the public pursuant to NRS 449.2486.

4. On or before February 1 of each odd-numbered year, the Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:
   (a) Any complaints included in the log maintained by the Division pursuant to subsection 3; and
   (b) Any disciplinary actions taken by the Division pursuant to subsection 2.

Sec. 26. NRS 449.220 is hereby amended to read as follows:
449.220  1. The Division may bring an action in the name of the State to enjoin any person, state or local government unit or agency thereof from operating or maintaining any facility within the meaning of NRS 449.030 to 449.2428, inclusive, and section 22 of this act:
   (a) Without first obtaining a license therefor; or
   (b) After his or her license has been revoked or suspended by the Division.

2. It is sufficient in such action to allege that the defendant did, on a certain date and in a certain place, operate and maintain such a facility without a license.

Sec. 27. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:
1. Every policy of insurance issued pursuant to chapters 616A to 617, inclusive, of NRS must include coverage for services
provided to an employee through telehealth to the same extent as though provided in person or by other means.

2. An insurer shall not:
   (a) Require an employee to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an employee through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;
   (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an employee receives services through telehealth; or
   (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A policy of insurance issued pursuant to chapters 616A to 617, inclusive, of NRS must not require an employee to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. Such a policy of insurance may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require an insurer to:
   (a) Ensure that covered services are available to an employee through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the insurer is not otherwise required by law to do so.

5. A policy of insurance subject to the provisions of chapters 616A to 617, inclusive, of NRS that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the policy or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
(b) “Originating site” has the meaning ascribed to it in section 3 of this act.

(c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.

(d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 28. NRS 687B.490 is hereby amended to read as follows:

687B.490 1. A carrier that offers coverage in the group or individual market must, before making any network plan available for sale in this State, demonstrate the capacity to deliver services adequately by applying to the Commissioner for the issuance of a network plan and submitting a description of the procedures and programs to be implemented to meet the requirements described in subsection 2.

2. The Commissioner shall determine, within 90 days after receipt of the application required pursuant to subsection 1, if the carrier, with respect to the network plan:
   (a) Has demonstrated the willingness and ability to ensure that health care services will be provided in a manner to ensure both availability and accessibility of adequate personnel and facilities in a manner that enhances availability, accessibility and continuity of service;
   (b) Has organizational arrangements established in accordance with regulations promulgated by the Commissioner; and
   (c) Has a procedure established in accordance with regulations promulgated by the Commissioner to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services and such other matters as may be reasonably required by the Commissioner.

3. The Commissioner may certify that the carrier and the network plan meet the requirements of subsection 2, or may determine that the carrier and the network plan do not meet such requirements. Upon a determination that the carrier and the network plan do not meet the requirements of subsection 2, the Commissioner shall specify in what respects the carrier and the network plan are deficient.

4. A carrier approved to issue a network plan pursuant to this section must file annually with the Commissioner a summary of information compiled pursuant to subsection 2 in a manner determined by the Commissioner.

5. The Commissioner shall, not less than once each year, or more often if deemed necessary by the Commissioner for the
protection of the interests of the people of this State, make a
determination concerning the availability and accessibility of the
health care services of any network plan approved pursuant to this
section.

6. The expense of any determination made by the
Commissioner pursuant to this section must be assessed against the
carrier and remitted to the Commissioner.

7. When making any determination concerning the
availability and accessibility of the services of any network plan or
proposed network plan pursuant to this section, the Commissioner
shall consider services that may be provided through telehealth, as
defined in section 3 of this act, pursuant to the network plan or
proposed network plan to be available services.

8. As used in this section, “network plan” has the meaning
ascribed to it in NRS 689B.570.

Sec. 29. Chapter 689A of NRS is hereby amended by adding
thereto a new section to read as follows:

1. A policy of health insurance must include coverage for
services provided to an insured through telehealth to the same
extent as though provided in person or by other means.

2. An insurer shall not:
   (a) Require an insured to establish a relationship in person
       with a provider of health care or provide any additional consent to
       or reason for obtaining services through telehealth as a condition
       to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is
       necessary to provide services to an insured through telehealth or
       receive any additional type of certification or license to provide
       services through telehealth as a condition to providing the
       coverage described in subsection 1;
   (c) Refuse to provide the coverage described in subsection 1
       because of the distant site from which a provider of health care
       provides services through telehealth or the originating site at
       which an insured receives services through telehealth; or
   (d) Require covered services to be provided through telehealth
       as a condition to providing coverage for such services.

3. A policy of health insurance must not require an insured to
obtain prior authorization for any service provided through
telehealth that is not required for the service when provided in
person. A policy of health insurance may require prior
authorization for a service provided through telehealth if such
prior authorization would be required if the service were provided
in person or by other means.
4. The provisions of this section do not require an insurer to:
   (a) Ensure that covered services are available to an insured through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the insurer is not otherwise required by law to do so.

5. A policy of health insurance subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the policy or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
   (b) “Originating site” has the meaning ascribed to it in section 3 of this act.
   (c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.
   (d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 30. NRS 689A.330 is hereby amended to read as follows:

689A.330 If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public officer of that other state has informed the Commissioner that the policy is not subject to approval or disapproval by that officer, the Commissioner may by ruling require that the policy meet the standards set forth in NRS 689A.030 to 689A.320, inclusive, and section 29 of this act.

Sec. 31. Chapter 689B of NRS is hereby amended by adding thereto a new section to read as follows:

1. A policy of group or blanket health insurance must include coverage for services provided to an insured through telehealth to the same extent as though provided in person or by other means.

2. An insurer shall not:
   (a) Require an insured to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an insured through telehealth or receive any additional type of certification or license to provide
services through telehealth as a condition to providing the coverage described in subsection 1;
  (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an insured receives services through telehealth; or
  (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A policy of group or blanket health insurance must not require an insured to obtain prior authorization for any service provided through telehealth that is not required for that service when provided in person. A policy of group or blanket health insurance may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require an insurer to:
   (a) Ensure that covered services are available to an insured through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the insurer is not otherwise required by law to do so.

5. A policy of group or blanket health insurance subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the policy or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
   (b) “Originating site” has the meaning ascribed to it in section 3 of this act.
   (c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.
   (d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 32. Chapter 689C of NRS is hereby amended by adding thereto a new section to read as follows:

1. A health benefit plan must include coverage for services provided to an insured through telehealth to the same extent as though provided in person or by other means.
2. A carrier shall not:
   (a) Require an insured to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an insured through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;
   (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an insured receives services through telehealth; or
   (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A health benefit plan must not require an insured to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. A health benefit plan may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require a carrier to:
   (a) Ensure that covered services are available to an insured through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the carrier is not otherwise required by law to do so.

5. A plan subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the plan or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
   (b) “Originating site” has the meaning ascribed to it in section 3 of this act.
   (c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.
(d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 33. NRS 689C.155 is hereby amended to read as follows:

689C.155 The Commissioner may adopt regulations to carry out the provisions of NRS 689C.109 to 689C.143, inclusive, 689C.156 to 689C.159, inclusive, 689C.165, 689C.183, 689C.187, 689C.191 to 689C.198, inclusive, and section 32 of this act, 689C.203, 689C.207, 689C.265, 689C.325, 689C.355 and 689C.610 to 689C.940, inclusive, and to ensure that rating practices used by carriers serving small employers are consistent with those sections, including regulations that:

1. Ensure that differences in rates charged for health benefit plans by such carriers are reasonable and reflect only differences in the designs of the plans, the terms of the coverage, the amount contributed by the employers to the cost of coverage and differences based on the rating factors established by the carrier.

2. Prescribe the manner in which rating factors may be used by such carriers.

Sec. 34. NRS 689C.156 is hereby amended to read as follows:

689C.156 1. As a condition of transacting business in this State with small employers, a carrier shall actively market to a small employer each health benefit plan which is actively marketed in this State by the carrier to any small employer in this State. A carrier shall be deemed to be actively marketing a health benefit plan when it makes available any of its plans to a small employer that is not currently receiving coverage under a health benefit plan issued by that carrier.

2. A carrier shall issue to a small employer any health benefit plan marketed in accordance with this section if the eligible small employer applies for the plan and agrees to make the required premium payments and satisfy the other reasonable provisions of the health benefit plan that are not inconsistent with NRS 689C.015 to 689C.355, inclusive, and section 32 of this act, and 689C.610 to 689C.940, inclusive, except that a carrier is not required to issue a health benefit plan to a self-employed person who is covered by, or is eligible for coverage under, a health benefit plan offered by another employer.

3. If a health benefit plan marketed pursuant to this section provides, delivers, arranges for, pays for or reimburses any cost of health care services through managed care, the carrier shall provide a system for resolving any complaints of an employee concerning those health care services that complies with the provisions of NRS 695G.200 to 695G.310, inclusive.
Sec. 35. NRS 689C.425 is hereby amended to read as follows:

689C.425 A voluntary purchasing group and any contract issued to such a group pursuant to NRS 689C.360 to 689C.600, inclusive, are subject to the provisions of NRS 689C.015 to 689C.355, inclusive, and section 32 of this act to the extent applicable and not in conflict with the express provisions of NRS 687B.408 and 689C.360 to 689C.600, inclusive.

Sec. 36. Chapter 695A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A benefit contract must include coverage for services provided to an insured through telehealth to the same extent as though provided in person or by other means.

2. A society shall not:

(a) Require an insured to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;

(b) Require a provider of health care to demonstrate that it is necessary to provide services to an insured through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;

(c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an insured receives services through telehealth; or

(d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A benefit contract must not require an insured to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. A benefit contract may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require a society to:

(a) Ensure that covered services are available to an insured through telehealth at a particular originating site;

(b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or

(c) Enter into a contract with any provider of health care or cover any service if the society is not otherwise required by law to do so.
5. *A benefit contract subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the contract or the renewal which is in conflict with this section is void.*

6. *As used in this section:*
   
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.

   (b) “Originating site” has the meaning ascribed to it in section 3 of this act.

   (c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.

   (d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 37. *Chapter 695B of NRS is hereby amended by adding thereto a new section to read as follows:*

1. *A contract for hospital, medical or dental services subject to the provisions of this chapter must include services provided to an insured through telehealth to the same extent as though provided in person or by other means.*

2. *A medical services corporation that issues contracts for hospital, medical or dental services shall not:*
   
   (a) Require an insured to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;

   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an insured through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;

   (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an insured receives services through telehealth; or

   (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. *A contract for hospital, medical or dental services must not require an insured to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. A contract for hospital, medical or dental services may require prior authorization for a service*
provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require a medical services corporation that issues contracts for hospital, medical or dental services to:
   (a) Ensure that covered services are available to an insured through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the medical services corporation is not otherwise required by law to do so.

5. A contract for hospital, medical or dental services subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the contract or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
   (b) “Originating site” has the meaning ascribed to it in section 3 of this act.
   (c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.
   (d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 38. Chapter 695C of NRS is hereby amended by adding thereto a new section to read as follows:

1. A health care plan of a health maintenance organization must include coverage for services provided to an enrollee through telehealth to the same extent as though provided in person or by other means.

2. A health maintenance organization shall not:
   (a) Require an enrollee to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an enrollee through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;
(c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an enrollee receives services through telehealth; or

(d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A health care plan of a health maintenance organization must not require an enrollee to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. Such a health care plan may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require a health maintenance organization to:

(a) Ensure that covered services are available to an enrollee through telehealth at a particular originating site;

(b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or

(c) Enter into a contract with any provider of health care or cover any service if the health maintenance organization is not otherwise required by law to do so.

5. Evidence of coverage subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the plan or the renewal which is in conflict with this section is void.

6. As used in this section:

(a) “Distant site” has the meaning ascribed to it in section 3 of this act.

(b) “Originating site” has the meaning ascribed to it in section 3 of this act.

(c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.

(d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 39. NRS 695C.050 is hereby amended to read as follows:

695C.050 1. Except as otherwise provided in this chapter or in specific provisions of this title, the provisions of this title are not applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision does not apply to an insurer licensed and regulated pursuant to this title.
except with respect to its activities as a health maintenance organization authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, must not be construed to violate any provision of law relating to solicitation or advertising by practitioners of a healing art.

3. Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and is exempt from the provisions of chapter 630 of NRS.

4. The provisions of NRS 695C.110, 695C.125, 695C.1691, 695C.1693, 695C.170 to 695C.173, inclusive, 695C.1733 to 695C.200, inclusive, and 695C.265 do not apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid or insurance pursuant to the Children’s Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human Services. This subsection does not exempt a health maintenance organization from any provision of this chapter for services provided pursuant to any other contract.

5. The provisions of NRS 695C.1694, 695C.1695 and 695C.1731 and section 38 of this act apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid.

Sec. 40. NRS 695C.330 is hereby amended to read as follows:

695C.330 1. The Commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization pursuant to the provisions of this chapter if the Commissioner finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to NRS 695C.060, 695C.070 and 695C.140, unless any amendments to those submissions have been filed with and approved by the Commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of NRS 695C.1691 to 695C.200, inclusive, and section 38 of this act or 695C.207;

(c) The health care plan does not furnish comprehensive health care services as provided for in NRS 695C.060;
(d) The Commissioner certifies that the health maintenance organization:

(1) Does not meet the requirements of subsection 1 of NRS 695C.080; or

(2) Is unable to fulfill its obligations to furnish health care services as required under its health care plan;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization has failed to put into effect a mechanism affording the enrollees an opportunity to participate in matters relating to the content of programs pursuant to NRS 695C.110;

(g) The health maintenance organization has failed to put into effect the system required by NRS 695C.260 for:

(1) Resolving complaints in a manner reasonably to dispose of valid complaints; and

(2) Conducting external reviews of adverse determinations that comply with the provisions of NRS 695G.241 to 695G.310, inclusive;

(h) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(j) The health maintenance organization fails to provide the coverage required by NRS 695C.1691; or

(k) The health maintenance organization has otherwise failed to comply substantially with the provisions of this chapter.

2. A certificate of authority must be suspended or revoked only after compliance with the requirements of NRS 695C.340.

3. If the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of that suspension, enroll any additional groups or new individual contracts, unless those groups or persons were contracted for before the date of suspension.

4. If the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation of any kind. The Commissioner may, by written order, permit such further
operation of the organization as the Commissioner may find to be in the best interest of enrollees to the end that enrollees are afforded the greatest practical opportunity to obtain continuing coverage for health care.

Sec. 41. Chapter 695D of NRS is hereby amended by adding thereto a new section to read as follows:

1. A plan for dental care must include coverage for services provided to a member through telehealth to the same extent as though provided in person or by other means.

2. An organization for dental care shall not:
   (a) Require a member to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to a member through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;
   (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which a member receives services through telehealth; or
   (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A plan for dental care must not require a member to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. A plan for dental care may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require an organization for dental care to:
   (a) Ensure that covered services are available to a member through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care; or
   (c) Enter into a contract with any provider of health care or cover any service if the organization for dental care is not otherwise required by law to do so.

5. A plan for dental care subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage
required by this section, and any provision of the plan or the renewal which is in conflict with this section is void.

6. As used in this section:
(a) “Distant site” has the meaning ascribed to it in section 3 of this act.
(b) “Originating site” has the meaning ascribed to it in section 3 of this act.
(c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.
(d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 42. NRS 695F.090 is hereby amended to read as follows:
695F.090 Prepaid limited health service organizations are subject to the provisions of this chapter and to the following provisions, to the extent reasonably applicable:
1. NRS 687B.310 to 687B.420, inclusive, concerning cancellation and nonrenewal of policies.
2. NRS 687B.122 to 687B.128, inclusive, concerning readability of policies.
3. The requirements of NRS 679B.152.
4. The fees imposed pursuant to NRS 449.465.
5. NRS 686A.010 to 686A.310, inclusive, concerning trade practices and frauds.
6. The assessment imposed pursuant to NRS 679B.700.
7. Chapter 683A of NRS.
8. To the extent applicable, the provisions of NRS 689B.340 to 689B.580, inclusive, and chapter 689C of NRS relating to the portability and availability of health insurance.
9. NRS 689A.035, 689A.410, 689A.413 and 689A.415 and section 29 of this act.
10. NRS 680B.025 to 680B.039, inclusive, concerning premium tax, premium tax rate, annual report and estimated quarterly tax payments. For the purposes of this subsection, unless the context otherwise requires that a section apply only to insurers, any reference in those sections to “insurer” must be replaced by a reference to “prepaid limited health service organization.”
11. Chapter 692C of NRS, concerning holding companies.
12. NRS 689A.637, concerning health centers.

Sec. 43. Chapter 695G of NRS is hereby amended by adding thereto a new section to read as follows:
1. A health care plan issued by a managed care organization for group coverage must include coverage for services provided to
an insured through telehealth to the same extent as though provided in person or by other means.

2. A managed care organization shall not:
   (a) Require an insured to establish a relationship in person with a provider of health care or provide any additional consent to or reason for obtaining services through telehealth as a condition to providing the coverage described in subsection 1;
   (b) Require a provider of health care to demonstrate that it is necessary to provide services to an insured through telehealth or receive any additional type of certification or license to provide services through telehealth as a condition to providing the coverage described in subsection 1;
   (c) Refuse to provide the coverage described in subsection 1 because of the distant site from which a provider of health care provides services through telehealth or the originating site at which an insured receives services through telehealth; or
   (d) Require covered services to be provided through telehealth as a condition to providing coverage for such services.

3. A health care plan of a managed care organization must not require an insured to obtain prior authorization for any service provided through telehealth that is not required for the service when provided in person. Such a health care plan may require prior authorization for a service provided through telehealth if such prior authorization would be required if the service were provided in person or by other means.

4. The provisions of this section do not require a managed care organization to:
   (a) Ensure that covered services are available to an insured through telehealth at a particular originating site;
   (b) Provide coverage for a service that is not a covered service or that is not provided by a covered provider of health care;
   (c) Enter into a contract with any provider of health care or cover any service if the managed care organization is not otherwise required by law to do so.

5. Evidence of coverage that is delivered, issued for delivery or renewed on or after July 1, 2015, has the legal effect of including the coverage required by this section, and any provision of the plan or the renewal which is in conflict with this section is void.

6. As used in this section:
   (a) “Distant site” has the meaning ascribed to it in section 3 of this act.
(b) “Originating site” has the meaning ascribed to it in section 3 of this act.

(c) “Provider of health care” has the meaning ascribed to it in NRS 439.820.

(d) “Telehealth” has the meaning ascribed to it in section 3 of this act.

Sec. 44. NRS 633.165 is hereby repealed.

Sec. 45. This act becomes effective on July 1, 2015.
An act to amend Sections 56.05, 56.104, 56.16, 1786.2, and 1798.91 of, and to add Section 56.107 to, the Civil Code, to amend Section 4053 of the Financial Code, to amend Sections 1280.15, 1627, 117705, 117928, 120985, 121010, and 130201 of, and to add Section 1348.5 to, the Health and Safety Code, to amend Section 791.02 of, and to add Section 791.29 to, the Insurance Code, and to amend Sections 3208.05, 3762, and 5406.6 of the Labor Code, relating to medical information.

[ Approved by Governor October 01, 2013. Filed with Secretary of State October 01, 2013. ]

LEGISLATIVE COUNSEL’S DIGEST


Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of its provisions a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Existing law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient’s written authorization, subject to certain exceptions, including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. The act defines various terms relevant to its implementation.

Existing law, the Insurance Information and Privacy Protection Act, generally regulates how insurers collect, use, and disclose information gathered in connection with insurance transactions.

This bill would declare the intent of the Legislature to incorporate HIPAA standards into state law and to clarify standards for protecting the confidentiality of medical information in insurance transactions. The bill would define additional terms in connection with maintaining the confidentiality of this information, including a "confidential communications request" which an insured, or a subscriber or enrollee under a health care service plan, may submit for the purpose of specifying the method for transmitting medical information communications.

This bill would specify the manner in which a health care service plan or health insurer, on and after January 1, 2015, would be required to maintain confidentiality of medical information regarding the treatment of an insured, subscriber, or enrollee, including requiring a health care service plan or health insurer to accommodate requests by insureds, subscribers, and enrollees to receive requests for confidential communication of medical
information in situations involving sensitive services or situations in which disclosure would endanger the individual.

This bill would specifically authorize a provider of health care to communicate information regarding benefit cost-sharing arrangements to the health care service plan or health insurer, as specified.

This bill would also prohibit the health care service plan or health insurer from conditioning enrollment in the plan or eligibility for benefits on the waiver of certain rights provided for in the bill. The bill also would make conforming technical changes. Because a willful violation of these provisions by a health care service plan would be a crime, and because this bill would expand the scope of a crime, the bill would create a state-mandated local program.

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

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

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

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

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

(a) Privacy is a fundamental right of all Californians, protected by the California Constitution, the federal Health Insurance Portability and Accountability Act (HIPAA; Public Law 104-191), and the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(b) Implementation of the recently enacted federal Patient Protection and Affordable Care Act (Public Law 111-148) will expand the number of individuals insured as dependents on a health insurance policy held in another person’s name, including adult children under 26 years of age insured on a parent’s insurance policy.

(c) HIPAA explicitly protects the confidentiality of medical care obtained by dependents insured under a health insurance policy held by another person.

(d) Therefore, it is the intent of the Legislature in enacting this act to incorporate HIPAA standards into state law and to clarify the standards for protecting the confidentiality of medical information in insurance transactions.

SEC. 2. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(a) "Authorization" means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) "Authorized recipient" means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) "Confidential communications request" means a request by a subscriber or enrollee that health care service plan communications containing medical information be communicated to him or her at a specific mail or email address or specific telephone number, as designated by the subscriber or enrollee.

(d) "Contractor" means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. "Contractor" does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) "Endanger" means that the subscriber or enrollee fears that disclosure of his or her medical information could subject the subscriber or enrollee to harassment or abuse.

(f) "Enrollee" has the same meaning as that term is defined in Section 1345 of the Health and Safety Code.
(g) “Health care service plan” means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(h) “Licensed health care professional” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(i) “Marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

“Marketing” does not include any of the following:

1. Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

2. Communications made to current enrollees solely for the purpose of describing a provider’s participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a Knox-Keene licensed health plan to which the enrollees already subscribe; or communications made to plan enrollees describing the availability of more cost-effective pharmaceuticals.

3. Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual’s adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:

   A) The individual receiving the communication is notified in the communication in typeface no smaller than 14-point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.

   B) The individual is provided the opportunity to opt out of receiving future remunerated communications.

   C) The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free number of the health care provider, contractor, or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt out request.

(j) “Medical information” means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity.

(k) “Patient” means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.

(l) “Pharmaceutical company” means any company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. “Pharmaceutical company” does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.

(m) “Provider of health care” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section
1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Provider of health care" does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.

(n) "Sensitive services" means all health care services described in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section.

(o) "Subscriber" has the same meaning as that term is defined in Section 1345 of the Health and Safety Code.

SEC. 3. Section 56.104 of the Civil Code is amended to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, except as provided in subdivision (e), no provider of health care, health care service plan, or contractor may release medical information to persons or entities who have requested that information and who are authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient’s participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient’s participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is both a “psychotherapist” as defined in Section 1010 of the Evidence Code and a “provider of health care” as defined in Section 56.05.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) This section shall not apply to any of the following:

(1) Information authorized to be disclosed pursuant to paragraph (1) of subdivision (c) of Section 56.10.

(2) Information requested from a psychotherapist by law enforcement or by the target of the threat subsequent to a disclosure by that psychotherapist authorized by paragraph (19) of subdivision (c) of Section 56.10, in which the additional information is clearly necessary to prevent the serious and imminent threat disclosed under that paragraph.

(3) Information disclosed by a psychotherapist pursuant to paragraphs (14) and (22) of subdivision (c) of Section 56.10 and requested by an agency investigating the abuse reported pursuant to those paragraphs.

(f) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient’s consent.
SEC. 4. Section 56.107 is added to the Civil Code, to read:

56.107. (a) Notwithstanding any other law, and to the extent permitted by federal law, a health care service plan shall take the following steps to protect the confidentiality of a subscriber’s or enrollee’s medical information on and after January 1, 2015:

(1) A health care service plan shall permit subscribers and enrollees to request, and shall accommodate requests for, communication in the form and format requested by the individual, if it is readily producible in the requested form and format, or at alternative locations, if the subscriber or enrollee clearly states either that the communication discloses medical information or provider name and address relating to receipt of sensitive services or that disclosure of all or part of the medical information or provider name and address could endanger the subscriber or enrollee.

(2) A health care service plan may require the subscriber or enrollee to make a request for a confidential communication described in paragraph (1), in writing or by electronic transmission.

(3) A health care service plan may require that a confidential communications request contain a statement that the request pertains to either medical information related to the receipt of sensitive services or that disclosure of all or part of the medical information could endanger the subscriber or enrollee. The health care service plan shall not require an explanation as to the basis for a subscriber’s or enrollee’s statement that disclosure could endanger the subscriber or enrollee.

(4) The confidential communication request shall be valid until the subscriber or enrollee submits a revocation of the request or a new confidential communication request is submitted.

(5) For the purposes of this section, a confidential communications request shall be implemented by the health care service plan within seven calendar days of receipt of an electronic transmission or telephonic request or within 14 calendar days of receipt by first-class mail. The health care service plan shall acknowledge receipt of the confidential communications request and advise the subscriber or enrollee of the status of implementation of the request if a subscriber or enrollee contacts the health care service plan.

(b) Notwithstanding subdivision (a), the provider of health care may make arrangements with the subscriber or enrollee for the payment of benefit cost sharing and communicate that arrangement with the health care service plan.

(c) A health care service plan shall not condition enrollment or coverage on the waiver of rights provided in this section.

SEC. 5. Section 56.16 of the Civil Code is amended to read:

56.16. For disclosures not addressed by Section 56.1007, unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information: the patient’s name, address, age, and sex; a general description of the reason for treatment (whether an injury, a burn, poisoning, or some unrelated condition); the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information as defined in Section 56.05.

SEC. 6. Section 1786.2 of the Civil Code is amended to read:

1786.2. The following terms as used in this title have the meaning expressed in this section:

(a) The term “person” means any individual, partnership, corporation, limited liability company, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. The term “person” as used in this title shall not be construed to require duplicative reporting by any individual, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity involved in the same transaction.

(b) The term “consumer” means a natural individual who has made application to a person for employment purposes, for insurance for personal, family, or household purposes, or the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940.
The term "investigative consumer report" means a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. The term does not include a consumer report or other compilation of information that is limited to specific factual information relating to a consumer's credit record or manner of obtaining credit obtained directly from a creditor of the consumer or from a consumer reporting agency when that information was obtained directly from a potential or existing creditor of the consumer or from the consumer. Notwithstanding the foregoing, for transactions between investigative consumer reporting agencies and insurance institutions, agents, or insurance-support organizations subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the term "investigative consumer report" shall have the meaning set forth in Section 791.02 of the Insurance Code.

The term "investigative consumer reporting agency" means any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.

The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by an investigative consumer reporting agency regardless of how the information is stored.

The term "employment purposes," when used in connection with an investigative consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

The term "medical information" means information on a person's medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

SEC. 7. Section 1798.91 of the Civil Code is amended to read:

1798.91. (a) For purposes of this title, the following definitions shall apply:

(1) "Direct marketing purposes" means the use of personal information for marketing or advertising products, goods, or services directly to individuals. "Direct marketing purposes" does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions or (B) to raise funds from and communicate with individuals regarding politics and government.

(2) "Medical information" means any individually identifiable information, in electronic or physical form, regarding the individual's medical history, or medical treatment or diagnosis by a health care professional. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the individual's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. For purposes of this section, "medical information" does not mean a subscription to, purchase of, or request for a periodical, book, pamphlet, video, audio, or other multimedia product or nonprofit association information.

(3) "Clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) For purposes of this section, the collection of medical information online constitutes "in writing." For purposes of this section, "written consent" includes consent obtained online.

(b) A business may not orally request medical information directly from an individual regardless of whether the information pertains to the individual or not, and use, share, or otherwise disclose that information for direct marketing purposes, without doing both of the following prior to obtaining that information:

(1) Orally disclosing to the individual in the same conversation during which the business seeks to obtain the information, that it is obtaining the information to market or advertise products, goods, or services to the individual.
(2) Obtaining the consent of either the individual to whom the information pertains or a person legally authorized to consent for the individual, to permit his or her medical information to be used or shared to market or advertise products, goods, or services to the individual, and making and maintaining for two years after the date of the conversation, an audio recording of the entire conversation.

(c) A business may not request in writing medical information directly from an individual regardless of whether the information pertains to the individual or not, and use, share, or otherwise disclose that information for direct marketing purposes, without doing both of the following prior to obtaining that information:

(1) Disclosing in a clear and conspicuous manner that it is obtaining the information to market or advertise products, goods, or services to the individual.

(2) Obtaining the written consent of either the individual to whom the information pertains or a person legally authorized to consent for the individual, to permit his or her medical information to be used or shared to market or advertise products, goods, or services to the individual.

(d) This section does not apply to a provider of health care, health care service plan, or contractor, as defined in Section 56.05.

(e) This section shall not apply to an insurance institution, agent, or support organization, as defined in Section 791.02 of the Insurance Code, when engaged in an insurance transaction, as defined in Section 791.02 of the Insurance Code, pursuant to all the requirements of Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, and the regulations promulgated thereunder.

(f) This section does not apply to a telephone corporation, as defined in Section 234 of the Public Utilities Code, when that corporation is engaged in providing telephone services and products pursuant to Sections 2881, 2881.1, and 2881.2 of the Public Utilities Code, if the corporation does not share or disclose medical information obtained as a consequence of complying with those sections of the Public Utilities Code, to third parties for direct marketing purposes.

SEC. 8. Section 4053 of the Financial Code is amended to read:

4053. (a) (1) A financial institution shall not disclose to, or share a consumer’s nonpublic personal information with, any nonaffiliated third party as prohibited by Section 4052.5, unless the financial institution has obtained a consent acknowledgment from the consumer that complies with paragraph (2) that authorizes the financial institution to disclose or share the nonpublic personal information. Nothing in this section shall prohibit or otherwise apply to the disclosure of nonpublic personal information as allowed in Section 4056. A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has not provided consent pursuant to this subdivision and Section 4052.5 to authorize the financial institution to disclose or share nonpublic personal information pertaining to him or her with any nonaffiliated third party. Nothing in this section shall prohibit a financial institution from denying a consumer a financial product or service if the financial institution could not provide the product or service to a consumer without the consent to disclose the consumer’s nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. A financial institution shall not be liable for failing to offer products and services to a consumer solely because that consumer has failed to provide consent pursuant to this subdivision and Section 4052.5 and the financial institution could not offer the product or service without the consent to disclose the consumer’s nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice.

(2) A financial institution shall utilize a form, statement, or writing to obtain consent to disclose nonpublic personal information to nonaffiliated third parties as required by Section 4052.5 and this subdivision. The form, statement, or writing shall meet all of the following criteria:

(A) The form, statement, or writing is a separate document, not attached to any other document.

(B) The form, statement, or writing is dated and signed by the consumer.

(C) The form, statement, or writing clearly and conspicuously discloses that by signing, the consumer is consenting to the disclosure to nonaffiliated third parties of nonpublic personal information pertaining to the consumer.
(D) The form, statement, or writing clearly and conspicuously discloses (i) that the consent will remain in effect until revoked or modified by the consumer; (ii) that the consumer may revoke the consent at any time; and (iii) the procedure for the consumer to revoke consent.

(E) The form, statement, or writing clearly and conspicuously informs the consumer that (i) the financial institution will maintain the document or a true and correct copy; (ii) the consumer is entitled to a copy of the document upon request; and (iii) the consumer may want to make a copy of the document for the consumer's records.

(b) (1) A financial institution shall not disclose to, or share a consumer's nonpublic personal information with, an affiliate unless the financial institution has clearly and conspicuously notified the consumer annually in writing pursuant to subdivision (d) that the nonpublic personal information may be disclosed to an affiliate of the financial institution and the consumer has not directed that the nonpublic personal information not be disclosed. A financial institution does not disclose information to, or share information with, its affiliate merely because information is maintained in common information systems or databases, and employees of the financial institution and its affiliate have access to those common information systems or databases, or a consumer accesses a Web site jointly operated or maintained under a common name by or on behalf of the financial institution and its affiliate, provided that where a consumer has exercised his or her right to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an affiliate except as permitted by this division.

(2) Subdivision (a) shall not prohibit the release of nonpublic personal information by a financial institution with whom the consumer has a relationship to a nonaffiliated financial institution for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the nonpublic personal information provided that all of the following requirements are met:

(A) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement.

(B) The financial product or service is jointly offered, endorsed, or sponsored, and clearly and conspicuously identifies for the consumer the financial institutions that disclose and receive the disclosed nonpublic personal information.

(C) The written agreement provides that the financial institution that receives that nonpublic personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement.

(D) The financial institution that releases the nonpublic personal information has complied with subdivision (d) and the consumer has not directed that the nonpublic personal information not be disclosed.

(E) Notwithstanding this section, until January 1, 2005, a financial institution may disclose nonpublic personal information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before January 1, 2004. Beginning on January 1, 2005, no nonpublic personal information may be disclosed pursuant to that contract unless all the requirements of this subdivision are met.

(3) Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing nonpublic personal information as otherwise specifically permitted by this division.

(4) A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has directed pursuant to this subdivision that nonpublic personal information pertaining to him or her not be disclosed. A financial institution shall not be required to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) where the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information that the consumer has directed not to be disclosed pursuant to this subdivision. A financial institution shall not be liable for failing to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) solely because the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information.
information that the consumer has directed not be disclosed to affiliates pursuant to this subdivision. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice set forth in this division. Nothing in this section shall prohibit the disclosure of nonpublic personal information allowed by Section 4056.

(5) The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a).

(c) Nothing in this division shall restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries; among financial institutions that are each wholly owned by the same financial institution; among financial institutions that are wholly owned by the same holding company; or among the insurance and management entities of a single insurance holding company system consisting of one or more reciprocal insurance exchanges which has a single corporation or its wholly owned subsidiaries providing management services to the reciprocal insurance exchanges, provided that in each case all of the following requirements are met:

(1) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are regulated by the same functional regulator; provided, however, that for purposes of this subdivision, financial institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, or a state regulator of depository institutions shall be deemed to be regulated by the same functional regulator; financial institutions regulated by the Securities and Exchange Commission, the United States Department of Labor, or a state securities regulator shall be deemed to be regulated by the same functional regulator; and insurers admitted in this state to transact insurance and licensed to write insurance policies shall be deemed to be in compliance with this paragraph.

(2) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are both principally engaged in the same line of business. For purposes of this subdivision, “same line of business” shall be one and only one of the following:

(A) Insurance.

(B) Banking.

(C) Securities.

(3) The financial institution disclosing the nonpublic personal information and the financial institution receiving it share a common brand, excluding a brand consisting solely of a graphic element or symbol, within their trademark, service mark, or trade name, which is used to identify the source of the products and services provided.

A wholly owned subsidiary shall include a subsidiary wholly owned directly or wholly owned indirectly in a chain of wholly owned subsidiaries.

Nothing in this subdivision shall permit the disclosure by a financial institution of medical record information, as defined in Section 791.02 of the Insurance Code, except in compliance with the requirements of this division, including the requirements set forth in subdivisions (a) and (b).

(d) (1) A financial institution shall be conclusively presumed to have satisfied the notice requirements of subdivision (b) if it uses the form set forth in this subdivision. The form set forth in this subdivision or a form that complies with subparagraphs (A) to (L), inclusive, of this paragraph shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. If a financial institution does not use the form set forth in this subdivision, the financial institution shall use a form that meets all of the following requirements:

(A) The form uses the same title (“IMPORTANT PRIVACY CHOICES FOR CONSUMERS”) and the headers, if applicable, as follows: “Restrict Information Sharing With Companies We Own Or Control (Affiliates)” and “Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services.”

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.
(C) The form is a separate document, except as provided by subparagraph (D) of paragraph (2), and Sections 4054 and 4058.7.

(D) The choice or choices pursuant to subdivision (b) and Section 4054.6, if applicable, provided in the form are stated separately and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15-20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form achieves a minimum Flesch reading ease score of 50, as defined in Section 2689.4(a)(7) of Title 10 of the California Code of Regulations, in effect on March 24, 2003, except that the information in the form included to comply with subparagraph (A) shall not be included in the calculation of the Flesch reading ease score, and the information used to describe the choice or choices pursuant to subparagraph (D) shall score no lower than the information describing the comparable choice or choices set forth in the form in this subdivision.

(K) The form provides wide margins, ample line spacing and uses boldface or italics for key words.

(L) The form is not more than one page.

(2) (A) None of the instructional items appearing in brackets in the form set forth in this subdivision shall appear in the form provided to the consumer, as those items are for explanation purposes only. If a financial institution does not disclose or share nonpublic personal information as described in a header of the form, the financial institution may omit the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision. The form with those omissions shall be conclusively presumed to satisfy the notice requirements of this subdivision.

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

(B) If a financial institution uses a form other than that set forth in this subdivision, the financial institution may submit that form to its functional regulator for approval, and for forms filed with the Office of Privacy Protection prior to July 1, 2007, that approval shall constitute a rebuttable presumption that the form complies with this section.

(C) A financial institution shall not be in violation of this subdivision solely because it includes in the form one or more brief examples or explanations of the purpose or purposes, or context, within which information will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(D) The outside of the envelope in which the form is sent to the consumer shall clearly state in 16-point boldface type “IMPORTANT PRIVACY CHOICES,” except that a financial institution sending the form to a consumer in the same envelope as a bill, account statement, or application requested by the consumer does not have to include the wording “IMPORTANT PRIVACY CHOICES” on that envelope. The form shall be sent in any of the following ways:

(i) With a bill, other statement of account, or application requested by the consumer, in which case the information required by Title V of the Gramm-Leach-Bliley Act may also be included in the same envelope.

(ii) As a separate notice or with the information required by Title V of the Gramm-Leach-Bliley Act, and including only information related to privacy.

(iii) With any other mailing, in which case it shall be the first page of the mailing.

(E) If a financial institution uses a form other than that set forth in this subdivision, that form shall be filed with the Office of Privacy Protection within 30 days after it is first used.

(3) The consumer shall be provided a reasonable opportunity prior to disclosure of nonpublic personal information to direct that nonpublic personal information not be disclosed. A consumer may direct at any time that his or her nonpublic personal information not be disclosed. A financial institution shall comply with a consumer’s directions concerning the sharing of his or her nonpublic personal information within 45 days of
receipt by the financial institution. When a consumer directs that nonpublic personal information not be disclosed, that direction is in effect until otherwise stated by the consumer. A financial institution that has not provided a consumer with annual notice pursuant to subdivision (b) shall provide the consumer with a form that meets the requirements of this subdivision, and shall allow 45 days to lapse from the date of providing the form in person or the postmark or other postal verification of mailing before disclosing nonpublic personal information pertaining to the consumer.

Nothing in this subdivision shall prohibit the disclosure of nonpublic personal information as allowed by subdivision (c) or Section 4056.

(4) A financial institution may elect to comply with the requirements of subdivision (a) with respect to disclosure of nonpublic personal information to an affiliate or with respect to nonpublic personal information disclosed pursuant to paragraph (2) of subdivision (b), or subdivision (c) of Section 4054.6.

(5) If a financial institution does not have a continuing relationship with a consumer other than the initial transaction in which the product or service is provided, no annual disclosure requirement exists pursuant to this section as long as the financial institution provides the consumer with the form required by this section at the time of the initial transaction. As used in this section, “annually” means at least once in any period of 12 consecutive months during which that relationship exists. The financial institution may define the 12-consecutive-month period, but shall apply it to the consumer on a consistent basis. If, for example, a financial institution defines the 12-consecutive-month period as a calendar year and provides the annual notice to the consumer once in each calendar year, it complies with the requirement to send the notice annually.

(6) A financial institution with assets in excess of twenty-five million dollars ($25,000,000) shall include a self-addressed first class business reply return envelope with the notice. A financial institution with assets of up to and including twenty-five million dollars ($25,000,000) shall include a self-addressed return envelope with the notice. In lieu of the first class business reply return envelope required by this paragraph, a financial institution may offer a self-addressed return envelope with the notice and at least two alternative cost-free means for consumers to communicate their privacy choices, such as calling a toll-free number, sending a facsimile to a toll-free telephone number, or using electronic means. A financial institution shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the consumer on how to communicate his or her choices, including the toll-free or facsimile number or Web site address that may be used, if those means of communication are offered by the financial institution.

(7) A financial institution may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, so long as the notice is accurate with respect to the financial institution and the affiliates and other financial institutions.

(e) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of affiliates or nonaffiliated third parties to customers of the financial institution as long as (1) nonpublic personal information is not disclosed in connection with the delivery of the applicable marketing materials to those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate nonpublic personal information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from using that information for any purpose other than the purpose for which it was provided, as set forth in the contract, and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party’s compliance with that contract.

SEC. 9. Section 1280.15 of the Health and Safety Code is amended to read:

1280.15. (a) A clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients’ medical information, as defined in Section 56.05 of the Civil Code and consistent with Section 130203. For purposes of this section, internal paper records, electronic mail, or facsimile transmissions inadvertently misdirected within the same facility or health care system within the course of coordinating care or delivering services shall not constitute unauthorized access to, or use or disclosure of, a patient’s medical information. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars ($25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars ($17,500) per subsequent
occurrence of unlawful or unauthorized access, use, or disclosure of that patient’s medical information. For purposes of the investigation, the department shall consider the clinic’s, health facility’s, agency’s, or hospice’s history of compliance with this section and other related state and federal statutes and regulations, the extent to which the facility detected violations and took preventative action to immediately correct and prevent past violations from recurring, and factors outside its control that restricted the facility’s ability to comply with this section. The department shall have full discretion to consider all factors when determining the amount of an administrative penalty pursuant to this section.

(b) (1) A clinic, health facility, home health agency, or hospice to which subdivision (a) applies shall report any unlawful or unauthorized access to, or use or disclosure of, a patient’s medical information to the department no later than five business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice.

(2) Subject to subdivision (c), a clinic, health facility, home health agency, or hospice shall also report any unlawful or unauthorized access to, or use or disclosure of, a patient’s medical information to the affected patient or the patient’s representative at the last known address, no later than five business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice.

(c) (1) A clinic, health facility, home health agency, or hospice shall delay the reporting, as required pursuant to paragraph (2) of subdivision (b), of any unlawful or unauthorized access to, or use or disclosure of, a patient’s medical information beyond five business days if a law enforcement agency or official provides the clinic, health facility, home health agency, or hospice with a written or oral statement that compliance with the reporting requirements of paragraph (2) of subdivision (b) would likely impede the law enforcement agency’s investigation that relates to the unlawful or unauthorized access to, and use or disclosure of, a patient’s medical information and specifies a date upon which the delay shall end, not to exceed 60 days after a written request is made, or 30 days after an oral request is made. A law enforcement agency or official may request an extension of a delay based upon a written declaration that there exists a bona fide, ongoing, significant criminal investigation of serious wrongdoing relating to the unlawful or unauthorized access to, and use or disclosure of, a patient’s medical information, that notification of patients will undermine the law enforcement agency’s investigation, and that specifies a date upon which the delay shall end, not to exceed 60 days after the end of the original delay period.

(2) If the statement of the law enforcement agency or official is made orally, then the clinic, health facility, home health agency, or hospice shall do both of the following:

(A) Document the oral statement, including, but not limited to, the identity of the law enforcement agency or official making the oral statement and the date upon which the oral statement was made.

(B) Limit the delay in reporting the unlawful or unauthorized access to, or use or disclosure of, the patient’s medical information to the date specified in the oral statement, not to exceed 30 calendar days from the date that the oral statement is made, unless a written statement that complies with the requirements of this subdivision is received during that time.

(3) A clinic, health facility, home health agency, or hospice shall submit a report that is delayed pursuant to this subdivision not later than five business days after the date designated as the end of the delay.

(d) If a clinic, health facility, home health agency, or hospice to which subdivision (a) applies violates subdivision (b), the department may assess the licensee a penalty in the amount of one hundred dollars ($100) for each day that the unlawful or unauthorized access, use, or disclosure is not reported to the department or the affected patient, following the initial five-day period specified in subdivision (b). However, the total combined penalty assessed by the department under subdivision (a) and this subdivision shall not exceed two hundred fifty thousand dollars ($250,000) per reported event. For enforcement purposes, it shall be presumed that the facility did not notify the affected patient if the notification was not documented. This presumption may be rebutted by a licensee only if the licensee demonstrates, by a preponderance of the evidence, that the notification was made.

(e) In enforcing subdivisions (a) and (d), the department shall take into consideration the special circumstances of small and rural hospitals, as defined in Section 124840, and primary care clinics, as defined in subdivision (a) of Section 1204, in order to protect access to quality care in those hospitals and clinics. When assessing a penalty on a skilled nursing facility or other facility subject to Section 1423, 1424, 1424.1,
1424.5, the department shall issue only the higher of either a penalty for the violation of this section or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5, not both.

(f) All penalties collected by the department pursuant to this section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited into the Internal Departmental Quality Improvement Account, which is hereby created within the Special Deposit Fund under Section 16370 of the Government Code. Upon appropriation by the Legislature, moneys in the account shall be expended for internal quality improvement activities in the Licensing and Certification Program.

(g) If the licensee disputes a determination by the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients’ medical information, or the imposition of a penalty under this section, the licensee may, within 10 days of receipt of the penalty assessment, request a hearing pursuant to Section 131071. Penalties shall be paid when appeals have been exhausted and the penalty has been upheld.

(h) In lieu of disputing the determination of the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients’ medical information, transmit to the department 75 percent of the total amount of the administrative penalty, for each violation, within 30 business days of receipt of the administrative penalty.

(i) Notwithstanding any other law, the department may refer violations of this section to the Office of Health Information Integrity for enforcement pursuant to Section 130303.

(j) For purposes of this section, the following definitions shall apply:

(1) “Reported event” means all breaches included in any single report that is made pursuant to subdivision (b), regardless of the number of breach events contained in the report.

(2) “Unauthorized” means the inappropriate access, review, or viewing of patient medical information without a direct need for medical diagnosis, treatment, or other lawful use as permitted by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or any other statute or regulation governing the lawful access, use, or disclosure of medical information.

SEC. 10. Section 1348.5 is added to the Health and Safety Code, to read:

1348.5. A health care service plan shall comply with the provisions of Section 56.107 of the Civil Code to the extent required by that section. To the extent this chapter conflicts with Section 56.107 of the Civil Code, the provisions of Section 56.107 of the Civil Code shall control.

SEC. 11. Section 1627 of the Health and Safety Code is amended to read:

1627. (a) (1) On or before July 1, 2011, the University of California is requested to develop a plan to establish and administer the Umbilical Cord Blood Collection Program for the purpose of collecting units of umbilical cord blood for public use in transplantation and providing nonclinical units for research pertaining to biology and new clinical utilization of stem cells derived from the blood and tissue of the placenta and umbilical cord. The program shall conclude no later than January 1, 2018.

(2) For purposes of this article, “public use” means both of the following:

(A) The collection of umbilical cord blood units from genetically diverse donors that will be owned by the University of California. This inventory shall be accessible by the National Registry and by qualified California-based and other United States and international registries and transplant centers to increase the likelihood of providing suitably matched donor cord blood units to patients or research participants who are in need of a transplant.

(B) Cord blood units with a lower number of cells than deemed necessary for clinical transplantation and units that meet clinical requirements, but for other reasons are unsuitable, unlikely to be transplanted, or otherwise unnecessary for clinical use, may be made available for research.

(b) (1) In order to implement the collection goals of this program, the University of California may, commensurate with available funds appropriated to the University of California for this program, contract with one or more selected applicant entities that have demonstrated the competence to collect and ship cord blood
units in compliance with federal guidelines and regulations.

(2) It is the intent of the Legislature that, if the University of California contracts with another entity pursuant to this subdivision, the following shall apply:

(A) The University of California may use a competitive process to identify the best proposals submitted by applicant entities to administer the collection and research objectives of the program, to the extent that the University of California chooses not to undertake these activities itself.

(B) In order to qualify for selection under this section to receive, process, cryopreserve, or bank cord blood units, the entity shall, at a minimum, have obtained an investigational new drug (IND) exemption from the FDA or a biologic license from the FDA, as appropriate, to manufacture clinical grade cord blood stem cell units for clinical indications.

(C) In order to qualify to receive appropriate cord blood units and placental tissue to advance the research goals of this program, an entity shall, at a minimum, be a laboratory recognized as having performed peer-reviewed research on stem and progenitor cells, including those derived from placental or umbilical cord blood and postnatal tissue.

(3) A medical provider or research facility shall comply with, and shall be subject to, existing penalties for violations of all applicable state and federal laws with respect to the protection of any medical information, as defined in Section 56.05 of the Civil Code, and any personally identifiable information contained in the umbilical cord blood inventory.

(c) The University of California is encouraged to make every effort to avoid duplication or conflicts with existing and ongoing programs and to leverage existing resources.

(d) (1) All information collected pursuant to the program shall be confidential, and shall be used solely for the purposes of the program, including research. Access to confidential information shall be limited to authorized persons who are bound by appropriate institutional policies or who otherwise agree, in writing, to maintain the confidentiality of that information.

(2) Any person who, in violation of applicable institutional policies or a written agreement to maintain confidentiality, discloses any information provided pursuant to this section, or who uses information provided pursuant to this section in a manner other than as approved pursuant to this section, may be denied further access to any confidential information maintained by the University of California, and shall be subject to a civil penalty not exceeding one thousand dollars ($1,000). The penalty provided for in this section shall not be construed to limit or otherwise restrict any remedy, provisional or otherwise, provided by law for the benefit of the University of California or any other person covered by this section.

(3) Notwithstanding the restrictions of this section, an individual to whom the confidential information pertains shall have access to his or her own personal information.

(e) It is the intent of the Legislature that the plan and implementation of the program provide for both of the following:

(1) Limit fees for access to cord blood units to the reasonable and actual costs of storage, handling, and providing units, as well as for related services such as donor matching and testing of cord blood and other programs and services typically provided by cord blood banks and public use programs.

(2) The submittal of the plan developed pursuant to subdivision (a) to the health and fiscal committees of the Legislature.

(f) It is additionally the intent of the Legislature that the plan and implementation of the program attempt to provide for all of the following:

(1) Development of a strategy to increase voluntary participation by hospitals in the collection and storage of umbilical cord blood and identify funding sources to offset the financial impact on hospitals.

(2) Consideration of a medical contingency response program to prepare for and respond effectively to biological, chemical, or radiological attacks, accidents, and other public health emergencies where victims potentially benefit from treatment.

(3) Exploration of the feasibility of operating the program as a self-funding program, including the potential for
charging users a reimbursement fee.

SEC. 12. Section 117705 of the Health and Safety Code is amended to read:

117705. "Medical waste generator" means any person whose act or process produces medical waste and includes, but is not limited to, a provider of health care, as defined in Section 56.05 of the Civil Code. All of the following are examples of businesses that generate medical waste:

(a) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, unlicensed health facilities, those facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), chronic dialysis clinics, as regulated pursuant to Division 2 (commencing with Section 1200), and education and research facilities.

(b) Veterinary offices, veterinary clinics, and veterinary hospitals.

(c) Pet shops.

(d) Trauma scene waste management practitioners.

SEC. 13. Section 117928 of the Health and Safety Code is amended to read:

117928. (a) Any common storage facility for the collection of medical waste produced by small quantity generators operating independently, but sharing common storage facilities, shall have a permit issued by the enforcement agency.

(b) A permit for any common storage facility specified in subdivision (a) may be obtained by any one of the following:

(1) A provider of health care as defined in Section 56.05 of the Civil Code.

(2) The registered hazardous waste transporter.

(3) The property owner.

(4) The property management firm responsible for providing tenant services to the medical waste generators.

SEC. 14. Section 120985 of the Health and Safety Code is amended to read:

120985. (a) Notwithstanding Section 120980, the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject’s medical record or otherwise disclosed without written authorization of the subject of the test, or the subject’s representative as set forth in Section 121020, to the test subject’s providers of health care, as defined in Section 56.05 of the Civil Code, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section, “providers of health care” does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

SEC. 15. Section 121010 of the Health and Safety Code is amended to read:

121010. Notwithstanding Section 120975 or 120980, the results of a blood test to detect antibodies to the probable causative agent of AIDS may be disclosed to any of the following persons without written authorization of the subject of the test:

(a) To the subject of the test or the subject’s legal representative, conservator, or to any person authorized to consent to the test pursuant to subdivision (b) of Section 120990.

(b) To a test subject’s provider of health care, as defined in Section 56.05 of the Civil Code, except that for purposes of this section, “provider of health care” does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(c) To an agent or employee of the test subject’s provider of health care who provides direct patient care and...
treatment.

(d) To a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

(e) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

SEC. 16. Section 130201 of the Health and Safety Code is amended to read:

130201. For purposes of this division, the following definitions apply:

(a) “Director” means the Director of the Office of Health Information Integrity.

(b) “Medical information” means the term as defined in Section 56.05 of the Civil Code.

(c) “Office” means the Office of Health Information Integrity.

(d) “Provider of health care” means the term as defined in Sections 56.05 and 56.06 of the Civil Code.

(e) “Unauthorized access” means the inappropriate review or viewing of patient medical information without a direct need for diagnosis, treatment, or other lawful use as permitted by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or by other statutes or regulations governing the lawful access, use, or disclosure of medical information.

SEC. 17. Section 791.02 of the Insurance Code is amended to read:

791.02. As used in this act:

(a) (1) “Adverse underwriting decision” means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an agent to apply for insurance coverage with a specific insurance institution that the agent represents and that is requested by an applicant.

(D) In the case of a property or casualty insurance coverage:

(i) Placement by an insurance institution or agent of a risk with a residual market mechanism, with an unauthorized insurer, or with an insurance institution that provides insurance to other than preferred or standard risks, if in fact the placement is at other than a preferred or standard rate. An adverse underwriting decision, in case of placement with an insurance institution that provides insurance to other than preferred or standard risks, shall not include placement if the applicant or insured did not specify or apply for placement as a preferred or standard risk or placement with a particular company insuring preferred or standard risks, or

(ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.
(E) In the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding paragraph (1), any of the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(b) “Affiliate” or “affiliated” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(c) “Agent” means any person licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(d) “Applicant” means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(e) “Consumer report” means any written, oral, or other communication of information bearing on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(f) “Consumer reporting agency” means any person who:

(1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(2) Obtains information primarily from sources other than insurance institutions.

(3) Furnishes consumer reports to other persons.

(g) “Control,” including the terms “controlled by” or “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(h) “Declination of insurance coverage” means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.

(i) “Individual” means any natural person who is any of the following:

(1) In the case of property or casualty insurance, is a past, present, or proposed named insured or certificate holder.

(2) In the case of life or disability insurance, is a past, present, or proposed principal insured or certificate holder.

(3) Is a past, present, or proposed policyowner.

(4) Is a past or present applicant.

(5) Is a past or present claimant.

(6) Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this act.

(j) “Institutional source” means any person or governmental entity that provides information about an individual to an agent, insurance institution, or insurance-support organization, other than any of the following:
(1) An agent.

(2) The individual who is the subject of the information.

(3) A natural person acting in a personal capacity rather than in a business or professional capacity.

(k) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance. "Insurance institution" shall not include agents, insurance-support organizations, or health care service plans regulated pursuant to the Knox-Keene Health Care Service Plan Act, Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(l) “Insurance-support organization” means:

(1) Any person who regularly engages, in whole or in part, in the business of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including either of the following:

(A) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction.

(B) The collection of personal information from insurance institutions, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding paragraph (1), the following persons shall not be considered “insurance-support organizations”: agents, governmental institutions, insurance institutions, medical care institutions, medical professionals, and peer review committees.

(m) “Insurance transaction” means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs that entails either of the following:

(1) The determination of an individual's eligibility for an insurance coverage, benefit, or payment.

(2) The servicing of an insurance application, policy, contract, or certificate.

(n) “Investigative consumer report” means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning those items of information.

(o) “Medical care institution” means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home health agencies, medical clinics, rehabilitation agencies, and public health agencies.

(p) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, clinical psychologist, chiropractor, pharmacist, or speech therapist.

(q) "Medical record information" means personal information that is both of the following:

(1) Relates to an individual's physical or mental condition, medical history or medical treatment.

(2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(r) "Person" means any natural person, corporation, association, partnership, limited liability company, or other legal entity.

(s) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information."
(t) "Policyholder" means any person who is any of the following:

(1) In the case of individual property or casualty insurance, is a present named insured.

(2) In the case of individual life or disability insurance, is a present policyowner.

(3) In the case of group insurance, which is individually underwritten, is a present group certificate holder.

(u) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(1) Pretends to be someone he or she is not.

(2) Pretends to represent a person he or she is not in fact representing.

(3) Misrepresents the true purpose of the interview.

(4) Refuses to identify himself or herself upon request.

(v) "Privileged information" means any individually identifiable information that both:

(1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual.

(2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. However, information otherwise meeting the requirements of this division shall nevertheless be considered "personal information" under this act if it is disclosed in violation of Section 791.13.

(w) "Residual market mechanism" means the California FAIR Plan Association, Chapter 10 (commencing with Section 10101) of Part 1 of Division 2, and the assigned risk plan, Chapter 1 (commencing with Section 11550) of Part 3 of Division 2.

(x) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(y) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact the business of insurance in this state.

(z) "Commissioner" means the Insurance Commissioner.

(aa) "Confidential communications request" means a request by an insured covered under a health insurance policy that insurance communications containing medical information be communicated to him or her at a specific mail or email address or specific telephone number, as designated by the insured.

(ab) "Endanger" means that the insured covered under a health insurance policy fears that the disclosure of his or her medical information could subject the insured covered under a health insurance policy to harassment or abuse.

(ac) "Sensitive services" means all health care services described in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient of any age at or above the minimum age specified for consenting to the service specified in the section.

(ad) "Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health insurer, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity.

SEC. 18. Section 791.29 is added to the Insurance Code, to read:

791.29. (a) Notwithstanding any other law, and to the extent permitted by federal law, a health insurer shall take the following steps to protect the confidentiality of an insured’s medical information on and after January
1, 2015:

(1) A health insurer shall permit an insured to request, and shall accommodate requests for, communication in
the form and format requested by the individual, if it is readily producible in the requested form and format, or
at alternative locations, if the insured clearly states either that the communication discloses medical
information or provider name and address relating to receipt of sensitive services or that disclosure of all or
part of the medical information or provider name and address could endanger him or her.

(2) A health insurer may require the insured to make a request for a confidential communication described in
paragraph (1) in writing or by electronic transmission.

(3) A health insurer may require that a confidential communications request contain a statement that the
request pertains to either medical information related to the receipt of sensitive services or that disclosure of
all or part of the medical information could endanger the insured. The health insurer shall not require an
explanation as to the basis for a insured’s statement that disclosure could endanger the insured.

(4) The confidential communication request shall be valid until the insured submits a revocation of the request,
or a new confidential communication request is submitted.

(5) For the purposes of this section, a confidential communications request must be implemented by the health
insurer within seven calendar days of the receipt of an electronic transmission or telephonic request or within
14 calendar days of receipt by first-class mail. The health insurer shall acknowledge receipt of the confidential
communications request and advise the insured of the status of implementation of the request if an insured
contacts the insurer.

(b) Notwithstanding subdivision (a), a provider of health care may make arrangements with the insured for the
payment of benefit cost sharing and communicate that arrangement with the insurer.

(c) A health insurer shall not condition coverage on the waiver of rights provided in this section.

SEC. 19. Section 3208.05 of the Labor Code is amended to read:

3208.05. (a) “Injury” includes a reaction to or a side effect arising from health care provided by an employer to
a health care worker, which health care is intended to prevent the development or manifestation of any
bloodborne disease, illness, syndrome, or condition recognized as occupationally incurred by Cal-OSHA, the
federal Centers for Disease Control and Prevention, or other appropriate governmental entities. This section
shall apply only to preventive health care that the employer provided to a health care worker under the
following circumstances: (1) prior to an exposure because of risk of occupational exposure to such a disease,
illness, syndrome, or condition, or (2) where the preventive care is provided as a consequence of a
documented exposure to blood or bodily fluid containing blood that arose out of and in the course of
employment. Such a disease, illness, syndrome, or condition includes, but is not limited to, hepatitis, and the
human immunodeficiency virus. Such preventive health care, and any disability indemnity or other benefits
required as a result of the preventive health care provided by the employer, shall be compensable under the
workers’ compensation system. The employer may require the health care worker to document that the
employer provided the preventive health care and that the reaction or side effects arising from the preventive
health care resulted in lost work time, health care costs, or other costs normally compensable under workers’
compensation.

(b) The benefits of this section shall not be provided to a health care worker for a reaction to or side effect
from health care intended to prevent the development of the human immunodeficiency virus if the worker
claims a work-related exposure and if the worker tests positive within 48 hours of that exposure to a test to
determine the presence of the human immunodeficiency virus.

(c) For purposes of this section, “health care worker” includes any person who is an employee of a provider of
health care as defined in Section 56.05 of the Civil Code, and who is exposed to human blood or other bodily
fluids contaminated with blood in the course of employment, including, but not limited to, a registered nurse, a
licensed vocational nurse, a certified nurse aide, clinical laboratory technologist, dental hygienist, physician,
janitor, and housekeeping worker. “Health care worker” does not include an employee who provides employee
health services for an employer primarily engaged in a business other than providing health care.

SEC. 20. Section 3762 of the Labor Code is amended to read:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB138
3762. (a) Except as provided in subdivisions (b) and (c), the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.

(b) The right provided by this section shall not extend to any document that the insurer is prohibited from disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.

(c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:

(1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed and the treatment provided for this condition.

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

SEC. 21. Section 5406.6 of the Labor Code is amended to read:

5406.6. (a) In the case of the death of a health care worker, a worker described in Section 3212, or a worker described in Section 830.5 of the Penal Code from an HIV-related disease, the period within which proceedings may be commenced for the collection of benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death, providing that one or more of the following events has occurred:

(1) A report of the injury or exposure was made to the employer or to a governmental agency authorized to administer industrial injury claims, within one year of the date of the injury.

(2) The worker has complied with the notice provisions of this chapter and the claim has not been finally determined to be noncompensable.

(3) The employer provided, or was ordered to provide, workers' compensation benefits for the injury prior to the date of death.

(b) For the purposes of this section, "health care worker" means an employee who has direct contact, in the course of his or her employment, with blood or other bodily fluids contaminated with blood, or with other bodily fluids identified by the Division of Occupational Safety and Health as capable of transmitting HIV, who is either (1) any person who is an employee of a provider of health care, as defined in Section 56.05 of the Civil Code, including, but not limited to, a registered nurse, licensed vocational nurse, certified nurse aide, clinical laboratory technologist, dental hygienist, physician, janitor, or housekeeping worker, or (2) an employee who provides direct patient care.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
LONG TITLE

General Description:
This bill adds provisions to the Health Care Facility Licensing and Inspection Act related to monitoring devices installed in assisted living facilities.

Highlighted Provisions:
This bill:
- allows a resident of an assisted living facility to install a video or audio monitoring device in the resident's room under certain conditions;
- prohibits an assisted living facility from denying an individual admission to the facility or discharging a resident from the facility solely because the individual or resident wants to operate or install a monitoring device in the individual's or resident's room; and
- provides certain liability protections related to operating or installing a monitoring device in a resident's room.

Money Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
ENACTS:
- 26-21-301, Utah Code Annotated 1953
- 26-21-302, Utah Code Annotated 1953
- 26-21-303, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 26-21-301 is enacted to read:

Part 3. Assisted Living Facility Surveillance Act

26-21-301. Title.
This part is known as the "Assisted Living Facility Surveillance Act."

Section 2. Section 26-21-302 is enacted to read:

As used in this part:
(1) "Facility" means an assisted living facility.
(2) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
(3) (a) "Monitoring device" means:
   (i) a video surveillance camera; or
   (ii) a microphone or other device that captures audio.
   (b) "Monitoring device" does not include:
      (i) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or
      (ii) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.
(4) "Resident" means an individual who receives health care from a facility.
(5) "Room" means a resident's private or shared primary living space.
(6) "Roommate" means an individual sharing a room with a resident.

Section 3. Section 26-21-303 is enacted to read:

(1) A resident or the resident's legal representative may operate or install a monitoring device in the resident's room if the resident and the resident's legal representative, if any, unless
the resident is incapable of informed consent:

(a) notifies the resident's facility in writing that the resident or the resident's legal representative, if any:

(i) intends to operate or install a monitoring device in the resident's room; and

(ii) consents to a waiver agreement, if required by a facility;

(b) obtains written consent from each of the resident's roommates, and their legal representative, if any, that specifically states the hours when each roommate consents to the resident or the resident's legal representative operating the monitoring device; and

(c) assumes all responsibility for any cost related to installing or operating the monitoring device.

(2) A facility shall not be civilly or criminally liable to:

(a) a resident or resident's roommate for the operation of a monitoring device consistent with this part; and

(b) any person other than the resident or resident's roommate for any claims related to the use or operation of a monitoring device consistent with this part, unless the claim is caused by the acts or omissions of an employee or agent of the facility.

(3) Notwithstanding any other provision of this part, an individual may not, under this part, operate a monitoring device in a facility without a court order:

(a) in secret; or

(b) with an intent to intercept a wire, electronic, or oral communication without notice to or the consent of a party to the communication.

Section 4. Section 26-21-304 is enacted to read:


(1) A facility may not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room.

(2) A facility may not discharge a resident for the sole reason that the resident or the
86 resident's legal representative requests to install or operate a monitoring device in the
87 individual's room.
88 (3) A facility may require the resident or the resident's legal representative to place a
89 sign near the entrance of the resident's room that states that the room contains a monitoring
90 device.
AN ACT concerning regulation.

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 Authorized Electronic Monitoring in Long-Term Care Facilities Act.

Section 5. Definitions. As used in this Act:

"Authorized electronic monitoring" means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with this Act.

"Department" means the Department of Public Health.

"Electronic monitoring device" means a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room under the provisions of this Act and broadcasts or records activity or sounds occurring in the room.

"Facility" means an intermediate care facility for the developmentally disabled licensed under the ID/DD Community Care Act that has 30 beds or more, a long-term care for under age 22 facility licensed under the ID/DD Community Care Act, or a facility licensed under the Nursing Home Care Act.

"Resident" means a person residing in a facility.

"Resident's representative" has the meaning given to that
term in (1) Section 1-123 of the Nursing Home Care Act if the resident resides in a facility licensed under the Nursing Home Care Act or (2) Section 1-123 of the ID/DD Community Care Act if the resident resides in a facility licensed under the ID/DD Community Care Act.

Section 10. Authorized electronic monitoring.

(a) A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to this Act.

(b) Nothing in this Act shall be construed to allow the use of an electronic monitoring device to take still photographs or for the nonconsensual interception of private communications.

Section 15. Consent.

(a) Except as otherwise provided in this subsection, a resident, a resident's plenary guardian of the person, or the parent of a resident under the age of 18 must consent in writing on a notification and consent form prescribed by the Department to the authorized electronic monitoring in the resident's room. If the resident has not affirmatively objected to the authorized electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent
on behalf of the resident, in order of priority:

(1) a health care agent named under the Illinois Power of Attorney Act;

(2) a resident's representative, as defined in Section 5 of this Act;

(3) the resident's spouse;

(4) the resident's parent;

(5) the resident's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or

(6) the resident's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

(a-5) Prior to another person, other than a resident's plenary guardian of the person, consent ing on behalf of a resident 18 years of age or older in accordance with this Section, the resident must be asked by that person, in the presence of a facility employee, if he or she wants authorized electronic monitoring to be conducted. The person must explain to the resident:

(1) the type of electronic monitoring device to be used;

(2) the standard conditions that may be placed on the electronic monitoring device's use, including those listed
in paragraph (7) of subsection (b) of Section 20;

(3) with whom the recording may be shared according to Section 45; and

(4) the resident's ability to decline all recording.

For the purposes of this subsection, a resident affirmatively objects when he or she orally, visually, or through the use of auxiliary aids or services declines authorized electronic monitoring. The resident's response must be documented on the notification and consent form.

(b) A resident or roommate may consent to authorized electronic monitoring with any conditions of the resident's choosing, including, but not limited to, the list of standard conditions provided in paragraph (7) of subsection (b) of Section 20. A resident or roommate may request that the electronic monitoring device be turned off or the visual recording component of the electronic monitoring device be blocked at any time.

(c) Prior to the authorized electronic monitoring, a resident must obtain the written consent of any other resident residing in the room on the notification and consent form prescribed by the Department. Except as otherwise provided in this subsection, a roommate, a roommate's plenary guardian of the person, or the parent of a roommate under the age of 18 must consent in writing to the authorized electronic monitoring in the resident's room. If the roommate has not affirmatively objected to the authorized electronic monitoring in accordance
with subsection (a-5) and the roommate's physician determines that the roommate lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the roommate, in order of priority:

1. a health care agent named under the Illinois Power of Attorney Act;
2. a roommate's resident's representative, as defined in Section 5 of this Act;
3. the roommate's spouse;
4. the roommate's parent;
5. the roommate's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or
6. the roommate's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

(c-5) Consent by a roommate under subsection (c) authorizes the resident's use of any recording obtained under this Act, as provided in Section 45 of this Act.

(c-7) Any resident previously conducting authorized electronic monitoring must obtain consent from any new roommate before the resident may resume authorized electronic monitoring. If a new roommate does not consent to authorized
electronic monitoring and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the device.

(d) Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the electronic monitoring device.

(e) If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct authorized electronic monitoring when upon notification that a roommate has not consented to the use of an electronic monitoring device in his or her room, the facility offers to move either resident to another shared room that is available at the time of the request. If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident must pay the private
room rate. If a facility is unable to accommodate a resident due to lack of space, the facility must reevaluate the request every 2 weeks until the request is fulfilled.

Section 20. Notice to the facility.

(a) Authorized electronic monitoring may begin only after a notification and consent form prescribed by the Department has been completed and submitted to the facility.

(b) A resident shall notify the facility in writing of his or her intent to install an electronic monitoring device by providing a completed notification and consent form prescribed by the Department that must include, at minimum, the following information:

   (1) the resident's signed consent to electronic monitoring or the signature of the person consenting on behalf of the resident in accordance with Section 15 of this Act; if a person other than the resident signs the consent form, the form must document the following:

       (A) the date the resident was asked if he or she wants authorized electronic monitoring to be conducted in accordance with subsection (a-5) of Section 15;

       (B) who was present when the resident was asked; and

       (C) an acknowledgement that the resident did not affirmatively object; and

   (2) the resident's roommate's signed consent or the
signature of the person consenting on behalf of the resident in accordance with Section 15 of this Act, if applicable, and any conditions placed on the roommate's consent; if a person other than the roommate signs the consent form, the form must document the following:

(A) the date the roommate was asked if he or she wants authorized electronic monitoring to be conducted in accordance with subsection (a-5) of Section 15;

(B) who was present when the roommate was asked; and

(C) an acknowledgement that the roommate did not affirmatively object; and

(3) the type of electronic monitoring device to be used;

(4) any installation needs, such as mounting of a device to a wall or ceiling;

(5) the proposed date of installation for scheduling purposes;

(6) a copy of any contract for maintenance of the electronic monitoring device by a commercial entity;

(7) a list of standard conditions or restrictions that the resident or a roommate may elect to place on use of the electronic monitoring device, including, but not limited to:

(A) prohibiting audio recording;

(B) prohibiting broadcasting of audio or video;
(C) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

(D) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed; and

(E) turning the electronic monitoring device off for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

(8) any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device.

(c) A copy of the completed notification and consent form shall be placed in the resident's and any roommate's clinical record and a copy shall be provided to the resident and his or her roommate, if applicable.

(d) The Department shall prescribe the notification and consent form required in this Section no later than 60 days after the effective date of this Act. If the Department has not prescribed such a form by that date, the Office of the Attorney General shall post a notification and consent form on its website for resident use until the Department has prescribed the form.
Section 25. Cost and installation.

(a) A resident choosing to conduct authorized electronic monitoring must do so at his or her own expense, including paying purchase, installation, maintenance, and removal costs.

(b) If a resident chooses to install an electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident is responsible for contracting with an Internet service provider.

(c) The facility shall make a reasonable attempt to accommodate the resident's installation needs, including, but not limited to, allowing access to the facility's telecommunications or equipment room. A facility has the burden of proving that a requested accommodation is not reasonable.

(d) The electronic monitoring device must be placed in a conspicuously visible location in the room.

(e) A facility may not charge the resident a fee for the cost of electricity used by an electronic monitoring device.

(f) All electronic monitoring device installations and supporting services shall comply with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2000 edition).

Section 27. Assistance program.

(a) Subject to appropriation, the Department shall establish a program to assist residents receiving medical

(b) The Department shall distribute up to $50,000 in funds on an annual basis to residents receiving medical assistance under Article V of the Illinois Public Aid Code for the purchase and installation of authorized electronic monitoring devices.

(c) Applications for funds and disbursement of funds must be made in a manner prescribed by the Department.

Section 30. Notice to visitors.

(a) If a resident of a facility conducts authorized electronic monitoring, a sign shall be clearly and conspicuously posted at all building entrances accessible to visitors. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents."

(b) A sign shall be clearly and conspicuously posted at the entrance to a resident's room where authorized electronic monitoring is being conducted. The notice must state, in large, easy-to-read type, "This room is electronically monitored."

(c) The facility is responsible for installing and maintaining the signage required in this Section.

Section 40. Obstruction of electronic monitoring devices.
(a) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room without the permission of the resident or the individual who consented on behalf of the resident in accordance with Section 15 of this Act.

(b) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying a video or audio recording obtained in accordance with this Act without the permission of the resident or the individual who consented on behalf of the resident in accordance with Section 15 of this Act.

(c) A person or entity that violates this Section is guilty of a Class B misdemeanor. A person or entity that violates this Section in the commission of or to conceal a misdemeanor offense is guilty of a Class A misdemeanor. A person or entity that violates this Section in the commission of or to conceal a felony offense is guilty of a Class 4 felony.

(d) It is not a violation of this Section if a person or facility turns off the electronic monitoring device or blocks the visual recording component of the electronic monitoring device at the direction of the resident or the person who consented on behalf of the resident in accordance with Section 15 of this Act.

Section 45. Dissemination of recordings.
(a) A facility may not access any video or audio recording created through authorized electronic monitoring without the written consent of the resident or the person who consented on behalf of the resident in accordance with Section 15 of this Act.

(b) Except as required under the Freedom of Information Act, a recording or copy of a recording made pursuant to this Act may only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident or residents.

(c) The resident or person who consented on behalf of the resident in accordance with Section 15 of this Act shall provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred.

Section 50. Admissibility of evidence. Subject to applicable rules of evidence and procedure, any video or audio recording created through authorized electronic monitoring in accordance with this Act may be admitted into evidence in a civil, criminal, or administrative proceeding if the contents of the recording have not been edited or artificially enhanced and the video recording includes the date and time the events occurred.
Section 55. Report. Each facility shall report to the Department, in a manner prescribed by the Department, the number of authorized electronic monitoring notification and consent forms received annually. The Department shall report the total number of authorized electronic monitoring notification and consent forms received by facilities to the Office of the Attorney General annually.

Section 60. Liability.
(a) A facility is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a person who consents on behalf of the resident for any purpose not authorized by this Act.
(b) A facility is not civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted pursuant to this Act.

Section 65. Rules. The Department shall adopt rules necessary to implement this Act.

Section 70. The Nursing Home Care Act is amended by changing Section 3-318 and by adding Section 2-115 as follows:

(210 ILCS 45/2-115 new)
Sec. 2-115. Authorized electronic monitoring of a
resident's room. A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(210 ILCS 45/3-318) (from Ch. 111 1/2, par. 4153-318)

Sec. 3-318. (a) No person shall:

(1) Intentionally fail to correct or interfere with the correction of a Type "AA", Type "A", or Type "B" violation within the time specified on the notice or approved plan of correction under this Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

(2) Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of this Act;

(3) Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to investigations and enforcement of this Act;

(4) Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under this Act;

(5) Intentionally retaliate or discriminate
against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this Act;

(6) Wilfully file any false, incomplete or intentionally misleading information required to be filed under this Act, or wilfully fail or refuse to file any required information; or

(7) Open or operate a facility without a license;

(8) Intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under the Authorized Electronic Monitoring in Long-Term Care Facilities Act; or

(9) Prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required in Section 20 of the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(b) A violation of this Section is a business offense, punishable by a fine not to exceed $10,000, except as otherwise provided in subsection (2) of Section 3-103 as to submission of false or misleading information in a license application.

(c) The State's Attorney of the county in which the facility is located, or the Attorney General, shall be notified by the Director of any violations of this Section.

(Source: P.A. 96-1372, eff. 7-29-10.)
Section 75. The ID/DD Community Care Act is amended by changing Section 3-318 and by adding Section 2-116 as follows:

(210 ILCS 47/2-116 new)
Sec. 2-116. Authorized electronic monitoring of a resident's room. A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(210 ILCS 47/3-318)
Sec. 3-318. Business offenses.
(a) No person shall:
(1) Intentionally fail to correct or interfere with the correction of a Type "AA", Type "A", or Type "B" violation within the time specified on the notice or approved plan of correction under this Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;
(2) Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of this Act;
(3) Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to
investigations and enforcement of this Act;

(4) Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under this Act;

(5) Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this Act;

(6) Willfully file any false, incomplete or intentionally misleading information required to be filed under this Act, or willfully fail or refuse to file any required information;

(7) Open or operate a facility without a license;

(8) Intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under the Authorized Electronic Monitoring in Long-Term Care Facilities Act; or

(9) Prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required in Section 20 of the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(b) A violation of this Section is a business offense, punishable by a fine not to exceed $10,000, except as otherwise provided in subsection (2) of Section 3-103 as to submission of
false or misleading information in a license application.

(c) The State's Attorney of the county in which the facility is located, or the Attorney General, shall be notified by the Director of any violations of this Section.
(Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11.)

Section 99. Effective date. This Act takes effect January 1, 2016.
AN ACT

RELATING TO COMMUNICATION AND VISITATION BETWEEN AN ADULT WARD
AND ANOTHER PERSON.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 633.635, subsection 1, Code 2015, is
amended by adding the following new paragraph:

NEW PARAGRAPH. 0f. Placing reasonable time, place,
or manner restrictions on communication, visitation, or
interaction between the adult ward and another person.

Sec. 2. Section 633.635, subsection 2, Code 2015, is amended
by adding the following new paragraph:

NEW PARAGRAPH. d. Denying all communication, visitation, or
interaction by an adult ward with a person with whom the adult
ward has expressed a desire to communicate, visit, or interact
or with a person who seeks to communicate, visit, or interact
with the adult ward. A court shall approve the denial of all
communication, visitation, or interaction with another person
only upon a showing of good cause by the guardian.

Sec. 3. NEW SECTION. 633.637A Rights of ward under
guardianship.

An adult ward under a guardianship has the right of
communication, visitation, or interaction with other persons
upon the consent of the adult ward, subject to section 633.635,
subsection 1, paragraph “0f”, and section 633.635, subsection 2,
paragraph “d”. If an adult ward is unable to give express
consent to such communication, visitation, or interaction with
a person due to a physical or mental condition, consent of an
adult ward may be presumed by a guardian or a court based on an
adult ward's prior relationship with such person.

PAM JOCHUM
President of the Senate

KRAIG PAULSEN
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 306, Eighty-sixth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 24, 2015

TERRY E. BRANSTAD
Governor
AN ACT to amend and reenact sections 23-43-01, 23-43-02, 23-43-03, 23-43-04, 23-43-05, and 23-43-06 of the North Dakota Century Code, relating to the creation and implementation of a stroke system; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-43-01 of the North Dakota Century Code is amended and reenacted as follows:


1. Effective January 1, 2010, the state department of health shall designate qualified hospitals as primary stroke centers. A hospital seeking designation as a primary stroke center shall apply to the department for that designation and shall demonstrate to the department that the hospital meets the applicable criteria established by the department.

2. The criteria established by the department for designation as a primary stroke center must include a requirement that the hospital be certified as a primary stroke center by the joint commission on accreditation of health care organizations or by a similar accrediting or certifying organization possessing hospital standards recognized nationally by the health care industry and accepted by the department.

3. The department may suspend or revoke a hospital's designation as a primary stroke center, after notice and opportunity for a hearing, if the department determines the hospital is not in compliance with the requirements of this chapter.

4. Annually, the state department of health shall provide a list of hospitals designated as primary stroke centers to each emergency medical services operation licensed in this state. The department shall post to the department's website a list of the hospitals designated as primary stroke centers.

The state health officer shall establish and maintain a comprehensive stroke system for the state. The program must comply with this chapter; be based on department-approved, nationally recognized guidelines and protocols; and provide specific patient care and support services criteria stroke centers shall meet to ensure stroke patients receive safe and effective care. The program must modify the state’s emergency medical response system to assure stroke patients are quickly identified and transported to and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients. The stroke system must include standards for the following components:

1. A system plan.

2. Prehospital emergency medical services.

3. Hospitals, for which the standards must include:
   b. Standards for evaluation and quality improvement programs for designated facilities. The standards must require each facility to collect quality improvement data and to provide...
specified portions to the department for use in state and regional stroke quality improvement programs.

4. A stroke registry. Data in the stroke registry is not subject to subpoena or discovery or introduction into evidence in any civil action. A designated facility shall participate in the stroke registry. A hospital not designated shall provide to the stroke registry a minimum set of data elements for all stroke patients as determined by the stroke system of care advisory task force.

5. A stroke quality improvement program to monitor the performance of the stroke system. The proceedings and records of the stroke quality improvement program are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter that is the subject of consideration by the stroke quality improvement program.

SECTION 2. AMENDMENT. Section 23-43-02 of the North Dakota Century Code is amended and reenacted as follows:


1. The state department of health shall establish a stroke system of care task force. The purpose of the task force is to encourage and ensure the establishment of an effective stroke system of care throughout the state. The state health officer, or the officer's designee, shall serve on the task force. The state health officer shall appoint members to the task force who represent rural hospitals, physicians who treat patients in rural areas, and members representing emergency medical services operations that provide services in rural areas of the state. Members of the task force serve at the pleasure of the state health officer.

2. Before April 1, 2010, the stroke system of care task force shall provide the state department of health with recommendations regarding the establishment of an effective stroke system of care in the rural areas of this state. The initial recommendations must include:
   a. Protocols for the triage, stabilization, and appropriate routing of stroke patients by emergency medical services operations in rural areas; and
   b. A plan to provide for coordination and communication between rural hospitals, primary stroke centers, and other support services in order to assure that residents of all regions of the state have access to effective and efficient stroke care.

3. The state health council may adopt rules, based on the task force's recommendations.

1. The state department of health shall identify hospitals that meet the criteria as a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital. In order to receive a designation under this section, a hospital shall apply to the state department of health and shall demonstrate to the satisfaction of the department the hospital meets the applicable criteria.

2. In order to qualify for designation as a comprehensive stroke center, an accredited acute care hospital must be certified as a comprehensive stroke center by a department-approved, nationally recognized guidelines-based organization, which provides comprehensive stroke center hospital certification for stroke care. As a condition of retaining designation as a comprehensive stroke center, an acute care hospital shall maintain its certification.

3. In order to qualify for designation as a primary stroke center, an accredited acute care hospital must be certified as a primary stroke center by a department-approved, nationally recognized guidelines-based organization, which provides primary stroke center certification for stroke care. As a condition of retaining designation as a primary stroke center, an acute care hospital shall maintain its certification.
4. In order to qualify for designation as an acute stroke-ready hospital, an accredited acute care hospital must be certified as an acute stroke-ready hospital by department-approved, nationally recognized guidelines-based criteria. As a condition of retaining designation as an acute stroke-ready hospital, an acute care hospital shall maintain its certification.

5. Through agreement, a comprehensive stroke center and primary stroke center may coordinate with an acute stroke-ready hospital to provide appropriate access to care for acute stroke patients. The coordinating stroke care agreement must be in writing and include, at a minimum:
   a. The transfer agreement for the transport and acceptance of a stroke patient seen by the acute stroke-ready hospital for stroke treatment therapies the stroke center or primary care center is not capable of providing; and
   b. Communication criteria and protocol with the acute stroke-ready hospital.

6. If the department determines the hospital is not in compliance with the requirements set for designation level, after notice and a hearing, the state department of health may suspend or revoke a hospital's state designation as a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital.

7. Any facility that is not designated must have a predetermined plan for the triage of acute stroke patients. The plan must be filed annually with the state department of health, division of emergency medical services and trauma.

SECTION 3. AMENDMENT. Section 23-43-03 of the North Dakota Century Code is amended and reenacted as follows:

23-43-03. Stroke triage—Emergency medical services operations - Assessment and transportation of stroke patients to a comprehensive stroke center, primary stroke center, or acute stroke-ready hospital.

1. Before January 1, 2011, the state department of health shall adopt a nationally recognized standardized stroke triage assessment tool. The department shall post this standardized stroke triage assessment tool to the department's website and shall provide a copy to each emergency medical services operation licensed in this state. As a term of licensure under chapter 23-27, each licensed emergency medical services operation shall adopt and implement a stroke triage assessment tool that is substantially similar to the standardized stroke triage assessment tool adopted by the department.

2. The department shall work with the stroke task force to establish protocols related to the assessment, treatment, and transport of stroke patients by emergency medical services operations licensed by the state. The protocols may include regional transport plans for the triage and transport of stroke patients to the closest, most appropriate facility, including the bypass of health care facilities not designated as primary stroke centers when it is safe to do so.

3. Effective April 1, 2012, each emergency medical services operation licensed under chapter 23-27 shall comply with this chapter.

1. Before June first of each year the state department of health shall send the list of comprehensive stroke centers, primary stroke centers, and acute stroke-ready hospitals to the medical director of each licensed emergency medical services operation in this state. The state department of health shall maintain a copy of the list and shall post a list of comprehensive stroke centers, primary stroke centers, and acute stroke-ready hospitals to the state department of health's website.
2. The state department of health shall adopt and distribute a nationally recognized, standardized stroke triage assessment tool. The department shall post this stroke triage assessment tool on the department's website and provide a copy of the assessment tool to each licensed emergency medical services operation. Each licensed emergency medical services operation shall use a stroke triage assessment tool that is substantially similar to the sample stroke triage assessment tool provided by the state department of health.

3. Each emergency medical services operation in the state shall establish prehospital care protocols related to the assessment, treatment, and transport of a stroke patient by a licensed emergency medical services operation. Such protocols must include plans for the triage and transport of an acute stroke patient to the closest comprehensive or primary stroke center or when appropriate to an acute stroke-ready hospital, within a specified timeframe of onset of symptoms.

4. As part of current training requirements, each emergency medical services operation in the state shall establish protocols to assure licensed emergency medical services providers and 911 dispatch personnel receive regular training on the assessment and treatment of stroke patients.

5. An emergency medical services operation shall comply with this chapter.

6. All data reported under this chapter must be made available to the state department of health and to all other government agencies, or contractors of government agencies, which have responsibility for the management and administration of emergency medical services throughout the state.

7. This chapter may not be construed to require disclosure of any confidential information or other data in violation of the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

SECTION 4. AMENDMENT. Section 23-43-04 of the North Dakota Century Code is amended and reenacted as follows:


   Semiannually, each hospital designated as a primary stroke center shall provide the state department of health a report on the center's quality initiatives. The data in the report is an exempt record and is not subject to the state's open records law. However, the department shall make the data in these reports available to state and local government entities that have responsibility for the management and administration of emergency medical services throughout the state. Annually, the department shall compile the report data in aggregate form as a report card and post this report card to the department's website. The results of this report card may be used by the department to conduct training.

1. The state department of health shall establish and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment. In implementing this plan, the state department of health shall:

   a. Maintain a statewide stroke database that compiles information and statistics on stroke care which align with nationally recognized stroke consensus metrics. The state department of health shall utilize a nationally recognized data set platform with confidentiality standards no less secure than the stroke registry data platform. The state department of health shall coordinate with national voluntary health organizations involved in stroke quality improvement to avoid duplication and redundancy.
b. Require comprehensive stroke centers and primary stroke centers and encourage acute stroke-ready hospitals and emergency medical services operations to report data consistent with nationally recognized guidelines on the treatment of individuals with confirmed stroke within the state.

c. Encourage sharing of information and data among health care providers on ways to improve the quality of care of stroke patients in this state.

d. Facilitate the communication and analysis of health information and data among the health care professionals providing care for individuals with stroke.

e. Require the application of evidence-based treatment guidelines regarding the transitioning of patients to community-based followup care in hospital outpatient, physician office, and ambulatory clinic settings for ongoing care after hospital discharge following acute treatment for stroke.

2. The state department of health shall establish a data oversight process and implement a plan for achieving continuous quality improvement in the quality of care provided under the state comprehensive stroke system for stroke response and treatment which must:
   a. Analyze data generated by the stroke registry on stroke response and treatment;
   b. Identify potential interventions to improve stroke care in geographic areas or regions of the state; and
   c. Provide recommendations to the state department of health, emergency medical services advisory council, and legislative assembly for the improvement of stroke care and delivery in the state.

3. Data reported under this section must be made available to the state department of health and to other government agencies, or contractors of government agencies, which have responsibility for the management and administration of emergency medical services throughout the state.

4. Before June first of each even-numbered year, the state department of health shall provide a report to the legislative management regarding progress made toward the recommendations provided in this chapter and any recommendations for future legislation.

SECTION 5. AMENDMENT. Section 23-43-05 of the North Dakota Century Code is amended and reenacted as follows:


This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital has been licensed. This chapter must be interpreted to recognize that all patients should be treated individually based on each patient’s needs and circumstances.

1. The state department of health shall establish a stroke system of care task force to address matters of triage, treatment, and transport of possible acute stroke patients. The stroke system of care task force must include representation from the state department of health, the emergency medical services advisory council, the university of North Dakota’s center for rural health, the American stroke association or similar entity, comprehensive stroke centers, primary stroke centers, rural hospitals, physicians, and emergency medical services operations.

2. The task force shall implement the regulations necessary to establish an effective stroke system of care in the state, with a focus on serving rural areas. The regulations must include protocols for the assessment, stabilization, and appropriate routing of stroke patients by
emergency medical services operations, and for coordination and communication between hospitals, comprehensive stroke centers, primary stroke centers, and other support services necessary to assure all residents have access to effective and efficient stroke care.

3. The stroke system of care task force shall make recommendations to the state department of health and health council. Upon receiving such recommendations, the health council may adopt rules implementing the recommendations.

4. As used in this subsection, "telemedicine services" means the use of interactive audio, video, and other electronic media used for the purpose of diagnosis, consultation, or treatment of acute stroke. The stroke system of care task force shall recommend eligible essential health care services for acute stroke care provided through telemedicine services.

SECTION 6. AMENDMENT. Section 23-43-06 of the North Dakota Century Code is amended and reenacted as follows:

23-43-06. Advertisement-General provisions.

A person may not advertise to the public that a hospital is a primary stroke center unless the hospital has been designated as such under this chapter.

1. This chapter is not a medical practice guideline and may not be used to restrict the authority of a hospital to provide services for which the hospital received a license under state law. Patients must be treated individually based on the needs and circumstances of each patient.

2. A person may not advertise to the public, by way of any medium, that a hospital is a comprehensive stroke center, primary stroke center, or acute stroke ready hospital unless the hospital is designated as such by the state department of health.

3. The health council may adopt rules to implement this chapter.
Assembly Bill No. 15

CHAPTER 1

An act to add and repeal Part 1.85 (commencing with Section 443) of Division 1 of the Health and Safety Code, relating to end of life.

[Approved by Governor October 5, 2015. Filed with Secretary of State October 5, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 15, Eggman. End of life.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill, until January 1, 2026, would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for a drug prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also establish specified forms to request an aid-in-dying drug, under specified circumstances, an interpreter declaration to be signed subject to penalty of perjury, thereby creating a crime and imposing a state-mandated local program, and a final attestation for an aid-in-dying drug. This bill would require specified information to be documented in the individual’s medical record, including, among other things, all oral and written requests for an aid-in-dying drug.

This bill would prohibit a provision in a contract, will, or other agreement from being conditioned upon, or affected by, a person making or rescinding a request for the above-described drug. The bill would prohibit the sale, procurement, or issuance of any life, health, or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for any policy or plan contract, from being conditioned upon or affected by the request. The bill would prohibit an insurance carrier from providing any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or his or her attending physician at the behest of the individual. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying drug coverage.

This bill would provide a person, except as provided, immunity from civil or criminal liability solely because the person was present when the qualified individual self-administered the drug, or the person assisted the qualified individual by preparing the aid-in-dying drug so long as the person did not
assist with the ingestion of the drug, and would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for conduct of a health care provider provided for by the bill. The bill would make participation in activities authorized pursuant to its provisions voluntary, and would make health care providers immune from liability for refusing to engage in activities authorized pursuant to its provisions. The bill would also authorize a health care provider to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under the act while on the premises owned or under the management or direct control of that prohibiting health care provider, or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

This bill would make it a felony to knowingly alter or forge a request for drugs to end an individual’s life without his or her authorization or to conceal or destroy a withdrawal or rescission of a request for a drug, if it is done with the intent or effect of causing the individual’s death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request a drug for the purpose of ending his or her life, to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without their knowledge or consent. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions is to be construed to authorize ending a patient’s life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among other things, suicide or homicide.

This bill would require physicians to submit specified forms and information to the State Department of Public Health after writing a prescription for an aid-in-dying drug and after the death of an individual who requested an aid-in-dying drug. The bill would authorize the Medical Board of California to update those forms and would require the State Department of Public Health to publish the forms on its Internet Web site. The bill would require the department to annually review a sample of certain information and records, make a statistical report of the information collected, and post that report to its Internet Web site.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

This bill would provide that no reimbursement is required by this act for a specified reason.
The people of the State of California do enact as follows:

SECTION 1. Part 1.85 (commencing with Section 443) is added to Division 1 of the Health and Safety Code, to read:

PART 1.85. END OF LIFE OPTION ACT

443. This part shall be known and may be cited as the End of Life Option Act.
443.1. As used in this part, the following definitions shall apply:
(a) “Adult” means an individual 18 years of age or older.
(b) “Aid-in-dying drug” means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease.
(c) “Attending physician” means the physician who has primary responsibility for the health care of an individual and treatment of the individual’s terminal disease.
(d) “Attending physician checklist and compliance form” means a form, as described in Section 443.22, identifying each and every requirement that must be fulfilled by an attending physician to be in good faith compliance with this part should the attending physician choose to participate.
(e) “Capacity to make medical decisions” means that, in the opinion of an individual’s attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make and communicate an informed decision to health care providers.
(f) “Consulting physician” means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual’s terminal disease.
(g) “Department” means the State Department of Public Health.
(h) “Health care provider” or “provider of health care” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of this code; and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of this code.
(i) “Informed decision” means a decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual’s life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:
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(1) The individual’s medical diagnosis and prognosis.
(2) The potential risks associated with taking the drug to be prescribed.
(3) The probable result of taking the drug to be prescribed.
(4) The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it.
(5) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(j) “Medically confirmed” means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual’s relevant medical records.

(k) “Mental health specialist assessment” means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(l) “Mental health specialist” means a psychiatrist or a licensed psychologist.

(m) “Physician” means a doctor of medicine or osteopathy currently licensed to practice medicine in this state.

(n) “Public place” means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.

(o) “Qualified individual” means an adult who has the capacity to make medical decisions, is a resident of California, and has satisfied the requirements of this part in order to obtain a prescription for a drug to end his or her life.

(p) “Self-administer” means a qualified individual’s affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to bring about his or her own death.

(q) “Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

443.2. (a) An individual who is an adult with the capacity to make medical decisions and with a terminal disease may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

(1) The individual’s attending physician has diagnosed the individual with a terminal disease.
(2) The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.
(3) The individual is a resident of California and is able to establish residency through any of the following means:

(A) Possession of a California driver license or other identification issued by the State of California.
(B) Registration to vote in California.
(C) Evidence that the person owns or leases property in California.
(D) Filing of a California tax return for the most recent tax year.

(4) The individual documents his or her request pursuant to the requirements set forth in Section 443.3.

(5) The individual has the physical and mental ability to self-administer the aid-in-dying drug.

(b) A person shall not be considered a “qualified individual” under the provisions of this part solely because of age or disability.

(c) A request for a prescription for an aid-in-dying drug under this part shall be made solely and directly by the individual diagnosed with the terminal disease and shall not be made on behalf of the patient, including, but not limited to, through a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decisionmaker.

443.3. (a) An individual seeking to obtain a prescription for an aid-in-dying drug pursuant to this part shall submit two oral requests, a minimum of 15 days apart, and a written request to his or her attending physician. The attending physician shall directly, and not through a designee, receive all three requests required pursuant to this section.

(b) A valid written request for an aid-in-dying drug under subdivision (a) shall meet all of the following conditions:

(1) The request shall be in the form described in Section 443.11.

(2) The request shall be signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug.

(3) The request shall be witnessed by at least two other adult persons who, in the presence of the individual, shall attest that to the best of their knowledge and belief the individual is all of the following:

(A) An individual who is personally known to them or has provided proof of identity.

(B) An individual who voluntarily signed this request in their presence.

(C) An individual whom they believe to be of sound mind and not under duress, fraud, or undue influence.

(D) Not an individual for whom either of them is the attending physician, consulting physician, or mental health specialist.

(c) Only one of the two witnesses at the time the written request is signed may:

(1) Be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the individual’s estate upon death.

(2) Own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides.

(d) The attending physician, consulting physician, or mental health specialist of the individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

443.4. (a) An individual may at any time withdraw or rescind his or her request for an aid-in-dying drug, or decide not to ingest an aid-in-dying drug, without regard to the individual’s mental state.
(b) A prescription for an aid-in-dying drug provided under this part may not be written without the attending physician directly, and not through a designee, offering the individual an opportunity to withdraw or rescind the request.

443.5. (a) Before prescribing an aid-in-dying drug, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:
   (A) Whether the requesting adult has the capacity to make medical decisions.
   (ii) If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.
   (iii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
   (B) Whether the requesting adult has a terminal disease.
   (C) Whether the requesting adult has voluntarily made the request for an aid-in-dying drug pursuant to Sections 443.2 and 443.3.
   (D) Whether the requesting adult is a qualified individual pursuant to subdivision (o) of Section 443.1.

(2) Confirm that the individual is making an informed decision by discussing with him or her all of the following:
   (A) His or her medical diagnosis and prognosis.
   (B) The potential risks associated with ingesting the requested aid-in-dying drug.
   (C) The probable result of ingesting the aid-in-dying drug.
   (D) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it.
   (E) The feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(3) Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of this part.

(4) Confirm that the qualified individual’s request does not arise from coercion or undue influence by another person by discussing with the qualified individual, outside of the presence of any other persons, except for an interpreter as required pursuant to this part, whether or not the qualified individual is feeling coerced or unduly influenced by another person.

(5) Counsel the qualified individual about the importance of all of the following:
   (A) Having another person present when he or she ingests the aid-in-dying drug prescribed pursuant to this part.
   (B) Not ingesting the aid-in-dying drug in a public place.
(C) Notifying the next of kin of his or her request for an aid-in-dying drug. A qualified individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

(D) Participating in a hospice program.

(E) Maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will ingest it.

(F) Inform the individual that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner.

(G) Offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug.

(H) Verify, immediately before writing the prescription for an aid-in-dying drug, that the qualified individual is making an informed decision.

(I) Confirm that all requirements are met and all appropriate steps are carried out in accordance with this part before writing a prescription for an aid-in-dying drug.

(J) Fulfill the record documentation required under Sections 443.8 and 443.19.

(K) Complete the attending physician checklist and compliance form, as described in Section 443.22, include it and the consulting physician compliance form in the individual’s medical record, and submit both forms to the State Department of Public Health.

(L) Give the qualified individual the final attestation form, with the instruction that the form be filled out and executed by the qualified individual within 48 hours prior to the qualified individual choosing to self-administer the aid-in-dying drug.

(b) If the conditions set forth in subdivision (a) are satisfied, the attending physician may deliver the aid-in-dying drug in any of the following ways:

(1) Dispensing the aid-in-dying drug directly, including ancillary medication intended to minimize the qualified individual’s discomfort, if the attending physician meets all of the following criteria:
   (A) Is authorized to dispense medicine under California law.
   (B) Has a current United States Drug Enforcement Administration (USDEA) certificate.
   (C) Complies with any applicable administrative rule or regulation.

(2) With the qualified individual’s written consent, contacting a pharmacist, informing the pharmacist of the prescriptions, and delivering the written prescriptions personally, by mail, or electronically to the pharmacist, who may dispense the drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual and with the designation delivered to the pharmacist in writing or verbally.

(c) Delivery of the dispensed drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery, or, with a signature required on delivery, by United Parcel Service, United States Postal Service, Federal Express, or by messenger service.
443.6. Before a qualified individual obtains an aid-in-dying drug from the attending physician, the consulting physician shall perform all of the following:
(a) Examine the individual and his or her relevant medical records.
(b) Confirm in writing the attending physician’s diagnosis and prognosis.
(c) Determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision.
(d) If there are indications of a mental disorder, refer the individual for a mental health specialist assessment.
(e) Fulfill the record documentation required under this part.
(f) Submit the compliance form to the attending physician.

443.7. Upon referral from the attending or consulting physician pursuant to this part, the mental health specialist shall:
(a) Examine the qualified individual and his or her relevant medical records.
(b) Determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.
(c) Determine that the individual is not suffering from impaired judgment due to a mental disorder.
(d) Fulfill the record documentation requirements of this part.

443.8. All of the following shall be documented in the individual’s medical record:
(a) All oral requests for aid-in-dying drugs.
(b) All written requests for aid-in-dying drugs.
(c) The attending physician’s diagnosis and prognosis, and the determination that a qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified individual.
(d) The consulting physician’s diagnosis and prognosis, and verification that the qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.
(e) A report of the outcome and determinations made during a mental health specialist’s assessment, if performed.
(f) The attending physician’s offer to the qualified individual to withdraw or rescind his or her request at the time of the individual’s second oral request.
(g) A note by the attending physician indicating that all requirements under Sections 443.5 and 443.6 have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.

443.9. (a) Within 30 calendar days of writing a prescription for an aid-in-dying drug, the attending physician shall submit to the State Department of Public Health a copy of the qualifying patient’s written request, the attending physician checklist and compliance form, and the consulting physician compliance form.
(b) Within 30 calendar days following the qualified individual’s death from ingesting the aid-in-dying drug, or any other cause, the attending physician shall submit the attending physician followup form to the State Department of Public Health.

443.10. A qualified individual may not receive a prescription for an aid-in-dying drug pursuant to this part unless he or she has made an informed decision. Immediately before writing a prescription for an aid-in-dying drug under this part, the attending physician shall verify that the individual is making an informed decision.

443.11. (a) A request for an aid-in-dying drug as authorized by this part shall be in the following form:

REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER  I, ......................................................,

am an adult of sound mind and a resident of the State of California.

I am suffering from ................, which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe an aid-in-dying drug that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

......... I have informed one or more members of my family of my decision and taken their opinions into consideration.

......... I have decided not to inform my family of my decision.

......... I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

Signed:..............................................

Dated:...............................................

DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) is personally known to us or has provided proof of identity;

(b) voluntarily signed this request in our presence;

(c) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and
(d) is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

............................Witness 1/Date
............................Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person’s estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care facility where the person is a patient or resident.

(b) (1) The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and his or her attending or consulting physicians.

(2) Notwithstanding paragraph (1), the written request may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter’s declaration that is signed under penalty of perjury. The interpreter’s declaration shall state words to the effect that:

I, (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (insert time), I read the “Request for an Aid-In-Dying Drug to End My Life” to (insert name of individual/patient) in (insert target language).

Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X______Interpreter signature
X______Interpreter printed name
X______Interpreter address

(3) An interpreter whose services are provided pursuant to paragraph (2) shall not be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the person’s estate upon death. An interpreter whose services are provided pursuant to paragraph (2) shall meet the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Health Care or other standards deemed acceptable by the department for health care providers in California.
(c) The final attestation form given by the attending physician to the qualified individual at the time the attending physician writes the prescription shall appear in the following form:

FINAL ATTESTATION FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, ......................................................, am an adult of sound mind and a resident of the State of California.
I am suffering from ................, which my attending physician has determined is in its terminal phase and which has been medically confirmed.
I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain control.
I have received the aid-in-dying drug and am fully aware that this aid-in-dying drug will end my life in a humane and dignified manner.
INITIAL ONE:
............ I have informed one or more members of my family of my decision and taken their opinions into consideration.
............ I have decided not to inform my family of my decision.
............ I have no family to inform of my decision.
My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.
I make this decision to ingest the aid-in-dying drug to end my life in a humane and dignified manner. I understand I still may choose not to ingest the drug and by signing this form I am under no obligation to ingest the drug. I understand I may rescind this request at any time.

Signed:..............................................
Dated:.............................................
Time:.............................................

(1) Within 48 hours prior to the individual self-administering the aid-in-dying drug, the individual shall complete the final attestation form. If aid-in-dying medication is not returned or relinquished upon the patient’s death as required in Section 443.20, the completed form shall be delivered
by the individual’s health care provider, family member, or other representative to the attending physician to be included in the patient’s medical record.

(2) Upon receiving the final attestation form the attending physician shall add this form to the medical records of the qualified individual.

443.12. (a) A provision in a contract, will, or other agreement executed on or after January 1, 2016, whether written or oral, to the extent the provision would affect whether a person may make, withdraw, or rescind a request for an aid-in-dying drug is not valid.

(b) An obligation owing under any contract executed on or after January 1, 2016, may not be conditioned or affected by a qualified individual making, withdrawing, or rescinding a request for an aid-in-dying drug.

443.13. (a) (1) The sale, procurement, or issuance of a life, health, or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for an aid-in-dying drug.

(2) Pursuant to Section 443.18, death resulting from the self-administration of an aid-in-dying drug is not suicide, and therefore health and insurance coverage shall not be exempted on that basis.

(b) Notwithstanding any other law, a qualified individual’s act of self-administering an aid-in-dying drug shall not have an effect upon a life, health, or annuity policy other than that of a natural death from the underlying disease.

(c) An insurance carrier shall not provide any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or his or her attending physician at the behest of the individual. Any communication shall not include both the denial of treatment and information as to the availability of aid-in-dying drug coverage. For the purposes of this subdivision, “insurance carrier” means a health care service plan as defined in Section 1345 of this code or a carrier of health insurance as defined in Section 106 of the Insurance Code.

443.14. (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed aid-in-dying drug. A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug so long as the person does not assist the qualified person in ingesting the aid-in-dying drug.

(b) A health care provider or professional organization or association shall not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with this part or for refusing to participate in accordance with subdivision (e).

(c) Notwithstanding any other law, a health care provider shall not be subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff
action, sanction, or penalty or other liability for participating in this part, including, but not limited to, determining the diagnosis or prognosis of an individual, determining the capacity of an individual for purposes of qualifying for the act, providing information to an individual regarding this part, and providing a referral to a physician who participates in this part. Nothing in this subdivision shall be construed to limit the application of, or provide immunity from, Section 443.16 or 443.17.

(d) (1) A request by a qualified individual to an attending physician to provide an aid-in-dying drug in good faith compliance with the provisions of this part shall not provide the sole basis for the appointment of a guardian or conservator.

(2) No actions taken in compliance with the provisions of this part shall constitute or provide the basis for any claim of neglect or elder abuse for any purpose of law.

(e) (1) Participation in activities authorized pursuant to this part shall be voluntary. Notwithstanding Sections 442 to 442.7, inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual’s decision under this part.

(2) Notwithstanding any other law, a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate in activities authorized under this part, including, but not limited to, refusing to inform a patient regarding his or her rights under this part, and not referring an individual to a physician who participates in activities authorized under this part.

(3) If a health care provider is unable or unwilling to carry out a qualified individual’s request under this part and the qualified individual transfers care to a new health care provider, the individual may request a copy of his or her medical records pursuant to law.

443.15. (a) Subject to subdivision (b), notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this part while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

(b) A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating in activities under this part, as described in subdivision (a), shall first give notice of the policy prohibiting participation under this part to the individual or entity. A health care provider that fails to provide notice to an individual or entity in compliance with this subdivision shall not be entitled to enforce such a policy against that individual or entity.
(c) Subject to compliance with subdivision (b), the prohibiting health care provider may take action, including, but not limited to, the following, as applicable, against any individual or entity that violates this policy:

(1) Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.

(2) Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting health care provider.

(3) Termination of any lease or other contract between the prohibiting health care provider and the individual or entity that violates this policy.

(4) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the individual or entity in violation of the policy.

(d) Nothing in this section shall be construed to prevent, or to allow a prohibiting health care provider to prohibit, any other health care provider, employee, independent contractor, or other person or entity from any of the following:

(1) Participating, or entering into an agreement to participate, in activities under this part, while on premises that are not owned or under the management or direct control of the prohibiting provider or while acting outside the course and scope of the participant’s duties as an employee of, or an independent contractor for, the prohibiting health care provider.

(2) Participating, or entering into an agreement to participate, in activities under this part as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting provider.

(e) In taking actions pursuant to subdivision (c), a health care provider shall comply with all procedures required by law, its own policies or procedures, and any contract with the individual or entity in violation of the policy, as applicable.

(f) For purposes of this section:

(1) “Notice” means a separate statement in writing advising of the prohibiting health care provider policy with respect to participating in activities under this part.

(2) “Participating, or entering into an agreement to participate, in activities under this part” means doing or entering into an agreement to do any one or more of the following:

(A) Performing the duties of an attending physician as specified in Section 443.5.

(B) Performing the duties of a consulting physician as specified in Section 443.6.

(C) Performing the duties of a mental health specialist, in the circumstance that a referral to one is made.

(D) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 443.5.

(E) Being present when the qualified individual takes the aid-in-dying drug prescribed pursuant to this part.
“Participating, or entering into an agreement to participate, in activities under this part” does not include doing, or entering into an agreement to do, any of the following:

(A) Diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions.

(B) Providing information to a patient about this part.

(C) Providing a patient, upon the patient’s request, with a referral to another health care provider for the purposes of participating in the activities authorized by this part.

(g) Any action taken by a prohibiting provider pursuant to this section shall not be reportable under Sections 800 to 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates in activities under this part shall not be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Sections 800 to 809.9, inclusive, of the Business and Professions Code.

(h) Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

443.16. (a) A health care provider may not be sanctioned for any of the following:

(1) Making an initial determination pursuant to the standard of care that an individual has a terminal disease and informing him or her of the medical prognosis.

(2) Providing information about the End of Life Option Act to a patient upon the request of the individual.

(3) Providing an individual, upon request, with a referral to another physician.

(b) A health care provider that prohibits activities under this part in accordance with Section 443.15 shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this part if the individual health care provider is acting outside of the course and scope of his or her capacity as an employee or independent contractor of the prohibiting health care provider.

(c) Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions of a health care provider taken pursuant to this part. Notwithstanding any contrary provision in this part, health care providers may be sanctioned by their licensing board or agency for conduct and actions constituting unprofessional conduct, including failure to comply in good faith with this part.

443.17. (a) Knowingly altering or forging a request for an aid-in-dying drug to end an individual’s life without his or her authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a felony if the act is done with the intent or effect of causing the individual’s death.
(b) Knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent, is punishable as a felony.

(c) For purposes of this section, “knowingly” has the meaning provided in Section 7 of the Penal Code.

(d) The attending physician, consulting physician, or mental health specialist shall not be related to the individual by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the individual’s estate upon death.

(e) Nothing in this section shall be construed to limit civil liability.

(f) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this section.

443.18. Nothing in this part may be construed to authorize a physician or any other person to end an individual’s life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law.

443.19. (a) The State Department of Public Health shall collect and review the information submitted pursuant to Section 443.9. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient’s family, and any medical provider or pharmacist involved with the patient under the provisions of this part. The information shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(b) On or before July 1, 2017, and each year thereafter, based on the information collected in the previous year, the department shall create a report with the information collected from the attending physician followup form and post that report to its Internet Web site. The report shall include, but not be limited to, all of the following based on the information that is provided to the department and on the department’s access to vital statistics:

(1) The number of people for whom an aid-in-dying prescription was written.

(2) The number of known individuals who died each year for whom aid-in-dying prescriptions were written, and the cause of death of those individuals.

(3) For the period commencing January 1, 2016, to and including the previous year, cumulatively, the total number of aid-in-dying prescriptions written, the number of people who died due to use of aid-in-dying drugs, and the number of those people who died who were enrolled in hospice or other palliative care programs at the time of death.

(4) The number of known deaths in California from using aid-in-dying drugs per 10,000 deaths in California.

(5) The number of physicians who wrote prescriptions for aid-in-dying drugs.
(6) Of people who died due to using an aid-in-dying drug, demographic percentages organized by the following characteristics:
(A) Age at death.
(B) Education level.
(C) Race.
(D) Sex.
(E) Type of insurance, including whether or not they had insurance.
(F) Underlying illness.

(c) The State Department of Public Health shall make available the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form, as described in Section 443.22, by posting them on its Internet Web site.

443.20. A person who has custody or control of any unused aid-in-dying drugs prescribed pursuant to this part after the death of the patient shall personally deliver the unused aid-in-dying drugs for disposal by delivering it to the nearest qualified facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means in accordance with guidelines promulgated by the California State Board of Pharmacy or a federal Drug Enforcement Administration approved take-back program.

443.21. Any governmental entity that incurs costs resulting from a qualified individual terminating his or her life pursuant to the provisions of this part in a public place shall have a claim against the estate of the qualified individual to recover those costs and reasonable attorney fees related to enforcing the claim.

443.215. This part shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

443.22. (a) The Medical Board of California may update the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form, based on those provided in subdivision (b). Upon completion, the State Department of Public Health shall publish the updated forms on its Internet Web site.

(b) Unless and until updated by the Medical Board of California pursuant to this section, the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form shall be in the following form:
### ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

<table>
<thead>
<tr>
<th>A</th>
<th>PATIENT INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PATIENT'S NAME (LAST, FIRST, M.I.)</td>
</tr>
<tr>
<td></td>
<td>PATIENT RESIDENTIAL ADDRESS (STREET, CITY, ZIP CODE)</td>
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</tbody>
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<table>
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<tr>
<th>B</th>
<th>ATTENDING PHYSICIAN INFORMATION</th>
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<tbody>
<tr>
<td></td>
<td>PHYSICIAN'S NAME (LAST, FIRST, M.I.)</td>
</tr>
<tr>
<td></td>
<td>MAILING ADDRESS (STREET, CITY, ZIP CODE)</td>
</tr>
<tr>
<td></td>
<td>PHYSICIAN'S LICENSE NUMBER</td>
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<tr>
<th>C</th>
<th>CONSULTING PHYSICIAN INFORMATION</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>PHYSICIAN'S NAME (LAST, FIRST, M.I.)</td>
</tr>
<tr>
<td></td>
<td>MAILING ADDRESS (STREET, CITY, ZIP CODE)</td>
</tr>
<tr>
<td></td>
<td>PHYSICIAN'S LICENSE NUMBER</td>
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</tbody>
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<thead>
<tr>
<th>D</th>
<th>ELIGIBILITY DETERMINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. TERMINAL DISEASE</td>
</tr>
<tr>
<td></td>
<td>2. CHECK BOXES FOR COMPLIANCE:</td>
</tr>
<tr>
<td></td>
<td>□ 1. Determination that the patient has a terminal disease.</td>
</tr>
<tr>
<td></td>
<td>□ 2. Determination that patient is a resident of California.</td>
</tr>
<tr>
<td></td>
<td>□ 3. Determination that patient has the capacity to make medical decisions**</td>
</tr>
<tr>
<td></td>
<td>□ 4. Determination that patient is acting voluntarily.</td>
</tr>
<tr>
<td></td>
<td>□ 5. Determination of capacity by mental health specialist, if necessary.</td>
</tr>
<tr>
<td></td>
<td>□ 6. Determination that patient has made his/her decision after being fully informed of:</td>
</tr>
<tr>
<td></td>
<td>□ a) His or her medical diagnosis; and</td>
</tr>
<tr>
<td></td>
<td>□ b) His or her prognosis; and</td>
</tr>
<tr>
<td></td>
<td>□ c) The potential risks associated with ingesting the requested aid-in-dying drug;</td>
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<tr>
<td></td>
<td>□ d) The probable result of ingesting the aid-in-dying drug;</td>
</tr>
<tr>
<td></td>
<td>□ e) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it</td>
</tr>
</tbody>
</table>
## ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

### E  ADDITIONAL COMPLIANCE REQUIREMENTS

- [ ] 1. Counseled patient about the importance of all of the following:
  - a) Maintaining the aid-in-dying drug in a safe and secure location until the time the qualified individual will ingest it;
  - b) Having another person present when he or she ingests the aid-in-dying drug;
  - c) Not ingesting the aid-in-dying drug in a public place;
  - d) Notifying the next of kin of his or her request for an aid-in-dying drug. (an individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason); and
  - e) Participating in a hospice program or palliative care program.
- [ ] 2. Informed patient of right to rescind request (1st time)
- [ ] 3. Discussed the feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control.
- [ ] 4. Met with patient one-on-one, except in the presence of an interpreter, to confirm the request is not coming from coercion
- [ ] 5. First oral request for aid-in-dying: / / Attend physician initials:_______
- [ ] 6. Second oral request for aid-in-dying: / / Attend physician initials:_______
- [ ] 7. Written request submitted: / / Attend physician initials:_______
- [ ] 8. Offered patient right to rescind (2nd time)

### F  PATIENT'S MENTAL STATUS

Check one of the following (required):

- [ ] I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
- [ ] I have referred the patient to the mental health specialist listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
- [ ] If a referral was made to a mental health specialist, the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder.

Mental health specialist's information, if applicable:

| MENTAL HEALTH SPECIALIST NAME |
| MENTAL HEALTH SPECIALIST TITLE & LICENSE NUMBER |
| MENTAL HEALTH SPECIALIST ADDRESS (STREET, CITY, ZIP CODE) |
### ATTENDING PHYSICIAN CHECKLIST & COMPLIANCE FORM

<table>
<thead>
<tr>
<th>G</th>
<th>PHARMACIST NAME</th>
<th>MEDICATION PRESCRIBED</th>
<th>TELEPHONE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1. Aid-in-dying medication prescribed:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. Name: __________________________</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>b. Dosage: ________________________</td>
<td></td>
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<td></td>
<td>2. Antihemorrhagic medication prescribed:</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td>a. Name: __________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Dosage: ________________________</td>
<td></td>
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<td></td>
<td></td>
<td>3. Method prescription was delivered:</td>
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<td></td>
<td></td>
<td>a. In person</td>
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<td></td>
<td></td>
<td>b. By mail</td>
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<tr>
<td></td>
<td></td>
<td>c. Electronically</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>4. Date medication was prescribed: <em><strong>/</strong></em>/____</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>X</th>
<th>PHYSICIAN'S SIGNATURE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NAME (PLEASE PRINT)</td>
<td></td>
</tr>
</tbody>
</table>

**"Capacity to make medical decisions" means that, in the opinion of an individual’s attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make decisions. "Mental Health Specialist" means a psychiatrist or licensed psychologist.**
**Consulting Physician Compliance Form**

### A. Patient Information
- Patient's Name (Last, First, M.I.)
- Date of Birth

### B. Attending Physician
- Attending Physician's Name (Last, First, M.I.)
- Telephone Number

### C. Consulting Physician's Report
1. **Terminal Disease**
   - Date of Examination(s)
   - Check boxes for compliance. (Both the attending and consulting physicians must make these determinations.)
   - 1. Determination that the patient has a terminal disease.
   - 2. Determination that patient has the mental capacity to make medical decisions.
   - 3. Determination that patient is acting voluntarily.
   - 4. Determination that patient has made his/her decision after being fully informed of:
     - a) His or her medical diagnosis; and
     - b) His or her prognosis; and
     - c) The potential risks associated with taking the drug to be prescribed; and
     - d) The potential result of taking the drug to be prescribed; and
     - e) The feasible alternatives, including, but not limited to, comfort care, hospice care, palliative care and pain control.

### D. Patient's Mental Status
- Check one of the following (required):
  - I have determined that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
  - I have referred the patient to the mental health specialist listed below for one or more consultations to determine that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.
  - I have referred the patient to a mental health specialist; the mental health specialist has determined that the patient is not suffering from impaired judgment due to a mental disorder.

- Mental Health Specialist's Name
- Telephone Number
- Date

### E. Consultant's Information
- **X** Physician's Signature
- Name (Please Print)
- Mailing Address
- City, State and Zip Code
- Telephone Number

---

**Capacity to make medical decisions** means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risks, and alternatives, and the ability to make decisions. **Mental Health Specialist** means a psychiatrist or a licensed psychologist.
ATTENDING PHYSICIAN FOLLOW-UP FORM

The End of Life Option Act requires physicians who write a prescription for an aid-in-dying drug to complete this follow-up form within 30 calendar days of a patient's death, whether from ingestion of the aid-in-dying drug obtained under the Act or from any other cause.

For the State Department of Public Health to accept this form, it must be signed by the attending physician, whether or not he or she was present at the patient's time of death.

This form should be mailed or sent electronically to the State Department of Public Health. All information is kept strictly confidential.

Date: __________/________/________

Patient name: __________________________________________

Attending physician name: __________________________________________

Did the patient die from ingesting the aid-in-dying drug, from their underlying illness, or from another cause such as terminal sedation or ceasing to eat or drink?

☐ Aid-in-dying drug (lethal dose) → Please sign below and go to page 2.
  Attending physician signature: ________________________________

☐ Underlying Illness → There is no need to complete the rest of the form. Please sign below.
  Attending physician signature: ________________________________

☐ Other → There is no need to complete the rest of the form. Please specify the circumstances surrounding the patient's death and sign.
  Please specify: __________________________________________
  Attending physician signature: ________________________________

PART A and PART B should only be completed if the patient died from ingesting the lethal dose of the aid-in-dying drug.

Please read carefully the following to determine which situation applies. Check the box that indicates the scenario and complete the remainder of the form accordingly.

☐ The attending physician was present at the time of death:

  → The attending physician must complete this form in its entirety and sign Part A and Part B.

☐ The attending physician was not present at the time of death, but another licensed health care provider was present:

  → The licensed health care provider must complete and sign Part A of this form. The attending physician must complete and sign Part B of the form.

☐ Neither the attending physician nor another licensed health care provider was present at the time of death:

  → Part A may be left blank. The attending physician must complete and sign Part B of the form.
ATTENDING PHYSICIAN FOLLOW-UP FORM

PART A: To be completed and signed by the attending physician or another licensed health care provider present at death:

1. Was the attending physician at the patient's bedside when the patient took the aid-in-dying drug?
   □ Yes
   □ No
   If no: Was another physician or trained health care provider present when the patient ingested the aid-in-dying drug?
   □ Yes, another physician
   □ Yes, a trained health-care provider/volunteer
   □ No
   □ Unknown

2. Was the attending physician at the patient's bedside at the time of death?
   □ Yes
   □ No
   If no: Was another physician or a licensed health care provider present at the patient's time of death?
   □ Yes, another physician or a licensed health care provider
   □ No
   □ Unknown

3. On what day did the patient consume the lethal dose of the aid-in-dying drug?
   __________/________/______ (month/day/year) □ Unknown

4. On what day did the patient die after consuming the lethal dose of the aid-in-dying drug?
   __________/________/______ (month/day/year) □ Unknown

5. Where did the patient ingest the lethal dose of the aid-in-dying drug?
   □ Private home
   □ Assisted-living residence
   □ Nursing home
   □ Acute care hospital in-patient
   □ In-patient hospice resident
   □ Other (specify) ____________________________
   □ Unknown

6. What was the time between the ingestion of the lethal dose of aid-in-dying drug and unconsciousness?
   Minutes _________ and/or Hours _______ □ Unknown

7. What was the time between lethal medication ingestion and death?
   Minutes _________ and/or Hours _______ □ Unknown
ATTENDING PHYSICIAN FOLLOW-UP FORM

8. Were there any complications that occurred after the patient took the lethal dose of the aid-in-dying drug?
   □ Yes - vomiting, emesis
   □ Yes - regained consciousness
   □ No Complications
   □ Other - Please describe: ________________________________
   □ Unknown

9. Was the Emergency Medical System activated for any reason after ingesting the lethal dose of the aid-in-dying drug?
   □ Yes - Please describe: ________________________________
   □ No
   □ Unknown

10. At the time of ingesting the lethal dose of the aid-in-dying drug, was the patient receiving hospice care?
    □ Yes
    □ No, refused care
    □ No, other (specify) ________________________________

Signature of attending physician present at time of death: ____________________________________________

Name of Licensed Health Care Provider present at time of death if not attending physician: _______________

Signature of Licensed Health Care Provider: ________________________________________________________
### ATTENDING PHYSICIAN FOLLOW-UP FORM

**PART B: To be completed and signed by the attending physician**

12. On what date was the prescription written for the aid-in-dying drug? ____/____/____

13. When the patient initially requested a prescription for the aid-in-dying drug, was the patient receiving hospice care?
   - ☐ Yes
   - ☐ No, refused care
   - ☐ No, other (specify) ____________________________

14. What type of health-care coverage did the patient have for their underlying illness? (Check all that apply.)
   - ☐ Medicare
   - ☐ Medi-Cal
   - ☐ Covered California
   - ☐ V.A.
   - ☐ Private Insurance
   - ☐ No Insurance
   - ☐ Had insurance, don’t know type

15. Possible concerns that may have contributed to the patient’s decision to request a prescription for aid-in-dying drug:
   Please check “yes,” “no,” or “Don’t know,” depending on whether or not you believe that concern contributed to their request (Please check as many boxes as you think may apply)
   A concern about ...
   - His or her terminal condition representing a steady loss of autonomy
     - ☐ Yes
     - ☐ No
     - ☐ Don’t Know
   - The decreasing ability to participate in activities that made life enjoyable
     - ☐ Yes
     - ☐ No
     - ☐ Don’t Know
   - The loss of control of bodily functions
     - ☐ Yes
     - ☐ No
     - ☐ Don’t Know
   - Persistent and uncontrollable pain and suffering
     - ☐ Yes
     - ☐ No
     - ☐ Don’t Know
   - A loss of Dignity
     - ☐ Yes
     - ☐ No
     - ☐ Don’t Know
   - Other concerns (specify): ____________________________

Signature of attending physician: ____________________________
SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 443.19 to the Health and Safety Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) Any limitation to public access to personally identifiable patient data collected pursuant to Section 443.19 of the Health and Safety Code as proposed to be added by this act is necessary to protect the privacy rights of the patient and his or her family.

(b) The interests in protecting the privacy rights of the patient and his or her family in this situation strongly outweigh the public interest in having access to personally identifiable data relating to services.

(c) The statistical report to be made available to the public pursuant to subdivision (b) of Section 443.19 of the Health and Safety Code is sufficient to satisfy the public’s right to access.

SEC. 3. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
AN ACT TO AMEND TITLE 16 RELATING TO ABUSE OF CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 910 Court orders to compel

(a) Whenever an investigation has been opened with the Division pursuant to § 906 of this title for potential abuse or neglect of a child, the Division shall have the authority to petition for request an order from the Family Court:

(1) To obtain access to the child, or children, and the residence of child, or children; or

(2) To compel the appearance of a person at an office of the Division in furtherance of the investigation; or

(3) To compel compliance with a treatment plan previously agreed to by a child's parent or guardian, if non-compliance with the plan endangers a child's safety; or

(4) To compel completion of a substance abuse or mental health evaluation by the parent or guardian or completion of a developmental health screening for the child or children.

(b) The Family Court shall issue such an order upon the showing of “need” by the Division and shall enforce noncompliance with such an order pursuant to § 925(3) of Title 10. Formal notice of a request under this section shall be provided to the respondent prior to the filing of the request with the Family Court provided that orders pursuant to this
section may be granted on an ex parte basis if the child, or children, at issue are at risk of imminent physical danger. The
Family Court shall consider all requests pursuant to this section within 2 business days of the request being made.

(b) For purposes of this section, “need” shall mean:

Division establishing by a preponderance of evidence that it provided written notice of its intent to file the petition and:

(1) For petitions requesting relief under subsections (a)(1), (a)(2), or (a)(3):

(i) That the Division has in good faith attempted on at least 2 separate prior occasions, at least 1 of which was by
written communication sent by certified mail, return receipt requested, to contact the person in question without success;
or

(ii) That a child is in actual danger of or there is an imminent risk of danger physical injury due to the Division's
inability to communicate with the person or see the child or the child's residence;

(2) For petitions requesting relief under subsection (a)(4), the investigation has revealed that substance abuse,
mental health conditions, or developmental delays may be factors placing the child at risk of abuse or neglect.

(c) The Family Court shall enforce noncompliance with such an order pursuant to § 925(3) of Title 10.

(d) Petitions filed pursuant to this section may be granted on an ex parte basis if a child is at risk of imminent physical
danger, provided that the Family Court shall consider all requests pursuant to subsections (a)(1), (a)(2) and (a)(3) within
two (2) business days of the request being made. The Family Court shall consider all petitions filed under subsection
(a)(4) within ten (10) business days of the filing.

(e) For petitions filed under subsection (a)(4) of this section against any parent or guardian who is indigent, that
indigent parent or guardian shall have the right to request a Court-appointed attorney authorized to practice law in this
State to represent the parent or guardian at no cost to that parent or guardian.
AN ACT to amend and reenact section 20.1-01-36, subsection 1 of section 62.1-01-01, sections 62.1-02-04, 62.1-02-05, 62.1-02-10, and 62.1-03-01, subsection 5 of section 62.1-04-01, section 62.1-04-02, subsections 2 and 7 of section 62.1-04-03, and section 62.1-05-01 of the North Dakota Century Code, relating to firearms and dangerous weapons; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-36 of the North Dakota Century Code is amended and reenacted as follows:


1. An individual in lawful possession of a device that will silence or deaden the sound or natural report of a firearm when the firearm is discharged may hunt any game for which the individual is licensed and for which a firearm is allowed with that device for or attached to the firearm.

2. An individual in lawful possession of a short-barreled rifle may hunt any game for which the individual is licensed and for which a rifle is allowed.

SECTION 2. AMENDMENT. Subsection 1 of section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses direct contact to deliver voltage for the defense of an individual, unless the device uses a projectile and voltage, then the term includes the device for an individual who is prohibited from possessing a firearm under this title. However, the term includes a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident.

SECTION 3. AMENDMENT. Section 62.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment prohibited - Penalty - Exceptions.

1. An individual who enters or remains in that part of the establishment that is set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site at which bingo is the primary gaming activity while in the possession of that individual knowingly possesses a firearm or dangerous weapon is guilty of a class A misdemeanor. In addition, an individual is guilty of an offense under this section for the
knowing possession of a device that uses a projectile and voltage in the part of an establishment that is set aside for the retail sale and consumption of alcoholic beverages.

2. This section does not apply to:
   a. A law enforcement officer.
   b. The proprietor.
   c. The proprietor's employee.
   d. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.
   e. Private security personnel while on duty for the purpose of delivering or receiving moneys used at the liquor establishment or at the gaming site at which bingo is the primary gaming activity.
   f. The restaurant part of an establishment if an individual under twenty-one years of age is not prohibited in that part of the establishment.

SECTION 4. AMENDMENT. Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes means an athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation event, a school, a church, and a publicly owned or operated building.

2. This section does not apply to:
   a. A law enforcement officer;
   b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
   c. A competitor participating in an organized sport shooting event;
   d. A gun or antique show;
   e. A participant using a blank cartridge firearm at a sporting or theatrical event;
   f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
   g. A student and an instructor at a hunter safety class;
   h. Private security personnel while on duty;
   i. A state or federal park;
   j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
k. An individual in a publicly owned or operated rest area or restroom;

l. An individual possessing a valid class 1 concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship. If a church or other place of worship authorizes an individual to carry a concealed weapon, local law enforcement must be informed of the name of the authorized individual; and

1-m. A municipal court judge, a district court judge, a staff member of the office of attorney general, and a retired North Dakota law enforcement officer, if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.

SECTION 5. AMENDMENT. Section 62.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:


An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of a class B misdemeanor. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.

2. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.

3. An individual possessing a valid North Dakota concealed weapons license from this state or a valid license issued by another state authorizing the individual to carry a firearm or dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a firearm or dangerous weapon concealed in that state without obtaining a similar license from that state, except while that individual is in the field engaged in hunting or trapping activities who has reciprocity under section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.

4. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.

5. A security guard or private investigator properly licensed to carry firearms.

6. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.

SECTION 6. AMENDMENT. Section 62.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

1. An unloaded handgun may not be carried unless by an individual not otherwise prohibited and if:
a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is 
unloaded and either in plain view or is secured.

b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is 
unloaded and secured.

2. The restrictions provided in subdivisions a and b of subsection 1 do not apply to:

a. An individual possessing a valid concealed weapons license from this state or who has 
reciprocity under section 62.1-04-03.1.

b. An individual on that person's land, or in that individual's permanent or temporary 
residence, or fixed place of business.

c. An individual while lawfully engaged in target shooting.

d. An individual while in the field engaging in the lawful pursuit of hunting or trapping. 
However, nothing in this exception authorizes the carrying of a loaded handgun in a 
motor vehicle.

f. Any North Dakota law enforcement officer.

g. Any law enforcement officer of any other state or political subdivision of another state if 
on official duty within this state.

h. Any armed security guard or investigator as authorized by law when on duty or going to 
or from duty.

i. Any member of the armed forces of the United States when on duty or going to or from 
duty and when carrying the handgun issued to the member.

j. Any member of the national guard, organized reserves, state defense forces, or state 
guard organizations, when on duty or going to or from duty and when carrying the 
handgun issued to the member by the organization.

k. Any officer or employee of the United States duly authorized to carry a handgun.

l. An individual engaged in manufacturing, repairing, or dealing in handguns or the agent or 
representative of that individual possessing, using, or carrying a handgun in the usual or 
ordinary course of the business.

m. Any common carrier, but only when carrying the handgun as part of the cargo in the 
usual cargo carrying portion of the vehicle.

SECTION 7. AMENDMENT. Subsection 5 of section 62.1-04-01 of the North Dakota Century Code 
is amended and reenacted as follows:

5. A bow and arrow, an unloaded rifle or, shotgun, unloaded handgun, or an unloaded 
weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, 
compressed air, or compressed gas including any such weapon commonly referred to as a BB 
gun, air rifle, or CO₂ gun, while carried in a motor vehicle.

SECTION 8. AMENDMENT. Section 62.1-04-02 of the North Dakota Century Code is amended and 
reenacted as follows:
62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited.

An individual, other than a law enforcement officer, may not carry any firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under this chapter. For purposes of this chapter, the term "dangerous weapon" does not include a spray or aerosol containing CS (ortho-chlorobenzamalonitrile), CN (alpha-chloroacetophenone) or other irritating agent intended for use in the defense of an individual, nor does the term include any stun gun or device that uses direct contact to deliver voltage for the defense of an individual.

SECTION 9. AMENDMENT. Subsection 2 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The attorney general shall offer class 1 firearm and class 2 firearm and dangerous weapon licenses to carry a firearm or dangerous weapon concealed under the following requirements:

   a. An applicant for a class 1 firearm license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate familiarity with a firearm, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm to be concealed may be satisfied by one of the following:

      (1) Certification of familiarity with a firearm by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor;

      (2) Evidence of equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service;

      (3) Possession of a license from another state to carry a firearm, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or

      (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm.

   b. An applicant for a class 2 firearm and dangerous weapon license is required to successfully complete the open book test offered for the class 1 firearm license.

   c. A North Dakota resident who has a valid class 1 firearm license also may carry a class 2 dangerous weapon without any further testing required. Class 1 and class 2 permits are equally valid in this state.

   d. Additional testing is not required to renew a class 2 firearm and dangerous weapon license. A class 1 firearm license may be renewed upon successful completion of the class 1 firearm requirements within thirty days before submission of the application for renewal.

SECTION 10. AMENDMENT. Subsection 7 of section 62.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

7. The director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title. The director of the bureau of criminal investigation shall disclose to the applicant the specific reason for denial or revocation of the license.

SECTION 11. AMENDMENT. Section 62.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:
62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty - Forfeiture.

1. No person may not purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872].

Any federal licensee who purchases, sells, has, or possesses these items for the licensee's protection or for sale must forward a copy of the licensee's federal license along with the required weapons transfer form to the licensee's local county sheriff and to the chief of the bureau of criminal investigation within five days of the receipt of these forms.

2. A person who violates this section is guilty of a class C felony. Upon arrest of that person, the firearm or dangerous weapon must be seized. Upon conviction of the person and motion to the court in which the conviction occurred, the firearm or dangerous weapon must be forfeited to the jurisdiction in which the arrest was made. The firearm or dangerous weapon may be sold at public auction, retained for use, or destroyed pursuant to the court's order. If a qualified local program as defined under section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the item and the item has been sold, the jurisdiction shall, after payment of expenses for forfeiture and sale, repay the qualified local program for the reward that it has paid.
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 5-14-3-2, AS AMENDED BY HEA 1022-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

(c) "Criminal intelligence information" means data that has been evaluated to determine that the data is relevant to:

(1) the identification of; and
(2) the criminal activity engaged in by;

an individual who or organization that is reasonably suspected of involvement in criminal activity.

(d) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;
(2) the labor required to retrieve electronically stored data; and
(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g)

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of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

(e) "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

(f) "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:
   (1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
   (2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

(g) "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

(h) "Inspect" includes the right to do the following:
   (1) Manually transcribe and make notes, abstracts, or memoranda.
   (2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.
   (3) In the case of public records available:
      (A) by enhanced access under section 3.5 of this chapter; or
      (B) to a governmental entity under section 3(c)(2) of this chapter;
   to examine and copy the public records by use of an electronic device.
   (4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

(i) "Investigatory record" means information compiled in the course of the investigation of a crime.

(j) "Law enforcement activity" means:
   (1) a traffic stop;
   (2) a pedestrian stop;
   (3) an arrest;
   (4) a search;
   (5) an investigation;
   (6) a pursuit;
   (7) crowd control;
   (8) traffic control; or
   (9) any other instance in which a law enforcement officer is enforcing the law.

The term does not include an administrative activity, including the
completion of paperwork related to a law enforcement activity, or a custodial interrogation conducted in a place of detention as described in Indiana Evidence Rule 617, regardless of the ultimate admissibility of a statement made during the custodial interrogation.

(k) "Law enforcement recording" means an audio, visual, or audiovisual recording of a law enforcement activity captured by a camera or other device that is:

(1) provided to or used by a law enforcement officer in the scope of the officer's duties; and
(2) designed to be worn by a law enforcement officer or attached to the vehicle or transportation of a law enforcement officer.

(l) "Offender" means a person confined in a penal institution as the result of the conviction for a crime.

(m) "Patient" has the meaning set out in IC 16-18-2-272(d).

(n) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(o) "Private university police department" means the police officers appointed by the governing board of a private university under IC 21-17-5.

(p) "Provider" has the meaning set out in IC 16-18-2-295(b) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

(q) "Public agency", except as provided in section 2.1 of this chapter, means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.
(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;
(B) political subdivision (as defined by IC 36-1-2-13); or
(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state.
state or a delegated local governmental power.

(3) Any entity or office that is subject to:
   (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
   (B) an audit by the state board of accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission established by IC 4-30-3-1, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(11) A private university police department. The term does not include the governing board of a private university or any other department, division, board, entity, or office of a private university.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material,
regardless of form or characteristics.

(3) "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

(4) "Trade secret" has the meaning set forth in IC 24-2-3-2.

(u) "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation. The term includes the attorney's:

1. notes and statements taken during interviews of prospective witnesses; and
2. legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

SECTION 2. IC 5-14-3-3, AS AMENDED BY P.L.134-2012, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

1. identify with reasonable particularity the record being requested; and
2. be, at the discretion of the agency, in writing or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. If a request is for inspection or copying of a law enforcement recording, the request must provide the information required under subsection (i).

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). Within a reasonable time after the request is received by the agency, the public agency shall either:

1. provide the requested copies to the person making the request; or
2. allow the person to make copies:
   (A) on the agency's equipment; or
   (B) on the person's own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

1. In accordance with a contract described in section 3.5 of this
chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map.

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses), it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. The lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to any individual or entity for political purposes and may not be used by any individual or entity for political purposes. In addition, the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1)
through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

1. A list of employees of a public agency.
2. A list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution.
3. A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
   (A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;
   (B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or
   (C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. For purposes of this subsection, "political purposes" means influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question.

(g) A public agency may not enter into or renew a contract or an obligation:
   (1) for the storage or copying of public records; or
   (2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;
   if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(h) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.
(i) A request to inspect or copy a law enforcement recording must be in writing. A request identifies a law enforcement recording with reasonable particularity as required by this section only if the request provides the following information regarding the law enforcement activity depicted in the recording:

1. The date and approximate time of the law enforcement activity.
2. The specific location where the law enforcement activity occurred.
3. The name of at least one (1) individual, other than a law enforcement officer, who was directly involved in the law enforcement activity.

SECTION 3. IC 5-14-3-4, AS AMENDED BY SEA 378-2016, SECTION 3, AND AS AMENDED BY HEA 1022-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

1. Those declared confidential by state statute.
2. Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
3. Those required to be kept confidential by federal law.
4. Records containing trade secrets.
5. Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
6. Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:
   (A) concerning any negotiations made with respect to the research; and
   (B) received from another party involved in the research.
7. Grade transcripts and license examination scores obtained as part of a licensure process.
8. Those declared confidential by or under rules adopted by the supreme court of Indiana.
9. Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.
10. Application information declared confidential by the Indiana
economic development corporation under IC 5-28-16.
(11) A photograph, a video recording, or an audio recording of an
autopsy, except as provided in IC 36-2-14-10.
(12) A Social Security number contained in the records of a
public agency.
(13) The following information that is part of a foreclosure action
subject to IC 32-30-10.5:
   (A) Contact information for a debtor, as described in
       IC 32-30-10.5-8(d)(1)(B).
   (B) Any document submitted to the court as part of the debtor's
       loss mitigation package under IC 32-30-10.5-10(a)(3).
(14) The following information obtained from a call made to a
fraud hotline established under IC 36-1-8-8.5:
   (A) The identity of any individual who makes a call to the
       fraud hotline.
   (B) A report, transcript, audio recording, or other information
       concerning a call to the fraud hotline.
However, records described in this subdivision may be disclosed
to a law enforcement agency, a private university police
department, the attorney general, the inspector general, the state
examiner, or a prosecuting attorney.
(b) Except as otherwise provided by subsection (a), the following
public records shall be excepted from section 3 of this chapter at the
discretion of a public agency:
   (1) Investigatory records of law enforcement agencies or private
       university police departments. **For purposes of this chapter, a
       law enforcement recording is not an investigatory record.** Law
       enforcement agencies or private university police departments
       may share investigatory records with a person who advocates on
       behalf of a crime victim, including a victim advocate (as defined
       in IC 35-37-6-3.5) or a victim service provider (as defined in
       IC 35-37-6-5), for the purposes of providing services to a victim
       or describing services that may be available to a victim, without
       the law enforcement agency or private university police
department losing its discretion to keep those records confidential
from other records requesters. However, certain law enforcement
records must be made available for inspection and copying as
provided in section 5 of this chapter.
   (2) The work product of an attorney representing, pursuant to
       state employment or an appointment by a public agency:
       (A) a public agency;
       (B) the state; or
(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between:
   (i) the Indiana economic development corporation;
   (ii) the ports of Indiana;
   (iii) the Indiana state department of agriculture;
   (iv) the Indiana finance authority;
   (v) an economic development commission;
   (vi) a local economic development organization that is a nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana; or
   (vii) a governing body of a political subdivision with industrial, research, or commercial prospects;

if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive
(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
(B) information relating to the status of any formal charges against the employee; and
(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:
(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or
(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:
(A) which can be used to identify any library patron; or
(B) deposited with or acquired by a library upon a condition that the records be disclosed only:
   (i) to qualified researchers;
   (ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or
   (iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes the following:
   (A) A record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2.
   (B) Vulnerability assessments.
   (C) Risk planning documents.
   (D) Needs assessments.
   (E) Threat assessments.
   (F) Intelligence assessments.
   (G) Domestic preparedness strategies.
   (H) The location of community drinking water wells and
surface water intakes.

(I) The emergency contact information of emergency responders and volunteers.

(J) Infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems.

(K) Detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency, or any part of a law enforcement recording that captures information about airport security procedures, areas, or systems. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. Both of the following apply to the public agency that owns, occupies, leases, or maintains the airport:

(i) The public agency is responsible for determining whether the public disclosure of a record or a part of a record, including a law enforcement recording, has a reasonable likelihood of threatening public safety by exposing a security procedure, area, system, or vulnerability to terrorist attack. and

(ii) The public agency must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)". and However, in the case of a law enforcement recording, the public agency must clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(K) without approval of (insert name of the public agency that owns, occupies, leases, or maintains the airport)".

(L) The home address, home telephone number, and emergency contact information for any:

(i) emergency management worker (as defined in IC 10-14-3-3);
(ii) public safety officer (as defined in IC 35-47-4.5-3);
(iii) emergency medical responder (as defined in IC 16-18-2-109.8); or
(iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):
   (A) Telephone number.
   (B) Address.
   (C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:
   (A) Telephone number.
   (B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:
   (A) contain personal information relating to:
      (i) a correctional officer (as defined in IC 5-10-10-1.5);
      (ii) a law enforcement officer (as defined in IC 35-31.5-2-185);
      (iii) a judge (as defined in IC 33-38-12-3);
      (iv) the victim of a crime; or
      (v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime; or
   (B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program, or activity conducted or supervised by a state educational
institutions, including the following information regarding the individual or the individual's parent or guardian:

(A) Name.
(B) Address.
(C) Telephone number.
(D) Electronic mail account address.
(25) Criminal intelligence information.
(26) The following information contained in a report of unclaimed property under IC 32-34-1-26 or in a claim for unclaimed property under IC 32-34-1-36:
(A) Date of birth.
(B) Driver's license number.
(C) Taxpayer identification number.
(D) Employer identification number. or
(E) Account number.
(27) Except as provided in subdivision (19) and sections 5.1 and 5.2 of this chapter, a law enforcement recording.
However, before disclosing the recording, the public agency must comply with the obscuring requirements of sections 5.1 and 5.2 of this chapter, if applicable.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.
(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.
(e) Only the content of a public record may form the basis for the adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.
(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.
(g) Except as provided by law, a public agency may not adopt a rule or procedure nor impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.
(h) Notwithstanding subsection (d) and section 7 of this chapter:
(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or
(2) public records not subject to IC 5-15 may be destroyed in the
ordinary course of business.

SECTION 4. IC 5-14-3-5.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5.1. (a) As used in this section, "requestor" means the following:

(1) An individual who is depicted in a law enforcement recording.
(2) If the individual described in subdivision (1) is deceased:
   (A) the surviving spouse, father, mother, brother, sister, son, or daughter of the individual; or
   (B) the personal representative (as defined in IC 6-4.1-1-9) of or an attorney representing the deceased individual's estate.
(3) If the individual described in subdivision (1) is an incapacitated person (as defined in IC 29-3-1-7.5), the legal guardian, attorney, or attorney in fact of the incapacitated person.
(4) A person that is an owner, tenant, lessee, or occupant of real property, if the interior of the real property is depicted in the recording.
(5) A person who:
   (A) is the victim of a crime; or
   (B) suffers a loss due to personal injury or property damage;
   if the events depicted in the law enforcement recording are relevant to the person's loss or to the crime committed against the person.
(b) A public agency shall allow a requestor to inspect a law enforcement recording at least twice, if:
   (1) the requestor submits a written request under section 3 of this chapter for inspection of the recording; and
   (2) if section 4(b)(19) of this chapter applies, the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.
The public agency shall allow the requestor to inspect the recording in the company of the requestor's attorney. A law enforcement recording may not be copied or recorded by the requestor or the requestor's attorney during an inspection.
(c) Before an inspection under subsection (b), the public agency:
   (1) shall obscure in the recording information described in section 4(a) of this chapter; and
   (2) may obscure any information identifying:
(A) a law enforcement officer operating in an undercover capacity; or
(B) a confidential informant.

(d) Before an inspection under subsection (b), only the information in the recording described in subsection (c) may be obscured by the public agency.

(e) If a person is denied access to inspect a recording under this section, the person may appeal the denial under section 9 of this chapter.

SECTION 5. IC 5-14-3-5.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5.2. (a) A public agency shall permit any person to inspect or copy a law enforcement recording unless one (1) or more of the following circumstances apply:

(1) Section 4(b)(19) of this chapter applies and the person has not demonstrated that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency finds, after due consideration of the facts of the particular case, that access to or dissemination of the recording:
  (A) creates a significant risk of substantial harm to any person or to the general public;
  (B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;
  (C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency as defined in section 2 of this chapter and notwithstanding its exclusion under section 4(b)(1) of this chapter; or
  (D) would not serve the public interest.

However, before permitting a person to inspect or copy the recording, the public agency must comply with the obscuring provisions of subsection (f), if applicable.

(b) If a public agency denies a person the opportunity to inspect or copy a law enforcement recording under subsection (a), the person may petition the circuit or superior court of the county in which the law enforcement recording was made for an order permitting inspection or copying of a law enforcement recording. The court shall review the decision of the public agency de novo and grant the order unless one (1) or more of the following apply:

(1) If section 4(b)(19) of this chapter applies, the petitioner
fails to establish by a preponderance of the evidence that the public agency that owns, occupies, leases, or maintains the airport approves the disclosure of the recording.

(2) The public agency establishes by a preponderance of the evidence in light of the facts of the particular case, that access to or dissemination of the recording:

(A) creates a significant risk of substantial harm to any person or to the general public;
(B) is likely to interfere with the ability of a person to receive a fair trial by creating prejudice or bias concerning the person or a claim or defense presented by the person;
(C) may affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency, as defined in section 2 of this chapter, notwithstanding its exclusion under section 4; or
(D) would not serve the public interest.

(c) Notwithstanding section 9(i) of this chapter, a person that obtains an order for inspection of or to copy a law enforcement recording under this section may not be awarded attorney's fees, court costs, and other reasonable expenses of litigation. The penalty provisions of section 9.5 of this chapter do not apply to a petition filed under this section.

(d) If the court grants a petition for inspection of or to copy the law enforcement recording, the public agency shall disclose the recording. However, before disclosing the recording, the public agency must comply with the obscuring provisions of subsection (e), if applicable.

(e) A public agency that discloses a law enforcement recording under this section:

(1) shall obscure:
(A) any information that is required to be obscured under section 4(a) of this chapter; and
(B) depictions of:
   (i) an individual's death or a dead body;
   (ii) acts of severe violence that are against any individual who is clearly visible and that result in serious bodily injury (as defined in IC 35-31.5-2-292);
   (iii) serious bodily injury (as defined in IC 35-31.5-2-292);
   (iv) nudity (as defined in IC 35-49-1-5);
   (v) an individual whom the public agency reasonably believes is less than eighteen (18) years of age;
(vi) personal medical information;
(vii) a victim of a crime, or any information identifying
the victim of a crime, if the public agency finds that
obscuring this information is necessary for the victim's
safety; and
(viii) a witness to a crime or an individual who reports a
crime, or any information identifying a witness to a
crime or an individual who reports a crime, if the public
agency finds that obscuring this information is necessary
for safety of the witness or individual who reports a
crime; and

(2) may obscure:

(A) any information identifying:
   (i) a law enforcement officer operating in an undercover
capacity; or
   (ii) a confidential informant; and

(B) any information that the public agency may withhold
from disclosure under section 4(b)(2) through 4(b)(26) of
this chapter.

(f) A court shall expedite a proceeding filed under this section.
Unless prevented by extraordinary circumstances, the court shall
conduct a hearing (if required) and rule on a petition filed under
this section not later than thirty (30) days after the date the petition
is filed.

SECTION 6. IC 5-14-3-5.3 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2016]: Sec. 5.3. (a) Except as provided in subsection (c), a public
agency that is not the state or a state agency shall retain an
unaltered, unobscured law enforcement recording for at least one
hundred ninety (190) days after the date of the recording.

(b) Except as provided in subsection (c), a public agency that is
the state or a state agency shall retain an unaltered, unobscured
law enforcement recording for at least two hundred eighty (280)
days after the date of the recording.

(c) A public agency shall retain an unaltered, unobscured law
enforcement recording for a period longer than the period
described in subsections (a) and (b) if the following conditions are
met:

(1) Except as provided in subdivision (3), if a person defined
as a requestor as set forth in section 5.1(a) of this chapter
notifies the public agency in writing not more than:
   (A) one hundred eighty (180) days (if the public agency is

(B) two hundred seventy (270) days (if the public agency is the state or a state agency); after the date of the recording that the recording is to be retained, the recording shall be retained for at least two (2) years after the date of the recording. The public agency may not request or require the person to provide a reason for the retention.

(2) Except as provided in subdivision (3), if a formal or informal complaint is filed with the public agency regarding a law enforcement activity depicted in the recording less than:
   (A) one hundred eighty (180) days (if the public agency is not the state or a state agency); or
   (B) two hundred seventy (270) days (if the public agency is the state or a state agency); after the date of the recording, the public agency shall automatically retain the recording for at least two (2) years after the date of the recording.

(3) If a recording is used in a criminal, civil, or administrative proceeding, the public agency shall retain the recording until final disposition of all appeals and order from the court.

(d) The public agency may retain a recording for training purposes for any length of time.

SECTION 7. IC 5-14-3-8, AS AMENDED BY P.L.16-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:
   (1) to inspect a public record; or
   (2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents ($0.10) per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public
agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification or copying of documents. The fee for certification of documents may not exceed five dollars ($5) per document. The fee for copying documents may not exceed the greater of:

(1) ten cents ($0.10) per page for copies that are not color copies or twenty-five cents ($0.25) per page for color copies; or
(2) the actual cost to the agency of copying the document.

As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers.

(e) If:

(1) a person is entitled to a copy of a public record under this chapter; and
(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record;

the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, law enforcement recording, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form. **However, the fee for a copy of a law enforcement recording may not exceed one hundred fifty dollars ($150).**
(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.
(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection, or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

(k) The fee charged by a public agency under subsection (j) to cover costs for maintaining, upgrading, and enhancing an electronic map may be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

1. Public agency program support.
2. Nonprofit activities.
4. Academic research.

(l) This subsection does not apply to a state agency. A fee collected under subsection (g) for the copying of a law enforcement recording may be:

1. retained by the public agency; and
2. used without appropriation for one (1) or more of the following purposes:
   (A) To purchase cameras and other equipment for use in connection with the agency's law enforcement recording program.
   (B) For training concerning law enforcement recording.
(C) To defray the expenses of storing, producing, and copying law enforcement recordings. 

Money from a fee described in this subsection does not revert to the local general fund at the end of a fiscal year.

SECTION 8. IC 5-14-3-9, AS AMENDED BY P.L.248-2013, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) This section does not apply to a request for information under section 4.4 of this chapter.

(b) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.

(c) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(d) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

(1) the denial is in writing or by facsimile; and

(2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

(e) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:
(1) that a request for release of the public record has been denied; and
(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(g) **This subsection does not apply to an action under section 5.2 of this chapter.** If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

   (A) proving that:
   
   (i) the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and
   
   (ii) if the action is for denial of access to a recording under section 5.1 of this chapter, the plaintiff is not a "requestor" as that term is defined in section 5.1 of this chapter; and
   
   (B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(h) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter. However, if the complaint alleges that a public agency denied disclosure of a public record by redacting information in the public record, the court shall conduct an in camera inspection of the public record with the redacted information included.

(i) **Except as provided in subsection (k),** in any action filed under this section, a court shall award reasonable attorney's fees, court costs,
(1) the plaintiff substantially prevails; or
(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

Except as provided in subsection (k), the plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(j) Except as provided in subsection (k), a court may assess a civil penalty under section 9.5 of this chapter only if the plaintiff obtained an advisory opinion from the public access counselor before filing an action under this section as set forth in section 9.5 of this chapter.

(k) This subsection applies only to an action to appeal the denial of access to a law enforcement recording under section 5.1 of this chapter. A requestor (as defined in section 5.1 of this chapter) may bring an action to appeal from the denial of access to a law enforcement recording without first seeking or receiving an informal inquiry response or advisory opinion from the public access counselor. If the requestor prevails in an action under this subsection:

(1) the requestor is eligible for an award of reasonable attorney's fees, court costs, and other reasonable expenses; and
(2) a court may assess a civil penalty under section 9.5 of this chapter.

(k) (l) A court shall expedite the hearing of an action filed under this section.

SECTION 9. IC 35-31.5-2-185.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 185.4. "Law enforcement recording device" means a camera or other device for creating audio, visual, or audiovisual recordings that is:

(1) provided to or used by a law enforcement officer in the scope of the officer's duties; and
(2) designed to be worn by a law enforcement officer or attached to the vehicle or transportation of a law enforcement officer.
SECTION 10. IC 35-46-8.5-1, AS ADDED BY P.L.170-2014, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) This section does not apply to any of the following:

(1) Electronic or video toll collection facilities or activities authorized under any of the following:
   (A) IC 8-15-2.
   (B) IC 8-15-3.
   (C) IC 8-15.5.
   (D) IC 8-15.7.
   (E) IC 8-16.
   (F) IC 9-21-3.5.

(2) A law enforcement officer who has obtained:
   (A) a search warrant; or
   (B) the consent of the owner or private property; to place a camera or electronic surveillance equipment on private property.

(3) A law enforcement officer who uses a law enforcement recording device in performance of the officer's duties.

(b) A person who knowingly or intentionally places a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property commits a Class A misdemeanor.
AN ACT

RELATING TO AMBER ALERTS; REQUIRING ALL COMMERCIAL MOBILE RADIO SERVICE PROVIDERS OPERATING IN THE STATE TO SEND WIRELESS EMERGENCY ALERTS, INCLUDING AMBER ALERTS, TO CUSTOMERS IN AFFECTED AREAS; PROVIDING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 63-9B-4.1 NMSA 1978 (being Laws 2005, Chapter 142, Section 2) is amended to read:

"63-9B-4.1. WIRELESS EMERGENCY ALERTS--AMBER ALERT NOTIFICATION.--

A. Each commercial mobile radio service provider that is authorized to conduct business in New Mexico shall submit to the authorized requester, designated by the chief of the New Mexico state police pursuant to the AMBER Alert Law, the provider's procedure for receiving a wireless emergency alert, including an AMBER alert, and for disseminating those alerts to the provider's customers as provided in this section.

B. Every alerting authority that has the necessary computer software or other infrastructure shall use the federal emergency management agency's integrated public alert and warning system or its successor federal public alert system to communicate wireless emergency alerts.

C. Upon receipt of a wireless emergency alert
initiated by an alerting authority, every commercial mobile radio service provider shall disseminate the wireless emergency alert to the provider's customers in the geographic area identified in the wireless emergency alert. Dissemination of a wireless emergency alert as provided in this section shall be undertaken in the most technically efficient manner possible, using standard network sharing protocol from authorized agencies or their respective communication contractors.

D. A wireless emergency alert disseminated pursuant to this section shall be disseminated at no additional expense to a provider's customer.

E. As used in this section:

(1) "alerting authority" means a state, local or tribal government that is authorized to use the federal emergency management agency's integrated public alert and warning system to communicate a wireless emergency alert;

(2) "commercial mobile radio service provider" means a federal communications commission licensee that provides commercial radio communication service for profit and that makes interconnected service available to the public in the state;

(3) "integrated public alert and warning system" means an internet-based system that provides for the dissemination of a wireless emergency alert; and
(4) "wireless emergency alert" means a public alert disseminated pursuant to the integrated public alert and warning system by an alerting authority through a commercial mobile radio service provider and includes:

(a) an extreme weather or other emergency alert;

(b) an AMBER alert; and

(c) an alert issued by the president during a national emergency."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
AN ACT to amend Tennessee Code Annotated, Title 39; Title 40 and Title 44, to create the "Tennessee Animal Abuser Registration Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 39, is amended by adding the following as a new part:

40-39-401. This part shall be known and may be cited as the "Tennessee Animal Abuser Registration Act."

40-39-402. As used in this part:

(1) "Abuser" or "animal abuser" means a person who has been convicted in this state of committing an animal abuse offense;

(2) "Animal" means a companion animal, and a "non-livestock animal", as defined in § 39-14-201. "Animal" does not mean "livestock", as defined in § 39-14-201, or "wildlife", as defined in § 70-1-101;

(3) "Animal abuse offense" means:

(A) Aggravated cruelty to animals, under § 39-14-212;

(B) Animal fighting, under § 39-14-203, where the defendant's act constitutes a felony; and

(C) A criminal offense against animals, under § 39-14-214;

(4) "Companion animal" means any dog, defined as any live dog of the species Canis familiaris, or cat, defined as any live cat of the species Felis catus;

(5) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. Conviction includes a disposition of pretrial diversion under § 40-15-105, a disposition of judicial diversion under § 40-35-313, or the equivalent dispositions from other jurisdictions;

(6) "Director" means the director of the TBI; and

(7) "TBI" means the Tennessee bureau of investigation.

40-39-403.
(a) Beginning January 1, 2016, the TBI shall post a publicly accessible list on its web site of any person convicted of an animal abuse offense on and after that date.

(b)(1) The list shall include a photograph taken of the convicted animal abuser as part of the booking process, the animal abuser's full legal name, and other identifying data as the TBI determines is necessary to properly identify the animal abuser and to exclude innocent persons.

(2) The list shall not include the abuser's social security number, driver license number, or any other state or federal identification number.

(c) The court clerks shall forward a copy of the judgment and date of birth of all persons convicted of an animal abuse offense to the TBI within sixty (60) calendar days of the date of judgment.

(d)(1) Upon a person's first conviction for an animal abuse offense, the TBI shall maintain the person's name and other identifying information, described in subsection (b), on the list published under subsection (a) for two (2) years following the date of conviction, after which time the TBI shall remove the person's name and identifying information from the list; provided, that the person is not convicted of another animal abuse offense during that two-year period.

(2) Upon a person's subsequent conviction for an animal abuse offense, the TBI shall maintain the person's name and other identifying information, described in subsection (b), on the list published under subsection (a) for five (5) years following the date of the most recent conviction, after which time the TBI shall remove the person's name and identifying information from the list; provided, that the person is not convicted of another animal abuse offense during that five-year period.

(e) The list shall remain on the TBI web site for such time as determined by the director.

(f) The TBI shall remove the person's name and identifying information from the registry list if the sole offense for which the person is required to be subject to the mandates of the registry is expunged, pursuant to § 40-32-101.

40-39-404. The TBI may promulgate rules to effectuate the purposes of this part. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it.
An act relating to unattended persons and animals in motor vehicles; creating s. 768.139, F.S.; providing definitions; providing immunity from civil liability for damage to a motor vehicle related to the rescue of a person or animal under certain circumstances; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.139, Florida Statutes, is created to read:

768.139 Rescue of vulnerable person or domestic animal from a motor vehicle; immunity from civil liability.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Domestic animal" means a dog, cat, or other animal that is domesticated and may be kept as a household pet. The term does not include livestock or other farm animals.

(b) "Motor vehicle" has the same meaning as provided in s. 320.01.

(c) "Vulnerable person" has the same meaning as provided in s. 435.02.

(2) IMMUNITY FOR DAMAGE TO MOTOR VEHICLE.—A person who enters a motor vehicle, by force or otherwise, for the purpose of removing a vulnerable person or domestic animal is immune from civil liability for damage to the motor vehicle if the
person:

(a) Determines the motor vehicle is locked or there is otherwise no reasonable method for the vulnerable person or domestic animal to exit the motor vehicle without assistance.

(b) Has a good faith and reasonable belief, based upon the known circumstances, that entry into the motor vehicle is necessary because the vulnerable person or domestic animal is in imminent danger of suffering harm.

(c) Ensures that law enforcement is notified or 911 called before entering the motor vehicle or immediately thereafter.

(d) Uses no more force to enter the motor vehicle and remove the vulnerable person or domestic animal than is necessary.

(e) Remains with the vulnerable person or domestic animal in a safe location, in reasonable proximity to the motor vehicle, until law enforcement or other first responder arrives.

(3) APPLICABILITY.—This section does not limit or expand any immunity provided under s. 768.13 for the care or treatment of the vulnerable person or domestic animal.

Section 2. This act shall take effect upon becoming a law.
AN ACT to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:


1. As used in this section, "personal identifying information" means any of the following information:
   a. An individual's name;
   b. An individual's address;
   c. An individual's telephone number;
   d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-06-14;
   e. An individual's social security number;
   f. An individual's employer or place of employment;
   g. An identification number assigned to the individual by the individual's employer;
   h. The maiden name of the individual's mother;
   i. The identifying number of a depository account in a financial institution; or
   j. An individual's birth, death, or marriage certificate.

2. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.

3. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony.
4. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

4-5. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.

5-6. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.
AN ACT

Restricting the publication of certain records of criminal cases on a publicly available Internet website; and providing for an effective date.

* Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that, to the extent practicable, the Alaska Court System remove from its public Internet website records of criminal cases that were disposed of before the effective date of this Act by acquittal of all charges, by dismissal of all charges, or by acquittal of some charges and dismissal of the remaining charges, to the extent that AS 22.35.030, enacted by sec. 2 of this Act, requires that the records may not be published.

* Sec. 2. AS 22.35 is amended by adding a new section to read:

Sec. 22.35.030. Records concerning criminal cases resulting in acquittal or dismissal. The Alaska Court System may not publish a court record of a criminal case
on a publicly available website if 60 days have elapsed from the date of acquittal or
dismissal and

(1) the defendant was acquitted of all charges filed in the case;

(2) all criminal charges against the defendant in the case have been
dismissed and were not dismissed as part of a plea agreement in another criminal case
under Rule 11, Alaska Rules of Criminal Procedure; or

(3) the defendant was acquitted of some of the criminal charges in the
case and the remaining charges were dismissed.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
read:

APPLICABILITY. AS 22.35.030, enacted by sec. 2 of this Act, applies to criminal
charges concluded on or after the effective date of this Act by dismissal or by acquittal of the
defendant.

* Sec. 4. This Act takes effect October 1, 2016.

HOUSE OF REPRESENTATIVES

148th GENERAL ASSEMBLY

HOUSE BILL NO. 2
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11 AND 29 OF THE DELAWARE CODE RELATING TO TRAINING ON SEXUAL ASSAULT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 84, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly as follows:

§ 8404 Powers and duties.

(a) The Council may:

   (5) Prescribe standards for in-service or continued training of police officers, which shall include at least 2 hours every 4 years on the detection, prevention and prosecution of sexual assault for all police officers who perform uniformed patrol duties or are assigned to investigative units responsible for sex crimes, and which training shall be conducted on a staggered basis so that half of the eligible members of any law enforcement or police organization receive said training in each two year period;

§ 8405. Mandatory training; exceptions.

(d) A component of training for all persons enrolled in an approved school shall be a course in the detection, prosecution and prevention of sexual assault. Such evidence-based training shall be victim-centered, and trauma-informed.

Section 2. Amend § 2505, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2505. Chief Deputy, State Solicitor, State Prosecutor, assistants, special assistants and law clerks.
(k) The Attorney General shall ensure that any assistant or special assistant regularly assigned to the prosecution of criminal or delinquency cases alleging a sexual offense as that term is defined at 11 Del. C. §761, including all lawyers assigned to the Sex Crimes Unit, shall receive at least 4 hours every 3 years of specialized training in the prosecution of sexual assault. Such evidence-based training shall be victim-centered and trauma-informed, and shall include education on mandatory reporting requirements under state and federal law, and shall be provided by the National College of District Attorneys or any other appropriate organization approved by the Attorney General.
WHEREAS, the successful prosecution of sexual offenses and serial sexual offenders is vital to public safety; and

WHEREAS, the United States Department of Justice estimates that there are approximately 100,000 backlogged sexual assault examination kits awaiting testing throughout the country; and

WHEREAS, preventing a backlog of untested or unsubmitted sexual assault examination kits is essential to the administration of justice in the State of Delaware.

NOW, THEREFORE, BE IT RESOLVED by the Senate and the House of Representatives of the 148th General Assembly of the State of Delaware, with the approval of the Governor, that every law enforcement agency, law department, hospital, testing facility, and prosecutorial agency responsible for the collection, storage, or maintenance of sexual assault examination kits shall file a written report with the State Attorney General's Office identifying the number of all untested and unsubmitted sexual assault examination kits in custody that have not been sent by September 1, 2015 to the Division of Forensic Science or its predecessor, the Office of the Chief Medical Examiner, or another testing facility for either serology or deoxyribonucleic acid testing and identifying the date each kit was collected.

BE IT FURTHER RESOLVED that, to facilitate the written reports, by August 1, 2015, the Criminal Justice Council (CJC), with support and cooperation from the State Attorney General's Office, shall prepare a checklist for the reporting entities to use in categorizing, counting, and prioritizing the order for testing of the sexual assault examination kits.

BE IT FURTHER RESOLVED that the reporting entities shall use the checklist to provide the written report to the CJC by October 15, 2015.

BE IT FURTHER RESOLVED that no report generated pursuant to this Resolution shall contain any personal or identifying information of any victim.
BE IT FURTHER RESOLVED that the information collected by the CJC shall not be disclosed to the public unless it is aggregated so that sensitive information for individuals cannot be determined.

BE IT FURTHER RESOLVED that the CJC shall submit a report to the Governor, Attorney General, and the General Assembly by January 11, 2016. This report shall identify in aggregate the information in the written reports and checklists provided to the Attorney General’s Office regarding the number and dates of all untested and unsubmitted sexual assault examination kits in custody that have not been sent by September 1, 2015 to the Division of Forensic Science or its predecessor, the Office of the Chief Medical Examiner, or another testing facility for either serology or deoxyribonucleic acid testing and identifying the date each kit was collected.

BE IT FURTHER RESOLVED that the CJC shall engage with law enforcement, forensic medical personnel, forensic laboratory personnel, prosecutors, and victim advocates in order to identify strategies that would result in enacting systematic changes to eliminate or reduce the number of untested or unsubmitted sexual assault kits.

BE IT FURTHER RESOLVED that the governmental entities, forensic laboratories, testing facilities, law enforcement agencies, and hospitals shall cooperate reasonably with the information gathering under this Resolution. The State Attorney General's Office shall have the authority to subpoena any entity or agency that fails or refuses to reasonably cooperate.

BE IT FURTHER RESOLVED that the CJC shall submit a report to the Governor, Attorney General, and the General Assembly by June 1, 2016. This report shall identify a comprehensive program to improve the criminal justice response to sexual assaults in Delaware.

SYNOPSIS

This Joint Resolution requires every law enforcement agency, law department, hospital, testing facility, and prosecutorial agency to report to the Attorney General’s Office the number of unexamined sexual assault kits and their date of collection. The Criminal Justice Council will then prepare an aggregated report by January 11, 2016. The Resolution then requires the Criminal Justice Council to develop strategies which will improve the response from the medical and criminal justice communities to reports of sexual assault in the State.

Author: Senator Poore
Enrolled

Senate Bill 1571

Sponsored by Senators GELSER, PROZANSKI, MONNES ANDERSON, Representatives OLSON, LININGER, GALLEGOS, HUFFMAN, GOMBERG, BUEHLER, PARRISH, KENY-GUYER, PILUSO, READ, RAYFIELD, NEARMAN, TAYLOR, KRIEGER, BARKER, SPRENGER, WILLIAMSON, Senators DEVLIN, KNOPP, RILEY, ROBLAN, ROSENBAUM, SHIELDS, STEINER HAYWARD, THATCHER, DEMBROW, HASS, JOHNSON, Olsen, THOMSEN; Senators BATES, BURDICK, COURTNEY, Representatives HOYLE, MCLANE, VEGA PEDERSON, WEIDNER, WHISNANT, WILSON (Presession filed.)

CHAPTER .................................................

AN ACT

Relating to sexual assault forensic evidence kits; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 5 of this 2016 Act shall be known and may be cited as “Melissa's Law.”

SECTION 2. As used in sections 2 to 5 of this 2016 Act:

(1) “Anonymous kit” means a sexual assault forensic evidence kit collected from a victim who either has not made a decision whether or not to participate in the prosecution of the perpetrator of the sexual assault or has chosen not to participate in the prosecution of the perpetrator of the sexual assault.

(2) “Law enforcement agency” has the meaning given that term in ORS 133.741.

(3) “Medical facility” means a hospital, clinic, urgent care center or any other facility that is authorized to provide sexual assault medical assessments as described in ORS 147.395.

(4) “Sexual assault” means the commission of or the attempted commission of an offense described in ORS 163.355 to 163.427.

(5) “Sexual assault forensic evidence kit” means forensic evidence collected using an evidence collection kit during a sexual assault medical assessment as described in ORS 147.395.

(6) “Victim” means a person from whom a sexual assault forensic evidence kit has been collected.

SECTION 3. (1) The Department of State Police shall adopt rules concerning the prioritization of testing untested sexual assault forensic evidence kits in the department's possession. The rules must contain a requirement to test all nonanonymous kits and a prohibition on the testing of anonymous kits.

(2) The department shall test any untested sexual assault forensic evidence kits, other than anonymous kits, in the department's possession in accordance with the rules adopted pursuant to subsection (1) of this section.

(3)(a) The department shall designate an entity, position or class of positions to receive inquiries from law enforcement agencies and victims seeking information concerning the testing of sexual assault forensic evidence kits.
(b) The department shall prohibit victims from directly contacting a forensic laboratory performing testing of sexual assault forensic evidence kits and may not publicize a means for victims to contact the laboratory.

(4)(a) As soon as practicable, the department shall ensure that the results from testing sexual assault forensic evidence kits that are eligible to be entered into the Combined DNA Index System are entered into the system after the testing results are obtained.

(b) No later than July 1, 2019, the department shall provide a written report to the interim committees of the Legislative Assembly related to the judiciary, in the manner provided in ORS 192.245, describing the department’s progress in entering results from testing sexual assault forensic evidence kits into the Combined DNA Index System.

(5) No later than January 15 of each calendar year, the department shall provide a written report to the interim committees of the Legislative Assembly related to the judiciary in the manner provided in ORS 192.245. The report must detail the progress made on the backlog of untested sexual assault forensic evidence kits and include the number of new kits that have been received during the previous calendar year, the number of kits that have been tested during the previous calendar year, and the number of remaining untested kits in the possession of the department.

SECTION 4. (1) No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning the collection, submission for testing, retention and destruction of sexual assault forensic evidence kits. The policies and procedures must be in writing, must be made available to the public as soon as possible upon request and must include:

(a) Procedures for investigating reports of sexual assault.

(b) A time limit by which the law enforcement agency must obtain a sexual assault forensic evidence kit from a medical facility that is within seven days after the medical facility notifies the agency that the kit has been collected.

(c) A time limit by which a sexual assault forensic evidence kit must be submitted to the Department of State Police for testing that is within 14 days after taking possession of the kit from a medical facility.

(d) A requirement that the law enforcement agency submit to the department information sufficient to allow the department to prioritize the testing of a sexual assault forensic evidence kit according to the rules of the department.

(e) A prohibition on the submission of an anonymous kit to the department for testing.

(f) A requirement that all sexual assault forensic evidence kits, including anonymous kits, be retained for no less than 60 years after the collection of the evidence.

(2) No later than January 1, 2017, each law enforcement agency within this state shall adopt policies and procedures concerning contact with the victims and the provision of information to victims concerning sexual assault forensic evidence kits. The policies and procedures must include:

(a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.

(b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.

(c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit.

(d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any informa-
tions the victim requests in a manner of communication designated by the victim, as soon as possible and within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.

(e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.

(f) A procedure that allows a sexual assault victim to provide the agency with written authorization for a designee to access information on the victim's behalf.

(g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.

SECTION 5. A medical facility collecting sexual assault forensic evidence kits shall, within seven days after the collection of a kit, notify the law enforcement agency with jurisdiction over a possible sexual assault criminal investigation that the kit has been collected.

SECTION 6. Section 4 of this 2016 Act is amended to read:

Sec. 4. (1) [No later than January 1, 2017,] Each law enforcement agency within this state shall have policies and procedures concerning the collection, submission for testing, retention and destruction of sexual assault forensic evidence kits. The policies and procedures must be in writing, must be made available to the public as soon as possible upon request and must include:

(a) Procedures for investigating reports of sexual assault.

(b) A time limit by which the law enforcement agency must obtain a sexual assault forensic evidence kit from a medical facility that is within seven days after the medical facility notifies the agency that the kit has been collected.

(c) A time limit by which a sexual assault forensic evidence kit must be submitted to the Department of State Police for testing that is within 14 days after taking possession of the kit from a medical facility.

(d) A requirement that the law enforcement agency submit to the department information sufficient to allow the department to prioritize the testing of a sexual assault forensic evidence kit according to the rules of the department.

(e) A prohibition on the submission of an anonymous kit to the department for testing.

(f) A requirement that all sexual assault forensic evidence kits, including anonymous kits, be retained for no less than 60 years after the collection of the evidence.

(2) [No later than January 1, 2017,] Each law enforcement agency within this state shall have policies and procedures concerning contact with victims and the provision of information to victims concerning sexual assault forensic evidence kits. The policies and procedures must include:

(a) A requirement that the agency designate at least one person within the agency to receive all telephone inquiries concerning sexual assault forensic evidence kits and to serve as a liaison between the agency and the Department of State Police.

(b) A requirement that, at the time that a sexual assault forensic evidence kit is collected, a victim be provided with the contact information of a person described in paragraph (a) of this subsection.

(c) Provisions allowing sexual assault victims to request and receive information concerning sexual assault forensic evidence kits, including but not limited to the location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases and the estimated destruction date for the kit.

(d) A requirement that a person described in paragraph (a) of this subsection provide, in response to a victim inquiry concerning a sexual assault forensic evidence kit, any information the victim requests in a manner of communication designated by the victim, as soon as possible and
within 30 days of the inquiry, unless the agency declines to provide the information pursuant to paragraph (e) of this subsection.

(e) Provisions allowing the agency to decline to provide information that interferes with the investigation or prosecution of a case.

(f) A procedure that allows a sexual assault victim to provide the agency with written authorization for a designee to access information on the victim's behalf.

(g) Provisions allowing a victim to contact a person described in paragraph (a) of this subsection to request that an untested nonanonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a nonanonymous kit, and a requirement that the agency notify the department of the reclassification.

SECTION 7. (1) The Task Force on the Testing of Sexual Assault Forensic Evidence Kits is established.

(2) The task force consists of 16 members appointed as follows:

(a) The President of the Senate, in consultation with the Senate Minority Leader, shall appoint two nonvoting members from among members of the Senate. The two members appointed under this paragraph may not be from the same political party.

(b) The Speaker of the House of Representatives, in consultation with the House Minority Leader, shall appoint two nonvoting members from among members of the House of Representatives. The two members appointed under this paragraph may not be from the same political party.

(c) The Governor shall appoint 12 members as follows:

(A) The coordinator of the Attorney General's Sexual Assault Task Force.

(B) Two survivors of sexual assault with experience with the sexual assault forensic evidence kit collection.

(C) A sexual assault nurse examiner.

(D) A person designated by the Superintendent of State Police who has expertise in the analysis of sexual assault forensic evidence kits.

(E) A person with experience seeking and applying for grants and other private funding.

(F) A person representing law enforcement agencies located in rural jurisdictions.

(G) A person representing law enforcement agencies located in urban jurisdictions.

(H) A person representing the Oregon Association Chiefs of Police.

(I) An attorney with experience prosecuting crimes.

(J) An attorney with experience in criminal defense.

(K) A sexual assault victims' advocate from a community-based organization.

(3) The task force shall:

(a) Examine the process for gathering and analyzing sexual assault forensic evidence kits in this state;

(b) Examine and identify improvements for law enforcement training on responding to and investigating sexual assaults;

(c) Examine and identify improvements for victim access to evidence other than sexual assault forensic evidence kits, including but not limited to police reports and other physical evidence;

(d) Examine and identify possible procedures for the testing of anonymous kits;

(e) Examine and identify additional rights of victims concerning the sexual assault forensic evidence kit testing process; and

(f) Identify and pursue grants and other funding sources in order to eliminate the backlog of untested sexual assault forensic evidence kits, reduce testing wait times, provide victim notification and improve efficiencies in the kit testing process.

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.
(6) The task force shall elect one of its members to serve as chairperson.
(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.
(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.
(9) The task force may adopt rules necessary for the operation of the task force.
(10)(a) The task force shall complete the duties described in subsection (3) of this section no later than July 31, 2018.
(b) The task force shall submit, in the manner provided by ORS 192.245, a report that includes recommendations for legislation to an interim committee of the Legislative Assembly related to the judiciary no later than December 1, 2018.
(11) The Committee Services office of the Legislative Assembly shall provide staff support to the task force.
(12) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Committee Services office of the Legislative Assembly for purposes of the task force.
(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of the task force's duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

SECTION 8, Section 7 of this 2016 Act is repealed on June 30, 2019.
SECTION 9, The amendments to section 4 of this 2016 Act by section 6 of this 2016 Act become operative on January 1, 2017.
SECTION 10, Notwithstanding any other provision of law, the General Fund appropriation made to the Department of State Police by section 1 (3), chapter 696, Oregon Laws 2015, for the biennium beginning July 1, 2015, is increased by $1,500,000 for increased capacity in the Forensic Services Division to process sexual assault forensic evidence kits.
SECTION 11, This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.
An act relating to evidence collected in sexual offense investigations; creating s. 943.326, F.S.; requiring that a sexual offense evidence kit or other DNA evidence be submitted to a member of the statewide criminal analysis laboratory system within a specified timeframe after specified occurrences; requiring a medical provider or law enforcement agency to inform an alleged victim of a sexual offense of certain information relating to sexual offense evidence kits; requiring the retention of specified evidence; requiring adoption and dissemination of guidelines and procedures by certain entities by a specified date; requiring the testing of sexual offense evidence kits within a specified timeframe after submission to a member of the statewide criminal analysis laboratory; providing requirements for such guidelines and procedures; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 943.326, Florida Statutes, is created to read:

943.326 DNA evidence collected in sexual offense investigations.—

(1) A sexual offense evidence kit, or other DNA evidence if a kit is not collected, must be submitted to a member of the statewide criminal analysis laboratory system under s. 943.32...
for forensic testing within 30 days after:

(a) Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or

(b) A request to have the evidence tested is made to the medical provider or the law enforcement agency by:

1. The alleged victim;
2. The alleged victim’s parent, guardian, or legal representative, if the alleged victim is a minor; or
3. The alleged victim’s personal representative, if the alleged victim is deceased.

(2) An alleged victim or, if applicable, the person representing the alleged victim under subparagraph (1)(b)2. or subparagraph (1)(b)3. must be informed of the purpose of submitting evidence for testing and the right to request testing under subsection (1) by:

(a) A medical provider conducting a forensic physical examination for purposes of a sexual offense evidence kit; or

(b) A law enforcement agency that collects other DNA evidence associated with the sexual offense if a kit is not collected under paragraph (a).

(3) A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency has approved its destruction.

(4) By January 1, 2017, the department and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, shall adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence that is
obtained in connection with an alleged sexual offense. The timely submission and testing of sexual offense evidence kits is a core public safety issue. Testing of sexual offense evidence kits must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

(a) The guidelines and procedures must include the requirements of this section, standards for how evidence is to be packaged for submission, what evidence must be submitted to a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

(b) The testing requirements of this section are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the sexual offense evidence kit in an attempt to identify the foreign DNA attributable to a suspect. If a sexual offense evidence kit is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect. If probative information is obtained from the testing of the sexual offense evidence kit, the examination of other evidence should be based on the potential evidentiary value to the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

(5) A violation of this section does not create:
(a) A cause of action or a right to challenge the admission of evidence.
(b) A cause of action for damages or any other relief.
AN ACT to create and enact a new subsection to sections 27-20-10, 27-20-31, and 39-06.1-10 and a new section to chapter 39-20 of the North Dakota Century Code, relating to the twenty-four seven sobriety program; to amend and reenact subsection 3 of section 29-06-15, subsection 7 of section 39-06.1-10, sections 39-06.1-11, 39-08-01, 39-08-01.2, 39-08-01.3, 39-08-01.4, 39-20-01, 39-20-01.1, 39-20-03.1, 39-20-04, 39-20-04.1, and 39-20-05, subsections 6, 9, and 10 of section 39-20-07, and sections 39-20-14 and 40-05-06 of the North Dakota Century Code, relating to driving while under the influence and city penalties; to provide for an underage drinking prevention program; to provide for a legislative management study; to provide a penalty; and to provide appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 27-20-10 of the North Dakota Century Code is created and enacted as follows:

If a child is subject to informal adjustment for a violation of section 39-08-01 or equivalent ordinance, or if a child is found to have an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the juvenile court shall require the child to participate in the twenty-four seven sobriety program under chapter 54-12 for up to nine months.

SECTION 2. A new subsection to section 27-20-31 of the North Dakota Century Code is created and enacted as follows:

If a child is adjudicated delinquent for a violation of section 39-08-01 or equivalent ordinance, or if a child is found to have an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the juvenile court shall require the child to participate in the twenty-four seven sobriety program under chapter 54-12.

SECTION 3. AMENDMENT. Subsection 3 of section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

3. If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may immediately take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

SECTION 4. AMENDMENT. Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or 39-08-01.4 or equivalent ordinance is:

a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five seven years preceding the last violation.
b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five seven years preceding the last violation.

d. Two years if the operator's record shows the person has at least once violated section 39-08-01 or equivalent ordinance within the five seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

e. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five seven years preceding the last violation.

f. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five seven years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

SECTION 5. A new subsection to section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

If an individual has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54-12, the individual may operate a motor vehicle during the suspension periods under this section.

SECTION 6. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:


1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.

2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director may issue a temporary restricted license that takes effect after fourteen days of the suspension have been served if the driver is not subject to any unrelated suspension or revocation. The director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause in accordance with subsection 5 if the offender is participating in the twenty-four seven sobriety program under chapter 54-12 or if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining
information, reports, and evaluations from courts, law enforcement, and citizens to determine
the offender's conduct and driving behavior during the prerequisite period of time. The director
may also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or
   suspension imposed under subsection 5 of section 39-06-17 or section 39-06-31. A temporary
   restricted license may be issued for suspensions ordered under subsection 7 of section
   39-06-32 if it could have been issued had the suspension resulted from in-state conduct.

4. A restricted license issued under this section is solely for the use of a motor vehicle during the
   licensee's normal working hours, or as provided under subsection 5, and may contain any
   other restrictions authorized by section 39-06-17. Violation of a restriction imposed according
to this section is deemed a violation of section 39-06-17.

5. If an offender has been charged with, or convicted of, a second or subsequent violation of
   section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension
   under chapter 39-20 and the offender's driver's license is not subject to an unrelated
   suspension or revocation, the director shall issue a temporary restricted driver's license
   to the offender only for the purpose of participation in the twenty-four seven sobriety program
   under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof
   of financial responsibility and proof of participation in the twenty-four seven sobriety program
   by the offender to receive a temporary restricted license. If a court or the parole board finds
   that an offender has violated a condition of the twenty-four seven sobriety program, the court
   or parole board may order the temporary restricted driver's permit be revoked and take-possession of the temporary restricted driver's permit. The court or the parole board shall send
   a copy of the order to the director who shall record the revocation of the temporary restricted
   driver's permit. Revocation of a temporary restricted driver's permit for violation of a condition
   of the twenty-four seven sobriety program does not preclude the offender's eligibility for a
   temporary restricted driver's license under any other provisions of this section.

SECTION 7. AMENDMENT. Section 39-08-01 of the North Dakota Century Code is amended and
reenacted as follows:

39-08-01. Persons under the influence of intoxicating liquor or any other drugs or
substances not to operate vehicle - Penalty.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon
   public or private areas to which the public has a right of access for vehicular use in this state if
   any of the following apply:

   a. That person has an alcohol concentration of at least eight one-hundredths of one percent
      by weight at the time of the performance of a chemical test within two hours after the
      driving or being in actual physical control of a vehicle.

   b. That person is under the influence of intoxicating liquor.

   c. That person is under the influence of any drug or substance or combination of drugs or
      substances to a degree which renders that person incapable of safely driving.

   d. That person is under the combined influence of alcohol and any other drugs or
      substances to a degree which renders that person incapable of safely driving.

   e. That individual refuses to submit to any of the following:

      (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the
      alcohol concentration or presence of other drugs, or combination thereof, in the
      individual's blood, breath, or urine, at the direction of a law enforcement officer.
under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or

(2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01; or

(3) An onsite screening test, or tests, of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer under section 39-20-14.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. Unless as otherwise provided in section 39-08-01.2, any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class B misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in any seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

3.4. Upon conviction of a second or subsequent offense within five years under this section or equivalent ordinance, the court must order the motor vehicle number plates of all the motor vehicles owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a coowner of the motor vehicle, but not including the offender if the offender is participating in the twenty-four seven sobriety program.

4.5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.

a. (1) For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.

(2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the...
offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars and at least two days' imprisonment.

b. For a second offense within five/seven years, the sentence must include at least fifteen days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; or thirty days' community service; a fine of at least one thousand five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least twelve months' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

c. For a third offense within five/seven years, the sentence must include at least sixty-one hundred twenty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; at least one year's supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

d. For a fourth or subsequent offense within seven years, the sentence must include at least one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to this section.

f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation and upon completion of the twenty-four seven sobriety program. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.
For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.

If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of section 12.1-32-02 and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.

If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual’s successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to serve the remainder of the sentence of imprisonment on probation, which may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment the remainder of the individual’s sentence of imprisonment must be considered time spent in custody.

As used in subdivision b subdivisions b and c of subsection 4, the term “imprisonment” includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.

As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees.

An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.

SECTION 8. AMENDMENT. Section 39-08-01.2 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol.

1. If an individual is convicted of an offense under chapter 12.1-16 and the conviction is based in part on the evidence of the individual’s operation of a motor vehicle while under the influence of alcohol or drugs, the sentence imposed must include at least one year’s imprisonment if the individual was an adult at the time of the offense.

2. If an individual is convicted of violating section 39-08-01, or section 39-08-03 based in part on the evidence of the individual’s operation of a motor vehicle while under the influence of alcohol or drugs, and the violation caused serious bodily injury, as defined in section
12.1-01-04, to another individual, that individual is guilty of a class A misdemeanor and the sentence must include at least ninety days' imprisonment if the individual was an adult at the time of the offense.

3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. If the finding of guilt is by jury verdict, the verdict form must indicate that the jury found the elements that create the minimum sentence.

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.

2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class C felony. If an individual violates this subsection, the court shall impose at least one year's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or equivalent ordinance, the court shall impose at least two years' imprisonment.

3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section.

SECTION 9. AMENDMENT. Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the seizure, forfeiture, and sale of motor vehicles.

A motor vehicle owned and operated by a person upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the person is in violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least one time within the five七年 preceding the violation. The court may also require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate.

SECTION 10. AMENDMENT. Section 39-08-01.4 of the North Dakota Century Code is amended and reenacted as follows:
39-08-01.4. Driving while under the influence of alcohol while being accompanied by a minor - Penalty.

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony.

SECTION 11. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

39-20-01. Implied consent to determine alcohol concentration and presence of drugs.

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-20-03, under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest.

3. The law enforcement officer shall also inform the individual charged that North Dakota law requires the individual to take the test to determine whether the individual is under the influence of alcohol or drugs; that refusal to take the test directed by the law enforcement officer is a crime punishable in the same manner as driving under the influence; and that refusal of the individual to submit to the test determined appropriate will result in a revocation for a minimum of one hundred eighty days and up to four years of the individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used.

4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 12. AMENDMENT. Section 39-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:
39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.

1. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is involved in an accident resulting in the death of another person, and there is probable cause to believe that the driver is in violation of section 39-08-01 or has committed a moving violation as defined in section 39-06.1-09, the driver must be compelled by a law enforcement officer shall request the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.

2. Notwithstanding section 39-20-01 or 39-20-04, when the driver of a vehicle is involved in an accident resulting in the serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the driver is in violation of section 39-08-01, a law enforcement officer may compel the driver to submit to a test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both. The methods and techniques established by the director of the state crime laboratory must be followed in collecting and preserving a specimen or conducting a test.

3. If the driver refuses to submit to a chemical test or tests of the driver's blood, breath, or urine and exigent circumstances are not present, the law enforcement officer shall request a search warrant to compel the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.

4. The approved methods of the director of the state crime laboratory or the director's designee must be followed in collecting and preserving a sample of the driver's blood, breath, or urine and conducting a chemical test or tests to determine the alcohol concentration or the presence of other drugs or substances, or both.

SECTION 13. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator.

If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that
notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.

4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may elect to participate in the twenty-four seven sobriety program under chapter 54-12 in lieu of the administrative hearing under this chapter if the individual's driver's license is not subject to an unrelated suspension or revocation. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty-four seven sobriety program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program under chapter 54-12.

SECTION 14. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing
procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

a. One year hundred eighty days if the person's driving record shows that within the five seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

b. Three two years if the person's driving record shows that within the five seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

c. Four three years if the person's driving record shows that within the five seven years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:

a. An administrative hearing is not held under section 39-20-05;

b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:

   (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

   (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;

   (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and

   (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not
plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;

c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and

e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and

f. The person has never been convicted under section 39-08-01 or equivalent ordinance.

3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

SECTION 15. AMENDMENT. Section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

39-20-04.1. Administrative sanction for driving or being in physical control of a vehicle while having certain alcohol concentration.

1. After the receipt of the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's driving privileges as follows:

a. For ninety-one days if the person's driving record shows that, within the five seven years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.

b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five the seven years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

c. For three hundred sixty-five days if the person's driving record shows that, within the five seven years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
d. For two years if the person's driving record shows that within the five seven years preceding the date of the arrest, the person's operator's license has once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five seven years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.

e. For three years if the operator's record shows that within five seven years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

2. In the suspension of the person's operator's license the director shall give credit for the time the person was without an operator's license after the day of the offense, except that the director may not give credit for the time the person retained driving privileges through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.

SECTION 16. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request - Election to participate in the twenty-four seven sobriety program.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person wants to communicate by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not
an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:

   a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator; and

   b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 17. AMENDMENT. Subsection 6 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:

a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.

b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.

c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.

d. The certificate of the director of the state crime laboratory designating the director's designees.
The certified records electronically posted under this section may be supplemented when
the director of the state crime laboratory or the director's designee determines it to be
necessary, and any certified supplemental records have the same force and effect as the
records that are supplemented.

The state crime laboratory shall make the certified records required by this section
available for download in a printable format on the attorney general website.

SECTION 18. AMENDMENT. Subsection 9 of section 39-20-07 of the North Dakota Century Code
is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be
indigent by the court in the criminal proceeding at issue may subpoena, without cost to the
defendant, the individual who conducted the chemical analysis referred to in this section to
testify at the trial on the issue of the amount of alcohol concentration or presence of other
drugs, or a combination thereof in the defendant's blood, breath, or urine at the time of the
alleged act. If the state toxicologist, the director of the state crime laboratory, or any employee
of either, or designee is subpoenaed to testify by a defendant who is not indigent and the
defendant does not call the witness to establish relevant evidence, the court shall order the
defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant
may also subpoena the individual who withdrew the defendant's blood by following the same
procedure.

SECTION 19. AMENDMENT. Subsection 10 of section 39-20-07 of the North Dakota Century Code
is amended and reenacted as follows:

10. A signed statement from the individual medically qualified to draw the blood sample for testing
as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn
and no further foundation for the admission of this evidence may be required. A law
enforcement officer who has witnessed an individual who is medically qualified to draw the
blood sample for testing may sign a verified statement that the law enforcement officer
witnessed the individual draw the blood sample and the individual followed the approved
methods of the state toxicologist. Further foundation is not required to establish that the blood
sample was drawn according to the approved method of the state toxicologist.

SECTION 20. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and
reenacted as follows:


1. Any individual who operates a motor vehicle upon the public highways of this state is deemed
to have given consent to submit to an onsite screening test or tests of the individual's breath
for the purpose of estimating the alcohol concentration in the individual's breath upon the
request of a law enforcement officer who has reason to believe that the individual committed a
moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with
the violation or the accident the officer has, through the officer's observations, formulated an
opinion that the individual's body contains alcohol.

2. An individual may not be required to submit to a screening test or tests of breath while at a
hospital as a patient if the medical practitioner in immediate charge of the individual's case is
not first notified of the proposal to make the requirement, or objects to the test or tests on the
ground that such would be prejudicial to the proper care or treatment of the patient.

3. The screening test or tests must be performed by an enforcement officer certified as a
chemical test operator by the director of the state crime laboratory or the director's designee
and according to methods and with devices approved by the director of the state crime
laboratory or the director's designee. The results of such screening test must be used only for
determining whether or not a further test shall be given under the provisions of section
The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test will result in a revocation for at least one hundred eighty days and up to four years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the

4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.

5. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein.

6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

SECTION 21. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

**Restricted license upon twenty-four seven sobriety program participation.**

Any driver suspended under this chapter may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The director may issue a temporary restricted license that takes effect after fifteen days of the suspension have been served provided that the driver is not subject to any unrelated suspension. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer.

SECTION 22. AMENDMENT. Section 40-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**40-05-06. City fines and penalties limited.**

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed one thousand five hundred dollars, and the imprisonment may not exceed thirty days for one offense.

2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which may not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.

3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section does not prohibit the use of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor does this section limit the use of deferred or suspended sentences under subsections 3 and 4 of section 12.1-32-02.
SECTION 23. LEGISLATIVE MANAGEMENT STUDY - ADMINISTRATIVE PROCEDURE FOR DRIVING UNDER THE INFLUENCE. During the 2013-14 interim, the legislative management shall consider studying the administrative procedure for driving under the influence of alcohol and drugs. The study must include a review of the use of ignition interlock devices and of the effect of an individual refusing to submit to chemical testing. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly.

SECTION 24. DEPARTMENT OF HUMAN SERVICES - UNDERAGE DRINKING PREVENTION PROGRAM. The department of human services shall facilitate the continuation of the parents listen, educate, ask, discuss program, a multiagency collaboration among the department of human services, department of transportation, North Dakota state university extension service, and North Dakota university system which has the goal of reducing the consumption of alcohol by minors by providing developmentally appropriate strategies and evidence-based underage drinking prevention services to parents and professionals throughout the state. Through this program the department of human services shall collaborate with the governor's prevention advisory council on drugs and alcohol in pursuing prevention activities.

SECTION 25. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $360,000, or so much of the sum as may be necessary, to the department of human services for the purpose of funding the underage drinking prevention program provided for under section 24 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 26. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $1,200,000, or so much of the sum as may be necessary, to the attorney general for the purpose of purchasing secure continuous remote alcohol monitors for individuals in the twenty-four seven sobriety program, for the biennium beginning July 1, 2013, and ending June 30, 2015.
CHAPTER 2015-137

Committee Substitute for Committee Substitute for House Bill No. 197

An act relating to tracking devices or tracking applications; creating s. 934.425, F.S.; providing definitions; prohibiting the installation of a tracking device or tracking application without the person’s consent; creating a presumption that consent is revoked upon initiation of specified proceedings; providing exceptions; providing criminal penalties; amending s. 493.6118, F.S.; providing that violations of the prohibition on installation of tracking devices and tracking applications by private investigative, private security, and repossession services are grounds for disciplinary action, to which penalties apply; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 934.425, Florida Statutes, is created to read:

934.425 Installation of tracking devices or tracking applications; exceptions; penalties.—

(1) As used in this section, the term:

(a) “Business entity” means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

(b) “Tracking application” means any software program whose primary purpose is to track or identify the location or movement of an individual.

(c) “Tracking device” means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

(d) “Person” means an individual but does not include a business entity.

(2) Except as provided in subsection (4), a person may not knowingly install a tracking device or tracking application on another person’s property without the other person’s consent.

(3) For purposes of this section, a person’s consent is presumed to be revoked if:

(a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or

(b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, s. 741.315, s. 784.046, or s. 784.0485.

CODING: Words stricken are deletions; words underlined are additions.
(4) This section does not apply to:

(a) A law enforcement officer as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person’s property as part of a criminal investigation.

(b) A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child’s property if:

1. The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;

2. The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;

3. The parent or legal guardian has sole custody of the minor child; or

4. The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.

(c) A caregiver of an elderly person or disabled adult, as those terms are defined in s. 825.101, if the elderly person’s or disabled adult’s treating physician certifies that the installation of a tracking device or tracking application onto the elderly person’s or disabled adult’s property is necessary to ensure the safety of the elderly person or disabled adult.

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose. This paragraph does not apply to a person engaged in private investigation, as defined in s. 493.6101, on behalf of another person unless such activities would otherwise be exempt under this subsection if performed by the person engaging the private investigator.

(e) An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:

1. The tracking device or tracking application is removed before the vehicle’s title is transferred or the vehicle’s lease expires;

2. The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or

3. The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

CODING: Words struck are deletions; words underlined are additions.
(5) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (y) is added to subsection (1) of section 493.6118, Florida Statutes, to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

(y) Installation of a tracking device or tracking application in violation of s. 934.425.

Section 3. This act shall take effect October 1, 2015.

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.
AN ACT TO PROVIDE THAT A PERSON COMMITS THE OFFENSE OF CYBERSTALKING IF THE PERSON KNOWINGLY INSTALLS OR PLACES A TRACKING DEVICE WITHOUT CONSENT AND USES THE DEVICE TO TRACK THE LOCATION OF AN INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"§ 14-196.3. Cyberstalking.
   (a) The following definitions apply in this section:
      (1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.
      (2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.
      (3) Electronic tracking device. – An electronic or mechanical device that permits a person to remotely determine or track the position and movement of another person.
      (4) Fleet vehicle. – Any of the following: (i) one or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes, (ii) motor vehicles held for lease or rental to the general public, or (iii) motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.
   (b) It is unlawful for a person to:
      (1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.
      (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person.
      (3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.
      (4) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.
      (5) Knowingly install, place, or use an electronic tracking device without consent, or cause an electronic tracking device to be installed, placed, or used without consent, to track the location of any person. The provisions of this subdivision do not apply to the installation, placement, or use of an electronic tracking device by any of the following:
a. A law enforcement officer, judicial officer, probation or parole officer, or employee of the Division of Corrections, Department of Public Safety, when any such person is engaged in the lawful performance of official duties and in accordance with State or federal law.

b. The owner or lessee of any vehicle on which the owner or lessee installs, places, or uses an electronic tracking device, unless the owner or lessee is subject to (i) a domestic violence protective order under Chapter 50B of the General Statutes or (ii) any court order that orders the owner or lessee not to assault, threaten, harass, follow, or contact a driver or occupant of the vehicle.

c. A legal guardian for a disabled adult, as defined in G.S. 108A-101(d), or a legally authorized individual or organization designated to provide protective services to a disabled adult pursuant to G.S. 108A-105(c), when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services.

d. The owner of fleet vehicles, when tracking such vehicles.

e. A creditor or other secured party under a retail installment agreement involving the sale of a motor vehicle or the lessor under a retail lease of a motor vehicle, and any assignee or successor in interest to that creditor, secured party, or lessor, when tracking a motor vehicle identified as security under the retail installment sales agreement or leased pursuant to a retail lease agreement, including the installation, placement, or use of an electronic tracking device to locate and remotely disable the motor vehicle, with the express written consent of the purchaser, borrower, or lessee of the motor vehicle.

f. The installation, placement, or use of an electronic tracking device authorized by an order of a State or federal court.

(g. A motor vehicle manufacturer, its subsidiary, or its affiliate that installs or uses an electronic tracking device in conjunction with providing a vehicle subscription telematics service, provided that the customer subscribes or consents to that service.

h. A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a domestic violence protective order under Chapter 50B of the General Statutes or any court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor or that minor’s parent, legal guardian, custodian, or caretaker as defined in G.S. 7B-101.

i. An employer, when providing a communication device to an employee or contractor for use in connection with his or her work for the employer.

j. A business, if the tracking is incident to the provision of a product or service requested by the person, except as limited in sub-subdivision k. of this subdivision.

k. A private detective or private investigator licensed under Chapter 74C of the General Statutes, provided that (i) the tracking is pursuant to authority under G.S. 74C-3(a)(8), (ii) the tracking is not otherwise contrary to law, and (iii) the person being tracked is not under the protection of a domestic violence protective order under Chapter 50B of the General Statutes or any other court order that protects against assault, threat, harassment, following, or contact.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.
(d) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly.

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 28th day of September, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:41 a.m. this 22nd day of October, 2015
AN ACT
relating to employment of a statewide data coordinator in the
Department of Information Resources.

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

SECTION 1. Subchapter B, Chapter 2054, Government Code, is
amended by adding Section 2054.0286 to read as follows:

Sec. 2054.0286. STATEWIDE DATA COORDINATOR. (a) The
executive director, using existing department funds, shall employ a
statewide data coordinator to:

(1) improve the control and security of information
collected by state agencies;

(2) promote between state agencies the sharing of
information, including customer information; and

(3) reduce information collection costs incurred by
this state.

(b) The statewide data coordinator shall develop and
implement best practices among state agencies to:

(1) improve interagency information coordination;

(2) reduce duplicative information collection;

(3) increase accountability and ensure compliance
with statutes and rules requiring agencies to share information;

(4) improve information management and analysis to
increase information security, uncover fraud and waste, reduce
agency costs, improve agency operations, and verify compliance with
(5) encourage agencies to collect and post on the agencies' Internet websites information related to agency functions that is in an open file format and is machine-readable, exportable, and easily accessible by the public; and

(6) encourage the evaluation of open document formats for storing data and documents generated by state agencies.

(c) Each state agency shall cooperate with the statewide data coordinator in fulfilling the requirements of this section.

(d) This section expires September 1, 2021.

SECTION 2. As soon as practicable after the effective date of this Act, the executive director of the Department of Information Resources shall employ a statewide data coordinator as required by Section 2054.0286, Government Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2015.
AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO FIDUCIARY ACCESS TO DIGITAL ASSETS AND DIGITAL ACCOUNTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 50. Fiduciary Access to Digital Assets and Digital Accounts.

§ 5001. Short Title.

This chapter may be cited as the “Fiduciary Access to Digital Assets and Digital Accounts Act.”

§ 5002. Definitions.

As used in this chapter:

(1) “Account holder” means a decedent, a disabled person pursuant to Chapter 39 of this title, a principal of a durable personal power of attorney pursuant to Chapter 49A of this title, a settlor of a trust which was revocable until the time of the settlor’s death or incapacity, or a trust, whether or not revocable, that invokes this chapter.

(2) “Catalogue of electronic communications” means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication, and the electronic address of the person.
(3) “Content of an electronic communication” means information not readily accessible to the public concerning the substance or meaning of an electronic communication.

(4) “Court” means the Court of Chancery for the State of Delaware.

(5) “Custodian” means a person that electronically stores digital assets or digital accounts of an account holder or otherwise has control over digital assets or digital accounts of the account holder. “Custodian” includes an electronic communication service, as the term is defined by the Electronic Communications Privacy Act, 18 U.S.C. § 2510, and a remote computing service, as the term is defined by the Stored Communications Act, 18 U.S.C. § 2711.

(6) “Digital account” means an electronic system for creating, generating, sending, sharing, communicating, receiving, storing, displaying, or processing information which provides access to a digital asset which currently exist or may exist as technology develops or such comparable items as technology develops, stored on any type of digital device, regardless of the ownership of the digital device upon which the digital asset is stored, including but not in any way limited to, email accounts, social network accounts, social media accounts, file sharing accounts, health insurance accounts, health care accounts, financial management accounts, domain registration accounts, domain name service accounts, web hosting accounts, tax preparation service accounts, online store accounts and affiliate programs thereto, and other online accounts which currently exist or may exist as technology develops or such comparable items as technology develops.

(7) “Digital asset” means data, text, emails, documents, audio, video, images, sounds, social media content, social networking content, codes, health care records, health insurance records, computer source codes, computer programs, software, software licenses, databases, or the like, including the usernames and passwords, created, generated, sent, communicated, shared, received, or stored by electronic means on a digital device. “Digital asset” does not include an underlying asset or liability that is governed under other provisions of this title.

(8) “Digital device” means an electronic device that can create, generate, send, share, communicate, receive, store, display, or process information, and such electronic devices shall include, but not limited to, desktops, laptops, tablets, peripherals, servers, mobile telephones, smartphones, and any similar storage device which currently exists or may exist as technology develops or such comparable items as technology develops.

(9) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
(10) “End User License Agreement” means an agreement between an account holder and a custodian establishing the rights and responsibilities of each. The term includes a terms-of-use agreement, terms-of-service agreement, privacy policy, terms and conditions, and license agreement.

(11) “Fiduciary” includes a personal representative appointed by the Register of Wills, a guardian appointed pursuant to Chapter 39 of this title, an agent under a durable personal power of attorney pursuant to Chapter 49A of this title, a trustee, or an adviser pursuant to § 3313 of this title.

(12) “Good Faith” means honesty in fact.

(13) “Governing Instrument” means a will, trust, a durable personal power of attorney pursuant to Chapter 49 or Chapter 49A of this title, order appointing a guardian over the property of the account holder, or other dispositive, appointive, or nominative instrument of any similar type.

(14) “Person” means an individual, corporation, statutory trust, estate, trust, partnership (general or limited), limited liability company, association, joint venture, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(15) “Valid Written Request” means a request made by a fiduciary with authority over the digital assets or digital accounts of another person that complies on its face with the requirements of § 5005 of this title.

§ 5003. Applicability.

This chapter applies to a grant of authority to a fiduciary over a digital account or a digital asset. Digital assets and digital accounts of an employer regularly used by an employee or contractor in the usual course of business are not subject to the provisions of this chapter.

§ 5004. Control of digital accounts and digital assets by a fiduciary.

(a) Except as otherwise provided by a governing instrument or court order, a fiduciary may exercise control over any and all rights in digital assets and digital accounts of an account holder, to the extent permitted under applicable state or federal law, including copyright law, or regulations or any end user license agreement.

(b) If a provision in an end user license agreement limits a fiduciary’s access to or control over a digital asset or digital account of an account holder, the provision is void as against the strong public policy of this state, unless the account holder has agreed to the provision by an affirmative act separate from the account holder’s assent to other provisions of the end user license agreement.
(c) A choice-of-law provision in an end user license agreement is unenforceable against a fiduciary action under this chapter to the extent the provision designates law that enforces or would enforce a limitation on a fiduciary’s access to or control over digital assets or digital accounts that is void under subsection (b) of this section.

§ 5005. Recovery of digital assets and digital accounts from a custodian.

(a) A fiduciary with authority over digital assets or digital accounts of an account holder under this chapter shall have the same access as the account holder, and is deemed to (i) have the lawful consent of the account holder and (ii) be an authorized agent or user under all applicable state and federal law and regulations and any end user license agreement.

(b) Upon receipt of a valid written request sent pursuant to the requirements of subsection (c) of this section, from a fiduciary seeking access to, transfer of, copy of, or destruction of a digital asset or digital account, a custodian shall provide the fiduciary the applicable access, transfer, copy, or destruction of the digital asset or digital account unless it would be technologically impracticable to provide access to, transfer of, copy of, or destruction of the digital asset or digital account to the fiduciary or to the account holder. Unless otherwise provided by a governing instrument or a court order, a fiduciary may access:

(1) the content of an electronic communication, as the term is defined by the Electronic Communications Privacy Act, 18 U.S.C. § 2510, sent or received by the account holder only if the custodian is permitted to disclose the content under the Electronic Communications Privacy Act, 18 U.S.C. § 2702(b);

(2) the catalogue of electronic communications sent or received by the account holder; and

(3) any other digital account or digital asset of the account holder.

(c) A valid written request under subsection (b) of this section must:

(1) If by a personal representative, be accompanied by a certified copy of the letters testamentary or letters of administration which grant authority to the personal representative to administer the estate of the deceased account holder;

(2) If by a guardian, be accompanied by a certified copy of the court order that gives the guardian authority over the property of the disabled person;

(3) If by an agent, be accompanied by a certified copy of the power of attorney that authorizes the agent to exercise authority over the affairs of the principal and which includes an authorization regarding the principal’s digital assets or digital accounts and, if the power of attorney provides that the agent’s power to access a digital account or digital asset is conditioned upon the account holder being incapacitated, be accompanied by a certification from a licensed physician or an order of the Court stating the account holder is incapacitated;
(4) If by a trustee, be accompanied by a certified copy of the trust instrument, or a certification of trust pursuant to § 3591 of this title, and, if the trustee’s power to access a digital account or digital asset is conditioned upon the account holder being incapacitated, be accompanied by a certification from a licensed physician or an order of the Court stating the account holder is incapacitated; or

(5) If by a fiduciary not otherwise specified herein, be accompanied by a certified copy of the governing instrument that authorizes the fiduciary to exercise authority over digital assets or digital accounts, or in the case of a fiduciary whose authority is granted in a trust instrument, a certification of trust pursuant to § 3591 of this title.

(d) A custodian shall comply with a valid written request not later than 60 days after receipt of the valid written request. If the custodian fails to comply, the fiduciary may apply to the court for an order directing compliance.

(e) For purposes of this section, a “certified copy” of a trust, power of attorney, certification of trust, or governing instrument means a copy accompanied by an affidavit attesting that the copy is a true, exact, complete and unaltered photocopy of the original, and that to the best of the affiant’s knowledge, said document remains in full force and effect.

§ 5006. Custodian Immunity.

(a) Except as otherwise provided in subsection (b) of this section:

(1) A custodian shall accept a valid written request that complies on its face with the requirements of § 5005 of this title;

(2) A custodian shall accept a valid written request that is originally written in English or is translated into English, under oath of the translator.

(b) A custodian is not required to accept a valid written request if:

(1) The custodian is not otherwise required to engage in a transaction with the account holder in the same circumstances;

(2) Engaging in a transaction with the fiduciary or the account holder in the same circumstances would be inconsistent with applicable state or federal law, including copyright law, or regulations or any end user license agreement; or

(3) The custodian has actual knowledge that the fiduciary does not have the authority to perform the act requested.

(c) A custodian that in good faith accepts a valid written request without actual knowledge that it is void, invalid, or terminated, that the purported fiduciary’s authority is void, invalid, or terminated, or that the fiduciary is exceeding or improperly exercising the fiduciary’s authority may rely upon such valid written request as if it were genuine, valid and still
in effect, the fiduciary’s authority were genuine, valid and still in effect, and the fiduciary had not exceeded and had properly exercised the authority.

(d) For purposes of this section, a custodian that conducts activities through employees is without actual knowledge of a fact relating to a valid written request, an account holder, or a fiduciary if the employee conducting the transaction involving the valid written request is without actual knowledge of the fact. Notification of revocation of a valid written request by an account holder or fiduciary to an officer of any custodian shall constitute actual notice to all employees.

(e) A custodian that refuses in violation of this section to accept a valid written request from a fiduciary that complies with § 5005(c) of this title is subject to:

(1) A court order compelling compliance with the valid written request; and

(2) Liability for damages, including reasonable attorney’s fees and costs, incurred in any action or proceeding that confirms the validity or authority of a fiduciary to act, or compels acceptance of the fiduciary’s valid written request under § 5005(c) of this title.

(g) A custodian acting in good faith is immune from liability for an action done in compliance with this chapter.

(h) A custodian acting in good faith is immune from civil liability for the custodian’s accidental destruction of any digital asset or digital account subject to this chapter.

§ 5007. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).

Section 2. Amend § 49A-201(b), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 49A-201. Grant of general authority; authority that requires specific grant.

(b) An agent under a personal power of attorney may do the following on behalf of the principal or with the principal's property only if the personal power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(6) Exercise fiduciary powers that the principal has authority to delegate; or

(7) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest; or
(8) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Digital Accounts Act, Chapter 50 of this title.

Section 3. Amend § 3923(d), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3923. Powers of the guardian of the property.

(d) Except as modified by the order of guardianship, the guardian of the property may act without Court authorization or confirmation to reasonably accomplish the purpose for which the guardian is appointed to:

(12) Execute and deliver all instruments which will accomplish or facilitate the exercise of powers vested in the guardian; and

(13) Hold a security in the name of the nominee or other forms without disclosure of guardianships so that title to the security may pass by delivery, but the guardian is liable for any acts of the nominee in connection with the stock so held; and

(14) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Accounts Act, Chapter 50 of this title.

Section 4. Amend § 3325, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3325. Specific powers of trustee.

Without limiting the authority conferred by § 3324 of this title, a trustee may:

(29) Merge any 2 or more trusts, whether or not created by the same trustor, to be held and administered as a single trust if such a merger would not result in a material change in the beneficial interests of the trust beneficiaries, or any of them, in the trust; and

(30) Take such actions as are necessary to cause gains from the sale or exchange of trust assets, as determined for federal income-tax purposes, to be taxed for federal income-tax purposes as part of a distribution of income (including income which has been increased by an adjustment from principal to income under § 61-104 of this title), a unitrust distribution, or a distribution of principal to a beneficiary; and

(31) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Accounts Act, Chapter 50 of this title.

Section 5. This Act shall become effective on January 1, 2015.
Section 6. This Act shall be liberally construed to effectuate the General Assembly’s intent to allow the access and control set forth in the Act. Furthermore, it is the will of the General Assembly that this Act be interpreted as legislative authorization pursuant to the good faith defense contained within the Electronic Communications Privacy Act, 18 U.S.C. § 2707(e)(1).
Enrolled

Senate Bill 1554

Sponsored by Senator PROZANSKI; Representatives BARKER, HUFFMAN, OLSON (at the request of The Estate Planning Section of the Oregon State Bar) (Presession filed.)

CHAPTER ..................................................

AN ACT

Relating to access to digital assets.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 18 of this 2016 Act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 2. As used in sections 2 to 18 of this 2016 Act:
(1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user.
(2) “Agent” means a person designated as an agent under a power of attorney in accordance with ORS 127.005 to 127.045.
(3) “Carries” means engages in the transmission of an electronic communication.
(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.
(5) “Conservator” has the meaning given that term in ORS 125.005.
(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication that:
(a) Has been sent or received by a user;
(b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
(c) Is not readily accessible to the public.
(7) “Court” means a circuit court in this state.
(8) “Custodian” means a person that carries, maintains, processes, receives or stores a digital asset of a user.
(9) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.
(10) “Digital asset” means an electronic record in which an individual has a right or interest. “Digital asset” does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.
(12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12).
(13) “Electronic communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means a person that is an original, additional or successor personal representative, conservator, agent or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases and similar intelligence of any nature.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

(18) “Personal representative” means an executor, administrator or special administrator, or a person legally authorized to perform substantially the same functions.

(19) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(20) “Principal” means an individual who grants authority to an agent in a power of attorney.

(21) “Protected person” means an individual for whom a conservator has been appointed. “Protected person” includes an individual for whom an application for the appointment of a conservator is pending.

(22) “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.

(23) “Remote computing service” means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. 2510(14).

(24) “Terms-of-service agreement” means an agreement that controls the relationship between a user and a custodian.

(25) “Trustee” means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another person. “Trustee” includes a successor trustee.

(26) “User” means a person that has an account with a custodian.

(27) “Will” includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

SECTION 3. (1) Sections 2 to 18 of this 2016 Act apply to:

(a) A fiduciary acting under a will or power of attorney executed before, on or after the effective date of this 2016 Act;

(b) A personal representative acting for a decedent who died before, on or after the effective date of this 2016 Act;

(c) A conservatorship proceeding commenced before, on or after the effective date of this 2016 Act; and

(d) A trustee acting under a trust created before, on or after the effective date of this 2016 Act.

(2) Sections 2 to 18 of this 2016 Act apply to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(3) Sections 2 to 18 of this 2016 Act do not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

SECTION 4. (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete
a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

(2) If a user has not used an online tool to give direction under subsection (1) of this section, or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

SECTION 5. (1) Sections 2 to 18 of this 2016 Act do not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) Sections 2 to 18 of this 2016 Act do not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms-of-service agreement if the user has not provided direction under section 4 of this 2016 Act.

SECTION 6. (1) When disclosing digital assets of a user under sections 2 to 18 of this 2016 Act, the custodian may, in the custodian's sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;
(b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under sections 2 to 18 of this 2016 Act.

(3) A custodian need not disclose under sections 2 to 18 of this 2016 Act a digital asset deleted by a user.

(4) If a user directs, or a fiduciary requests, a custodian to disclose some, but not all, of the user's digital assets under sections 2 to 18 of this 2016 Act, the custodian need not disclose the digital assets if segregation of the digital assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) A subset limited by date of the user's digital assets;
(b) All of the user's digital assets to the fiduciary or designated recipient;
(c) None of the user's digital assets; or
(d) All of the user's digital assets to the court for review in camera.

SECTION 7. If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(1) A written request for disclosure in physical or electronic form;
(2) A certified copy of the death certificate of the user;
(3) A certified copy of the letter of appointment of the personal representative or a small estate affidavit or court order;
(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and
(5) If requested by the custodian:
(a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user; or

(c) A finding by the court that:
   (A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection;
   (B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. 2701 et seq., 47 U.S.C. 222 or other applicable law;
   (C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
   (D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 8. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user if the personal representative gives the custodian:

1. A written request for disclosure in physical or electronic form;

2. A certified copy of the death certificate of the user;

3. A certified copy of the letter of appointment of the personal representative or a small estate affidavit or court order; and

4. If requested by the custodian:
   (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
   (b) Evidence linking the account to the user;
   (c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
   (d) A finding by the court that:
      (A) The user had a specific account with the custodian, identifiable by the information specified in paragraph (a) of this subsection; or
      (B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 9. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

1. A written request for disclosure in physical or electronic form;

2. An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

3. A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

4. If requested by the custodian:
   (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
   (b) Evidence linking the account to the principal.

SECTION 10. Unless otherwise ordered by the court, directed by the principal or provided in a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

1. A written request for disclosure in physical or electronic form;
(2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal; 
(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and 
(4) If requested by the custodian:
   (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or 
   (b) Evidence linking the account to the principal.

SECTION 11. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 12. Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;
(2) A certified copy of the trust instrument or a certification of the trust under ORS 130.860 that includes consent to disclosure of the content of electronic communications to the trustee;
(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and 
(4) If requested by the custodian:
   (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or 
   (b) Evidence linking the account to the trust.

SECTION 13. Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account a catalogue of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;
(2) A certified copy of the trust instrument or a certification of the trust under ORS 130.860;
(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and 
(4) If requested by the custodian:
   (a) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or 
   (b) Evidence linking the account to the trust.

SECTION 14. (1) After an opportunity for a hearing, the court may grant a conservator access to the digital assets of a protected person.
(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to the conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(a) A written request for disclosure in physical or electronic form;
(b) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
(c) If requested by the custodian:
   (A) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
   (B) Evidence linking the account to the protected person.

(3) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate the account of the protected person for good cause. A request made under this subsection must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

SECTION 15. (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:
   (a) The duty of care;
   (b) The duty of loyalty; and
   (c) The duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:
   (a) Except as otherwise provided in section 4 of this 2016 Act, is subject to the applicable terms of service;
   (b) Is subject to other applicable law, including copyright law;
   (c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
   (d) May not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor has a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:
   (a) Has the right to access the property and any digital asset stored in the property; and
   (b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including this state's laws on unauthorized computer access.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:
   (a) If the user is deceased, a certified copy of the death certificate of the user;
   (b) A certified copy of the letter of appointment of the personal representative, a small estate affidavit or court order, a court order, a power of attorney or a trust giving the fiduciary authority over the account; and
   (c) If requested by the custodian:
      (A) A number, user name, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
      (B) Evidence linking the account to the user; or
      (C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A) of this paragraph.

SECTION 16. (1) Not later than 60 days after receipt of the information required under sections 7 to 15 of this 2016 Act, a custodian shall comply with a request from a fiduciary.
or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. 2702.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under sections 2 to 18 of this 2016 Act.

(4) A custodian may deny a request under sections 2 to 18 of this 2016 Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) Sections 2 to 18 of this 2016 Act do not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination to obtain a court order that:

(a) Specifies that an account belongs to the protected person or principal;
(b) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and
(c) Contains a finding required by law other than under sections 2 to 18 of this 2016 Act.

(6) A custodian and the custodian's officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with sections 2 to 18 of this 2016 Act.

SECTION 17. 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 enacting states.


Enrolled Senate Bill 1554 (SB 1554-A) Page 7
Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

By: Senator Rapert

For An Act To Be Entitled
AN ACT TO AMEND THE OFFENSE OF NEGLIGENT HOMICIDE;
AND FOR OTHER PURPOSES.

Subtitle
TO AMEND THE OFFENSE OF NEGLIGENT HOMICIDE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-10-105 is amended to read as follows:

5-10-105. Negligent homicide.
(a)(1) A person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft:
(A) While intoxicated;
(B)(i) If at that time there is an alcohol concentration of eight hundredths (0.08) or more in the person’s breath or blood based upon the definition of breath, blood, and urine concentration in § 5-65-204, as determined by a chemical test of the person’s blood, urine, breath, or other bodily substance.
(ii) The method of chemical analysis of the person’s blood, urine, or breath shall be made in accordance with §§ 5-65-204 and 5-65-206; or
(C) While passing a stopped school bus in violation of §
27-51-1004; or
(D) While fatigued.
(2) A person who violates subdivision (a)(1) of this section
upon conviction is guilty of a Class B felony.

(b)(1) A person commits negligent homicide if he or she negligently
causes the death of another person.

(2) A person who violates subdivision (b)(1) of this section
upon conviction is guilty of a Class A misdemeanor.

(c) As used in this section:

(1) "Fatigued" means:

(A) Having been without sleep for a period of twenty-four
(24) consecutive hours; or

(B) Having been without sleep for a period of twenty-four
(24) consecutive hours and in the state of being asleep; and

(2) "Intoxicated" "Intoxicated" means influenced or affected by
the ingestion of alcohol, a controlled substance, any intoxicant, or any
combination of alcohol, a controlled substance, or an intoxicant to such a
degree that the driver's operator's reactions, motor skills, and judgment are
substantially altered and the driver operator therefore constitutes a clear
and substantial danger of physical injury or death to himself or herself and
other motorists or pedestrians or to another person.

/s/Rapert
STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

S.P. 466 - L.D. 1301

An Act To Improve the Safety of Vulnerable Users in Traffic and To Clarify the Responsibilities of Bicyclists and Pedestrians

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 29-A MRSA §101, sub-§91-A is enacted to read:

91-A. Vulnerable user. "Vulnerable user" means a person on a public way who is more vulnerable to injury than a person in an automobile, truck or other similar motor vehicle and includes, but is not limited to:

A. A pedestrian, including a person on or within a public way engaged in work or the provision of emergency or roadside assistance;

B. A person riding, guiding or leading an animal upon or within a public way;

C. A person being guided by a service animal upon or within a public way; or

D. A person lawfully on or within a public way, crosswalk or shoulder portion of the public way who is lawfully operating, riding, using, holding or otherwise on or in any of the following devices:

   (1) A bicycle, or a device that is an extension of a bicycle such as an extend-a-bike, a bicycle trailer or a child's bicycle seat;

   (2) A motorized bicycle or tricycle, including an electric-assisted bicycle;

   (3) A farm tractor or similar vehicle designed primarily for farm use;

   (4) A skateboard;

   (5) Roller skates;

   (6) In-line skates;

   (7) A scooter;

   (8) A moped;

   (9) A horse-drawn carriage;
(10) An electric personal assistive mobility device;
(11) A wheelchair;
(12) A Segway; or
(13) Roller skis.

Sec. 2. 29-A MRSA §1351, sub-§4, as enacted by PL 2003, c. 183, §1, is repealed and the following enacted in its place:

4. Requirements. A driver education course approved under this subchapter must include instruction that imparts the understanding and skills necessary to operate a motor vehicle safely in a situation in which a motorcycle or vulnerable user is sharing the road with that motor vehicle.

Sec. 3. 29-A MRSA §2056, sub-§4, as amended by PL 1999, c. 101, §1, is further amended to read:

4. Pedestrians in marked crosswalks. When traffic-control devices are not in operation, an operator must yield the right-of-way to a pedestrian who is crossing within a marked crosswalk or to a pedestrian who has shown visible intent to enter the marked crosswalk.

Sec. 4. 29-A MRSA §2057, sub-§10, as amended by PL 2007, c. 348, §21, is further amended to read:

10. Failure to yield; criminal offense. A person commits a Class E crime if the person operates a vehicle past a yield sign and collides with a vehicle, person riding a bicycle or pedestrian proceeding on the intersecting way.

Sec. 5. 29-A MRSA §2057, sub-§10-A, as enacted by PL 2007, c. 348, §22, is amended to read:

10-A. Failure to yield; traffic infraction. A person commits a traffic infraction if the person operates a vehicle or a bicycle past a yield sign and fails to yield the right-of-way to a vehicle, person riding a bicycle or pedestrian proceeding on the intersecting way.

Sec. 6. 29-A MRSA §2063, sub-§7, as amended by PL 2013, c. 482, §2, is further amended to read:

7. Penalties. A person 17 years of age or over who violates this section subsection 2, 3, 3-A, 4, 6, 9, 10, 11, 12 or 13 commits a traffic infraction for which a fine of not less than $25 and not more than $250 may be adjudged. A person under 17 years of age is not subject to a fine under this section.

Sec. 7. 29-A MRSA §2063, sub-§§10 to 13 are enacted to read:

10. Duty to yield. A bicyclist, roller skier or other nonmotorized traffic must yield the right-of-way to a pedestrian crossing the way in a marked crosswalk who is
proceeding in accordance with a traffic-control device as provided in section 2057 or who is proceeding without a traffic-control device in operation. For purposes of this subsection, "yield the right-of-way" means to slow or stop to avoid colliding with or causing other harm to a pedestrian.

11. Traffic-control devices. A person operating a bicycle or roller skis shall obey a traffic-control device, unless otherwise directed by a law enforcement officer. A traffic-control device conforming to the requirements for these devices is presumed to comply with this chapter.

12. Stop signs. Unless directed to proceed by a law enforcement officer or traffic-control device, a person operating a bicycle or roller skis approaching a stop sign shall stop and:

A. Yield the right-of-way to a vehicle that has entered the intersection or that is approaching so closely as to constitute an immediate hazard; and

B. Having yielded, a person operating a bicycle or roller skis may proceed. All other operators approaching the intersection shall yield the right-of-way to the person operating a bicycle or roller skis so proceeding.

13. One-way road. On a public way posted for one-way traffic, unless directed to proceed by a law enforcement officer or traffic-control device, a bicycle may be ridden only in the direction designated.

Sec. 8. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 29-A, in the title headnote, the words "motor vehicles" are amended to read "motor vehicles and traffic" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.
chapters 95-382 and section 48 of 2014-223, Laws of Florida, is repealed.

Section 15. Section 339.0809, Florida Statutes, is created to read:

339.0809 Florida Department of Transportation Financing Corporation.—

(1) The Florida Department of Transportation Financing Corporation is created as a nonprofit corporation for the purpose of financing or refinancing projects for the department as provided in subsection (4).

(2) The Florida Department of Transportation Financing Corporation shall be governed by a board of directors consisting of the director of the Office of Policy and Budget within the Executive Office of the Governor, the director of the Division of Bond Finance, and the Secretary of Transportation. The director of the Division of Bond Finance shall be the chief executive officer of the corporation and shall direct and supervise the administrative affairs of the corporation and shall control, direct, and supervise the operation of the corporation. The corporation shall have such other officers as may be determined by the board of directors.

(3) The Florida Department of Transportation Financing Corporation shall have all the powers of a corporate body under the laws of the state to the extent not inconsistent with or restricted by this section, including, but not limited to, the power to:
(a) Adopt, amend, and repeal bylaws.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey such real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section and to sell, lease, or otherwise dispose of such property.

(e) Elect or appoint and employ such other officers, agents, and employees as the corporation deems advisable to operate and manage the affairs of the corporation, which officers, agents, and employees may be officers or employees of the department and the state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness necessary to finance or refinance projects as provided in subsection (4).

(g) Make and execute any and all contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.

(h) Select, retain, and employ professionals, contractors, or agents, which may include the Division of Bond Finance, as necessary or convenient to enable or assist the corporation in carrying out the purposes of the corporation and this section.

(i) Take any action necessary or convenient to carry out
the purposes of the corporation and this section and the powers provided in this section.

(4) The Florida Department of Transportation Financing Corporation may enter into one or more service contracts with the department to provide services to the department in connection with projects approved in the department's work program, which approval specifically provides that the department may enter into a service contract for the project pursuant to this section. The department may enter into one or more such service contracts with the corporation and provide for payments under such contracts, subject to annual appropriation by the Legislature. The proceeds from such service contracts may be used for the corporation's administrative costs and expenses after payments under subsection (5). Each service contract may have a term of up to 35 years. In compliance with s. 287.0641 and other applicable law, the obligations of the department under such service contracts do not constitute a general obligation of the state or a pledge of the full faith and credit or taxing power of the state, and such obligations are not an obligation of the State Board of Administration or entities for which it invests funds, other than the department as provided in this section, but are payable solely from amounts available in the State Transportation Trust Fund, subject to annual appropriation. In compliance with this subsection and s. 287.0582, the service contract must expressly include the following statement: "The State of Florida's performance and
obligation to pay under this contract is contingent upon an
annual appropriation by the Legislature."

(5) The Florida Department of Transportation Financing
Corporation may issue and incur notes, bonds, certificates of
indebtedness, and other obligations or evidences of indebtedness
payable from and secured by amounts payable to the corporation
by the department under a service contract entered into under
subsection (4) for the purpose of financing or refinancing
projects approved as provided in subsection (4). The duration of
any such note, bond, certificate of indebtedness, or other
obligation or evidence of indebtedness may not exceed 30 annual
maturities. The corporation may select its financing team and
issue its obligations through competitive bidding or negotiated
contracts, whichever is most cost-effective. Indebtedness of the
corporation does not constitute a debt or obligation of the
state or a pledge of the full faith and credit or taxing power
of the state but is payable from and secured by payments made by
the department under the service contract.

(6) The fulfillment of the purposes of the Florida
Department of Transportation Financing Corporation promotes the
health, safety, and general welfare of the people of the state
and serves as essential governmental functions and a paramount
public purpose.

(7) The Florida Department of Transportation Financing
Corporation is exempt from taxation and assessments on its
income, property, and assets or revenues acquired, received, or
used in the furtherance of the purposes provided in this chapter. The obligations of the corporation incurred under subsection (5) and the interest and income on such obligations and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection with, or given to secure payment of such obligations are exempt from taxation; however, such exemption does not apply to any tax imposed under chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(8) The Florida Department of Transportation Financing Corporation may validate obligations to be incurred under subsection (5) and the validity and enforceability of any service contracts providing for payments pledged to the payment of such obligations by proceedings under chapter 75. The validation complaint may be filed only in the circuit court of the Second Judicial Circuit in and for Leon County. The notice required to be published by s. 75.06 must be published in Leon County, and the complaint and order of the circuit court may be served only on the State Attorney for the Second Judicial Circuit. Sections 75.04(2) and 75.06(2) do not apply to a complaint for validation filed under this subsection.

(9) The Florida Department of Transportation Financing Corporation is not a special district for purposes of chapter 189 or a unit of local government for purposes of part III of chapter 218. Chapters 120 and 215, except the limitation on the
interest rates provided by s. 215.84, which applies to
obligations of the corporation issued pursuant to this section,
and part I of chapter 287, except ss. 287.0582 and 287.0641, do
not apply to this section, the corporation, the service
contracts entered into pursuant to this section, or debt
obligations issued by the corporation as contemplated in this
section.

(10) The benefits and earnings of the Florida Department
of Transportation Financing Corporation may not inure to the
benefit of any private person.

(11) Upon dissolution of the Florida Department of
Transportation Financing Corporation, title to all property
owned by the corporation shall revert to the state.

(12) The Florida Department of Transportation Financing
Corporation may contract with the State Board of Administration
to serve as a trustee with respect to debt obligations issued by
the corporation as contemplated by this section; to hold,
administer, and invest proceeds of such debt obligations and
other funds of the corporation; and to perform other services
required by the corporation. The State Board of Administration
may perform such services and may contract with others to
provide all or a part of such services and to recover its and
such other costs and expenses thereof.

(13) The department may enter into a service contract in
conjunction with the issuance of debt obligations as provided in
this section which provides for periodic payments for debt
service or other amounts payable with respect to debt obligations, plus any administrative expenses of the Florida Department of Transportation Financing Corporation.

Section 16. Paragraph (g) of subsection (7) of section 339.135, Florida Statutes, is amended, and paragraph (h) is added to that subsection, to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(g) Any work program amendment which also requires the transfer of fixed capital outlay appropriations between categories within the department or the increase of an appropriation category is subject to the approval of the Legislative Budget Commission. If a meeting of the Legislative Budget Commission cannot be held within 30 days of the department submitting an amendment to the Legislative Budget Commission, then the chair and vice chair of the Legislative Budget Commission may authorize such amendment to be approved pursuant to the provisions of s. 216.177.

(h) Any work program amendment that also adds a new project, or phase thereof, to the adopted work program in excess of $3 million is subject to approval by the Legislative Budget Commission. Any work program amendment submitted under this paragraph must include, as supplemental information, a list of projects, or phases thereof, in the current 5-year adopted work program which are eligible for the funds within the
TRANSPORTATION INFRASTRUCTURE FUNDING

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: Alvin B. Jackson

LONG TITLE

General Description:

This bill modifies provisions relating to transportation funding.

Highlighted Provisions:

This bill:

- provides and amends definitions;
- authorizes a county to impose a local option sales and use tax for highways and public transit;
- addresses the use of revenue collected from the local option sales and use tax for highways and public transit;
- requires a political subdivision that receives certain sales and use tax revenue to submit certain information in audits, reviews, compilations, or fiscal reports;
- repeals the cents per gallon tax rate that is imposed on motor fuels and special fuels after a specified date;
- imposes a percentage tax per gallon on motor fuel and special fuel based on the statewide average rack price of a gallon of regular unleaded motor fuel after a specified date;
- establishes procedures for the State Tax Commission to determine the statewide average rack price of a gallon of regular unleaded motor fuel;
- specifies the date that the adjusted fuel tax rate shall take effect each year;
- increases the tax rate of the special fuel tax imposed on compressed natural gas and liquefied natural gas;
- imposes a special fuel tax on hydrogen used to operate or propel a motor vehicle on...
H.B. 362

30 a public highway;
31 ▪ repeals the requirement to post a tax rate decal on each motor fuel or undyed special
32 fuel pump or dispensing device;
33 ▪ repeals the cap on the amount of motor fuel tax revenue that is deposited in the
34 Off-highway Vehicle Account;
35 ▪ requires the Department of Transportation to study the implementation of a road
36 usage charge;
37 ▪ amends the apportionment formula for revenues deposited in the class B and class C
38 roads account; and
39 ▪ makes technical and conforming changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides a special effective date.
This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:
51-2a-202, as enacted by Laws of Utah 2004, Chapter 206
59-12-2203, as enacted by Laws of Utah 2010, Chapter 263
59-12-2206, as enacted by Laws of Utah 2010, Chapter 263
59-13-102, as last amended by Laws of Utah 2012, Chapter 369
59-13-201, as last amended by Laws of Utah 2010, Chapter 308
59-13-301, as last amended by Laws of Utah 2011, Chapter 259
63I-1-259, as last amended by Laws of Utah 2014, Chapter 54
72-2-108, as last amended by Laws of Utah 2008, Chapter 109

ENACTS:
59-12-2219, Utah Code Annotated 1953
63I-1-251, Utah Code Annotated 1953
Section 1. Section 51-2a-202 is amended to read:

51-2a-202. Reporting requirements.

(1) The governing board of each entity required to have an audit, review, compilation, or fiscal report shall ensure that the audit, review, compilation, or fiscal report is:

(a) made at least annually; and

(b) filed with the state auditor within six months of the close of the fiscal year of the entity.

(2) If the political subdivision, interlocal organization, or other local entity receives federal funding, the audit, review, or compilation shall be performed in accordance with both federal and state auditing requirements.

(3) If a political subdivision receives revenue from a sales and use tax imposed under Section 59-12-2219, the political subdivision shall identify the amount of revenue the political subdivision budgets for transportation and verify compliance with Subsection 59-12-2219(10) in the audit, review, compilation, or fiscal report.

Section 2. Section 59-12-2203 is amended to read:

59-12-2203. Authority to impose a sales and use tax under this part.

(1) As provided in this Subsection (1), one of the following sales and use taxes may be imposed within the boundaries of a local taxing jurisdiction:

(a) a county, city, or town may impose the sales and use tax authorized by Section 59-12-2213 in accordance with Section 59-12-2213; or

(b) a city or town may impose the sales and use tax authorized by Section 59-12-2215
in accordance with Section 59-12-2215.

(2) As provided in this Subsection (2), one of the following sales and use taxes may be imposed within the boundaries of a local taxing jurisdiction:

(a) a county, city, or town may impose the sales and use tax authorized by Section 59-12-2214 in accordance with Section 59-12-2214; or

(b) a county may impose the sales and use tax authorized by Section 59-12-2216 in accordance with Section 59-12-2216.

(3) As provided in this Subsection (3), one of the following sales and use taxes may be imposed within the boundaries of a local taxing jurisdiction:

(a) a county may impose the sales and use tax authorized by Section 59-12-2217 in accordance with Section 59-12-2217; or

(b) a county, city, or town may impose the sales and use tax authorized by Section 59-12-2218 in accordance with Section 59-12-2218.

(4) A county may impose the sales and use tax authorized by Section 59-12-2219 in accordance with Section 59-12-2219.

Section 3. Section 59-12-2206 is amended to read:

59-12-2206. Administration, collection, and enforcement of a sales and use tax under this part -- Transmission of revenues monthly by electronic funds transfer -- Transfer of revenues to a public transit district or eligible political subdivision.

(1) Except as provided in Subsection (2), the commission shall administer, collect, and enforce a sales and use tax imposed under this part.

(2) The commission shall administer, collect, and enforce a sales and use tax imposed under this part in accordance with:

(a) the same procedures used to administer, collect, and enforce a tax under:

(i) Part 1, Tax Collection; or

(ii) Part 2, Local Sales and Use Tax Act; and

(b) Chapter 1, General Taxation Policies.

(3) A sales and use tax under this part is not subject to Subsections 59-12-205(2)
through (6).

(4) Subject to Section 59-12-2207 and except as provided in Subsection (5) or another provision of this part, the state treasurer shall transmit revenues collected within a county, city, or town from a sales and use tax under this part to the county, city, or town legislative body monthly by electronic funds transfer.

(5) Subject to Section 59-12-2207, the state treasurer shall transfer revenues collected within a county, city, or town from a sales and use tax under this part directly to a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, or an eligible political subdivision as defined in Section 59-12-2219, if the county, city, or town legislative body:

(a) provides written notice to the state treasurer requesting the transfer; and

(b) designates the public transit district or eligible political subdivision to which the county, city, or town legislative body requests the state treasurer to transfer the revenues.

Section 4. Section 59-12-2219 is enacted to read:

59-12-2219. County option sales and use tax for highways and public transit -- Base -- Rate -- Distribution and expenditure of revenue -- Revenue may not supplant existing budgeted transportation revenue.

(1) As used in this section:

(a) "Class B road" means the same as that term is defined in Section 72-3-103.

(b) "Class C road" means the same as that term is defined in Section 72-3-104.

(c) "Eligible political subdivision" means a political subdivision that:

(i) on May 12, 2015, provides public transit services;

(ii) is not a public transit district; and

(iii) is not annexed into a public transit district.

(d) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(2) Subject to the other provisions of this part, a county legislative body may impose a sales and use tax of .25% on the transactions described in Subsection 59-12-103(1) within the
county, including the cities and towns within the county.

(3) The commission shall distribute sales and use tax revenue collected under this section as provided in Subsections (4) through (7).

(4) If the entire boundary of a county that imposes a sales and use tax under this section is annexed into a single public transit district, the commission shall distribute the sales and use tax revenue collected within the county as follows:

(a) .10% shall be transferred to the public transit district in accordance with Section 59-12-2206;
(b) .10% shall be distributed as provided in Subsection (6); and
(c) .05% shall be distributed to the county legislative body.

(5) If the entire boundary of a county that imposes a sales and use tax under this section is not annexed into a single public transit district, or if there is not a public transit district within the county, the commission shall distribute the sales and use tax revenue collected within the county as follows:

(a) for a city or town within the county that is annexed into a single public transit district, the commission shall distribute the sales and use tax revenue collected within that city or town as follows:
(i) .10% shall be transferred to the public transit district in accordance with Section 59-12-2206;
(ii) .10% shall be distributed as provided in Subsection (6); and
(iii) .05% shall be distributed to the county legislative body;

(b) for an eligible political subdivision within the county, the commission shall distribute the sales and use tax revenue collected within that eligible political subdivision as follows:
(i) .10% shall be transferred to the eligible political subdivision in accordance with Section 59-12-2206;
(ii) .10% shall be distributed as provided in Subsection (6); and
(iii) .05% shall be distributed to the county legislative body; and
the commission shall distribute the sales and use tax revenue, except for the sales tax revenue described in Subsections (5)(a) and (b), as follows:

(i) .10% shall be distributed as provided in Subsection (6); and

(ii) .15% shall be distributed to the county legislative body.

(6) (a) Subject to Subsection (6)(b), the commission shall make the distributions required by Subsections (4)(b), (5)(a)(ii), (5)(b)(ii), and (5)(c)(i) as follows:

(i) 50% of the total revenue collected under Subsections (4)(b), (5)(a)(ii), (5)(b)(ii), and (5)(c)(i) within the counties that impose a tax under this section shall be distributed to the unincorporated areas, cities, and towns within those counties on the basis of the percentage that the population of each unincorporated area, city, or town bears to the total population of all of the counties that impose a tax under this section; and

(ii) 50% of the total revenue collected under Subsections (4)(b), (5)(a)(ii), (5)(b)(ii), and (5)(c)(i) within the counties that impose a tax under this section shall be distributed to the unincorporated areas, cities, and towns within those counties on the basis of the location of the transaction as determined under Sections 59-12-211 through 59-12-215.

(b) (i) Population for purposes of this Subsection (6) shall be determined on the basis of the most recent official census or census estimate of the United States Census Bureau.

(ii) If a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from an estimate from the Utah Population Estimates Committee created by executive order of the governor.

(7) (a) If a public transit district is organized after the date a county legislative body first imposes a tax under this section, a change in a distribution required by this section may not take effect until the first distribution the commission makes under this section after a 90-day period that begins on the date the commission receives written notice from the public transit district of the organization of the public transit district.

(b) If an eligible political subdivision intends to provide public transit service within a county after the date a county legislative body first imposes a tax under this section, a change in a distribution required by this section may not take effect until the first distribution the
commission makes under this section after a 90-day period that begins on the date the
commission receives written notice from the eligible political subdivision stating that the
eligible political subdivision intends to provide public transit service within the county.

(8) A county, city, or town may expend revenue collected from a tax under this section, except for revenue the commission distributes in accordance with Subsection (4)(a), (5)(a)(i), or (5)(b)(i), for:

(a) a class B road;
(b) a class C road;
(c) traffic and pedestrian safety, including for a class B road or class C road, for:
   (i) a sidewalk;
   (ii) curb and gutter;
   (iii) a safety feature;
   (iv) a traffic sign;
   (v) a traffic signal;
   (vi) street lighting; or
   (vii) a combination of Subsections (8)(c)(i) through (vi);
(d) the construction, maintenance, or operation of an active transportation facility that is for nonmotorized vehicles and multimodal transportation and connects an origin with a destination;
(e) public transit system services; or
(f) a combination of Subsections (8)(a) through (e).

(9) A public transit district or an eligible political subdivision may expend revenue the commission distributes in accordance with Subsection (4)(a), (5)(a)(i), or (5)(b)(i), for capital expenses and service delivery expenses of the public transit district or eligible political subdivision.

(10) (a) Revenue collected from a sales and use tax under this section may not be used to supplant existing general fund appropriations that a county, city, or town has budgeted for transportation as of the date the tax becomes effective for a county, city, or town.
(b) The limitation under Subsection (10)(a) does not apply to a designated transportation capital or reserve account a county, city, or town may have established prior to the date the tax becomes effective.

Section 5. Section 59-13-102 is amended to read:


As used in this chapter:

(1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the operation of aircraft.

(2) "Clean fuel" means:

(a) the following special fuels:

(i) propane;

(ii) compressed natural gas;

(iii) liquified natural gas; [or]

(iv) electricity; or

(v) hydrogen; or

(b) any motor or special fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, Title II.

(3) "Commission" means the State Tax Commission.


(5) (a) "Diesel fuel" means any liquid that is commonly or commercially known, offered for sale, or used as a fuel in diesel engines.

(b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be known or sold, when the liquid is used in an internal combustion engine for the generation of power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.

(6) "Diesel gallon equivalent" means 6.06 pounds of liquified natural gas.
"Distributor" means any person in this state who:

(a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at retail or wholesale;

(b) produces, refines, manufactures, or compounds motor fuel in this state for use, distribution, or sale in this state;

(c) is engaged in the business of purchasing motor fuel for resale in wholesale quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;

or

(d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:

(i) federally certificated air carriers; and

(ii) other persons.

"Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations and that is considered destined for nontaxable off-highway use.

"Exchange agreement" means an agreement between licensed suppliers where one is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the loading rack of the terminal where the delivering supplier holds an inventory position.

"Federally certificated air carrier" means a person who holds a certificate issued by the Federal Aviation Administration authorizing the person to conduct an all-cargo operation or scheduled operation, as defined in 14 C.F.R. Sec. 110.2.

"Fuels" means any gas, liquid, solid, mixture, or other energy source which is generally used in an engine or motor for the generation of power, including aviation fuel, clean fuel, diesel fuel, motor fuel, and special fuel.

"Gasoline gallon equivalent" means:

(a) 5.660 pounds of compressed natural gas; or

(b) 2.198 pounds of hydrogen.

"Highway" means every way or place, of whatever nature, generally open to
the use of the public for the purpose of vehicular travel notwithstanding that the way or place
may be temporarily closed for the purpose of construction, maintenance, or repair.

[(14)] "Motor fuel" means fuel that is commonly or commercially known or sold
as gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

[(15)] "Motor fuels received" means:

(a) motor fuels that have been loaded at the refinery or other place into tank cars,
placed in any tank at the refinery from which any withdrawals are made directly into tank
trucks, tank wagons, or other types of transportation equipment, containers, or facilities other
than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not
involving transportation are made directly; or

(b) motor fuels that have been imported by any person into the state from any other
state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when,
and the place where, the interstate transportation of the motor fuel is completed within the state
by the person who at the time of the delivery is the owner of the motor fuel.

(16) "Oil pricing service" means an organization that:

(a) publishes wholesale petroleum prices within the United States;

(b) publishes at least 25,000 rack prices on a daily basis; and

(c) receives daily gasoline and diesel prices from at least 100,000 retail outlets in the
United States and Canada.

[(17)] (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle
used, designed, or maintained for transportation of persons or property which:

(i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000
pounds;

(ii) has three or more axles regardless of weight; or

(iii) is used in a combination of vehicles when the weight of the combination of
vehicles exceeds 26,000 pounds gross vehicle weight.

(b) "Qualified motor vehicle" does not include a recreational vehicle not used in
connection with any business activity.
"Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a refinery or terminal into a motor vehicle, rail car, or vessel.

"Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel fuel. Removal does not include:

(a) loss by evaporation or destruction; or
(b) transfers between refineries, racks, or terminals.

"Special fuel" means any fuel regardless of name or character that:

(i) is usable as fuel to operate or propel a motor vehicle upon the public highways of the state; and
(ii) is not taxed under the category of aviation or motor fuel.

Special fuel includes:

(i) fuels that are not conveniently measurable on a gallonage basis; and
(ii) diesel fuel.

"Supplier," as used in Part 3, Special Fuel, means a person who:

(a) imports or acquires immediately upon importation into this state diesel fuel from within or without a state, territory, or possession of the United States or the District of Columbia;
(b) produces, manufactures, refines, or blends diesel fuel in this state;
(c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to which there has been no previous taxable sale or use; or
(d) is in a two party exchange where the receiving party is deemed to be the supplier.

"Terminal," as used in Part 3, Special Fuel, means a facility for the storage of diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel is removed for distribution at a rack.

"Two party exchange" means a transaction in which special fuel is transferred between licensed suppliers pursuant to an exchange agreement.
"Undyed diesel fuel" means diesel fuel that is not subject to the dyeing requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations.

"Use," as used in Part 3, Special Fuel, means the consumption of special fuel for the operation or propulsion of a motor vehicle upon the public highways of the state and includes the reception of special fuel into the fuel supply tank of a motor vehicle.

"User," as used in Part 3, Special Fuel, means any person who uses special fuel within this state in an engine or motor for the generation of power to operate or propel a motor vehicle upon the public highways of the state.

"Ute tribal member" means an enrolled member of the Ute tribe.

"Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

"Ute trust land" means the lands:

(a) of the Uintah and Ouray Reservation that are held in trust by the United States for the benefit of:

(i) the Ute tribe;

(ii) an individual; or

(iii) a group of individuals; or

(b) specified as trust land by agreement between the governor and the Ute tribe meeting the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

Section 6. Section 59-13-201 is amended to read:

59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax in limited circumstances.

(1) (a) Subject to the provisions of this section and through December 31, 2015, a tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

(b) (i) Subject to the provisions of this section and beginning on January 1, 2016, a tax
is imposed at the rate of 12% of the statewide average rack price of a gallon of motor fuel per
gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

(ii) (A) Until December 31, 2018, and subject to the requirements under Subsection
(1)(b)(iii), the statewide average rack price of a gallon of motor fuel under Subsection (1)(b)(i)
shall be determined by calculating the previous fiscal year statewide average rack price of a
gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 12
months ending on the previous June 30 as published by an oil pricing service.

(B) Beginning on January 1, 2019, and subject to the requirements under Subsection
(1)(b)(iii), the statewide average rack price of a gallon of motor fuel under Subsection (1)(b)(i)
shall be determined by calculating the previous three fiscal years statewide average rack price
of a gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 36
months ending on the previous June 30 as published by an oil pricing service.

(iii) (A) Subject to the requirement in Subsection (1)(b)(iii)(B), the statewide average
rack price of a gallon of motor fuel determined under Subsection (1)(b)(ii) may not be less than
$2.45 per gallon.

(B) Beginning on a calendar year following the year that the actual statewide average
rack price of a gallon of motor fuel reaches $2.45 before applying the minimum under
Subsection (1)(b)(iii)(A), the commission shall, on January 1, annually adjust the minimum
statewide average rack price of a gallon of motor fuel described in Subsection (1)(b)(iii)(A) by
taking the minimum statewide average rack price of a gallon of motor fuel for the previous
calendar year and adding an amount equal to the greater of:

(I) an amount calculated by multiplying the minimum average rack price of a gallon of
motor fuel for the previous calendar year by the actual percent change during the previous
fiscal year in the Consumer Price Index; and

(II) 0.

(C) The statewide average rack price of a gallon of motor fuel determined by the
commission under Subsection (1)(b)(ii) may not exceed $3.33 per gallon.

(iv) The commission shall annually:
(A) determine the statewide average rack price of a gallon of motor fuel in accordance with Subsection (1)(b)(ii);

(B) adjust the fuel tax rate imposed under Subsection (1)(b)(i), rounded to the nearest one-tenth of a cent, based on the determination under Subsection (1)(b)(ii);

(C) publish the adjusted fuel tax as a cents per gallon rate; and

(D) post or otherwise make public the adjusted fuel tax rate as determined in Subsection (1)(b)(iv)(B) no later than 60 days prior to the annual effective date under Subsection (1)(b)(v).

(v) The tax rate imposed under this Subsection (1)(b) and adjusted as required under Subsection (1)(b)(iv) shall take effect on January 1 of each year.

[(b) (c)] In lieu of the tax imposed under Subsection (1)(a) or (b) and subject to the provisions of this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a) or (b), rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in Section 59-13-102 and are sold, used, or received for sale or use in this state.

(2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state or sold at refineries in the state on or after the effective date of the rate change.

(3) (a) No motor fuel tax is imposed upon:

(i) motor fuel that is brought into and sold in this state in original packages as purely interstate commerce sales;

(ii) motor fuel that is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) motor fuel or components of motor fuel that is sold and used in this state and distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or

(iv) motor fuel that is sold to the United States government, this state, or the political subdivisions of this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
422 commission shall make rules governing the procedures for administering the tax exemption
423 provided under Subsection (3)(a)(iv).
424
425 (4) The commission may either collect no tax on motor fuel exported from the state or,
426 upon application, refund the tax paid.
427
428 (5) (a) All revenue received by the commission under this part shall be deposited daily
429 with the state treasurer and credited to the Transportation Fund.
430
431 (b) An appropriation from the Transportation Fund shall be made to the commission to
432 cover expenses incurred in the administration and enforcement of this part and the collection of
433 the motor fuel tax.
434
435 (6) (a) The commission shall determine what amount of motor fuel tax revenue is
436 received from the sale or use of motor fuel used in motorboats registered under the provisions
437 of the State Boating Act, and this amount shall be deposited in a restricted revenue account in
438 the General Fund of the state.
439
440 (b) The funds from this account shall be used for the construction, improvement,
441 operation, and maintenance of state-owned boating facilities and for the payment of the costs
442 and expenses of the Division of Parks and Recreation in administering and enforcing the State
443 Boating Act.
444
445 (7) (a) The United States government or any of its instrumentalities, this state, or a
446 political subdivision of this state that has purchased motor fuel from a licensed distributor or
447 from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this
448 section is entitled to a refund of the tax and may file with the commission for a quarterly
449 refund.
450
451 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
452 commission shall make rules governing the application and refund provided for in Subsection
453 (7)(a).
454
455 (8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in
456 the General Fund an amount equal to [the lesser of the following: (i) .5% of the motor fuel tax
457 revenues collected under this section or]
(ii) $1,050,000.

(b) This amount shall be used as provided in Section 41-22-19.

(9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection (9)(b) if:

(i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel is paid to the Navajo Nation;

(ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (9) for the administration of the reduction of tax.

(b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that difference is greater than $0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (9)(b)(ii) is less than or equal to $0.

(ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the motor fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the motor fuel.

(c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (9).

(e) The agreement required under Subsection (9)(a):
(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (9); or
(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;
(B) be signed by:
(I) the chair of the commission or the chair's designee; and
(II) a person designated by the Navajo Nation that may bind the Navajo Nation;
(C) be conditioned on obtaining any approval required by federal law;
(D) state the effective date of the agreement; and
(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:
(I) contained in a document filed with the commission; and
(II) related to the tax imposed under this section;
(B) provide for maintaining records by the commission or the Navajo Nation; or
(C) provide for inspections or audits of distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and
meeting the requirements of Subsection (9)(f)(ii).

(ii) The notice described in Subsection (9)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on motor fuel;

(B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

(g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not permitted under this Subsection (9) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (9) and the agreement required by Subsection (9)(a), this Subsection (9) governs.

Section 7. Section 59-13-301 is amended to read:

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section 59-13-304, a tax is imposed at the same rate imposed under Subsections 59-13-201(1)(a) and (b) on the:

(i) removal of undyed diesel fuel from any refinery;

(ii) removal of undyed diesel fuel from any terminal;

(iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;

(iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;

(v) any untaxed special fuel blended with undyed diesel fuel; or

(vi) use of untaxed special fuel other than propane or electricity.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.
(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

(ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

(i) sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;

(ii) exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) used in a vehicle off-highway;

(iv) used to operate a power take-off unit of a vehicle;

(v) used for off-highway agricultural uses;

(vi) used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

(a) (i) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(ii) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act; or

(b) propane or electricity.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.
(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the special fuel tax.

(c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303 may be used by the commission as a dedicated credit to cover the costs of electronic credentialing as provided in Section 41-1a-303.

(8) The commission may either collect no tax on special fuel exported from the state or, upon application, refund the tax paid.

(9) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of special fuel and has paid the tax on the special fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund in a manner prescribed by the commission.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (9)(a).

(10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as provided in Subsection (9) and this Subsection (10).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund for off-highway and
590 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).
591 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural
592 uses shall be made in accordance with the tax return procedures under Section 59-13-202.
593 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is
594 reduced to the extent provided in Subsection (11)(b) if:
595   (i) the Navajo Nation imposes a tax on the special fuel;
596   (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the
597   person required to pay the tax is an enrolled member of the Navajo Nation; and
598   (iii) the commission and the Navajo Nation execute and maintain an agreement as
599   provided in this Subsection (11) for the administration of the reduction of tax.
600 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this
601 section:
602   (A) the state shall be paid the difference described in Subsection (11)(b)(i) if that
603   difference is greater than $0; and
604   (B) a person may not require the state to provide a refund, a credit, or similar tax relief
605 if the difference described in Subsection (11)(b)(i) is less than or equal to $0.
606 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference
607 between:
608   (A) the amount of tax imposed on the special fuel by this section; less
609   (B) the tax imposed and collected by the Navajo Nation on the special fuel.
610 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on
611 the special fuel does not include any interest or penalties a taxpayer may be required to pay to
612 the Navajo Nation.
613 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
614 commission shall make rules governing the procedures for administering the reduction of tax
615 provided under this Subsection (11).
616 (e) The agreement required under Subsection (11)(a):
617   (i) may not:
(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (11); or
(C) affect the power of the state to establish rates of taxation;

(ii) shall:
(A) be in writing;
(B) be signed by:
(I) the chair of the commission or the chair's designee; and
(II) a person designated by the Navajo Nation that may bind the Navajo Nation;
(C) be conditioned on obtaining any approval required by federal law;
(D) state the effective date of the agreement; and
(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:
(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:
(I) contained in a document filed with the commission; and
(II) related to the tax imposed under this section;
(B) provide for maintaining records by the commission or the Navajo Nation; or
(C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:
(A) from the Navajo Nation; and
(B) meeting the requirements of Subsection (11)(f)(ii).
(ii) The notice described in Subsection (11)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on special fuel;

(B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

(g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not permitted under this Subsection (11) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (11) and the agreement required by Subsection (11)(a), this Subsection (11) governs.

(12) (a) A tax imposed under this section on compressed natural gas is imposed at a rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a):;

(i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon equivalent;

(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline gallon equivalent; and

(iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

(b) A tax imposed under this section on liquified natural gas is imposed at a rate of 8-1/2 cents per gasoline gallon equivalent to be increased or decreased proportionately with any increase or decrease in the rate in Subsection 59-13-201(1)(a):;

(i) until June 30, 2016, 10-1/2 cents per diesel gallon equivalent;

(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per diesel gallon equivalent;
(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per diesel gallon equivalent; and
(iv) beginning on or after July 1, 2018, 16-1/2 cents per diesel gallon equivalent.
(c) A tax imposed under this section on hydrogen used to operate or propel a motor vehicle upon the public highways of the state is imposed at a rate of:
(i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;
(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon equivalent;
(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline gallon equivalent; and
(iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

Section 8. Section 63I-1-251 is enacted to read:

63I-1-251. Repeal dates, Title 51.
Subsection 51-2a-202(3) is repealed on June 30, 2020.

Section 9. Section 63I-1-259 is amended to read:

63I-1-259. Repeal dates, Title 59.
(1) Subsection 59-2-924(3)(g) is repealed on December 31, 2016.
(2) Section 59-2-924.3 is repealed on December 31, 2016.
(3) Section 59-9-102.5 is repealed December 31, 2020.
(4) Subsection 59-12-2219(10) is repealed on June 30, 2020.

Section 10. Section 72-1-212 is enacted to read:

72-1-212. Road usage charge study -- Recommendations.
The department shall:
(1) continue to study a road usage charge mileage-based revenue system, including a potential demonstration program, as an alternative to the motor and special tax; and
(2) make recommendations to the Legislature and other policymaking bodies on the potential use and future implementation of a road usage charge within the state.

Section 11. Section 72-2-108 is amended to read:
72-2-108. Apportionment of funds available for use on class B and class C roads

-- Bonds.

(1) For purposes of this section:

(a) "Graveled road" means a road:

(i) that is:

(A) graded; and

(B) drained by transverse drainage systems to prevent serious impairment of the road by surface water;

(ii) that has an improved surface; and

(iii) that has a wearing surface made of:

(A) gravel;

(B) broken stone;

(C) slag;

(D) iron ore;

(E) shale; or

(F) other material that is:

(I) similar to a material described in Subsection (1)(a)(iii)(A) through (E); and

(II) coarser than sand.

(b) "Paved road" includes a graveled road with a chip seal surface.

(c) "Road mile" means a one-mile length of road, regardless of:

(i) the width of the road; or

(ii) the number of lanes into which the road is divided.

(d) "Weighted mileage" means the sum of the following:

(i) paved road miles multiplied by five; and

[(ii) graveled road miles multiplied by two; and]

[(iii) all other road type road miles multiplied by [one] two.

(2) Subject to the provisions of Subsections (3) through (5), funds in the class B and class C roads account shall be apportioned among counties and municipalities in the following
manner:

(a) 50% in the ratio that the class B roads weighted mileage within each county and class C roads weighted mileage within each municipality bear to the total class B and class C roads weighted mileage within the state; and

(b) 50% in the ratio that the population of a county or municipality bears to the total population of the state as of the last official federal census or the United States Bureau of Census estimate, whichever is most recent, except that if population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(3) For purposes of Subsection (2)(b), "the population of a county" means:

(a) the population of a county outside the corporate limits of municipalities in that county, if the population of the county outside the corporate limits of municipalities in that county is not less than 14% of the total population of that county, including municipalities; and

(b) if the population of a county outside the corporate limits of municipalities in the county is less than 14% of the total population:

(i) the aggregate percentage of the population apportioned to municipalities in that county shall be reduced by an amount equal to the difference between:

(A) 14%; and

(B) the actual percentage of population outside the corporate limits of municipalities in that county; and

(ii) the population apportioned to the county shall be 14% of the total population of that county, including incorporated municipalities.

(4) (a) If an apportionment under Subsection (2) for fiscal year 2014 to a county or municipality with a population of less than 14,000 is less than 120% of the amount apportioned to the county or municipality from the class B and class C roads account for fiscal year 1996-97, the department shall:

(i) reapportion the funds under Subsection (2) to ensure that the county or municipality receives an amount equal to [120% of] the amount apportioned to the county or municipality
from the class B and class C roads account for fiscal year 1996-97 multiplied by the percentage
increase in the class B and class C roads account from fiscal year 1996-97 to the most recently
completed fiscal year; and

(ii) decrease proportionately as provided in Subsection (4)(b) the apportionments to
counties and municipalities for which the reapportionment under Subsection (4)(a)(i) does not
apply.

(b) The aggregate amount of the funds that the department shall decrease
proportionately from the apportionments under Subsection (4)(a)(ii) is an amount equal to the
aggregate amount reapportioned to counties and municipalities under Subsection (4)(a)(i).

(5) (a) In addition to the apportionment adjustments made under Subsection (4), a
county or municipality that qualifies for reapportioned money under Subsection (4)(a)(i) shall
receive the percentage change in the class B and class C roads account compounded annually
beginning in fiscal year 2006-07.

(b) The adjustment under Subsection (5)(a) shall be made in the same way as provided
in Subsection (4)(a)(ii) and (b).

(6) The governing body of any municipality or county may issue bonds redeemable up
to a period of 10 years under Title 11, Chapter 14, Local Government Bonding Act, to pay the
costs of constructing, repairing, and maintaining class B or class C roads and may pledge class
B or class C road funds received pursuant to this section to pay principal, interest, premiums,
and reserves for the bonds.

Section 12. Repealer.

This bill repeals:

Section 59-13-104, Tax rate decals -- Posted on pump.

Section 13. Effective date.

This bill takes effect on July 1, 2015.


If this H.B. 362 and H.B. 406, Natural Gas Vehicle Amendments, both pass and
become law, it is the intent of the Legislature that the Office of Legislative Research and
General Counsel, in preparing the Utah Code database for publication, replace all references to "gasoline gallon equivalent" in Subsection 59-13-301(12)(b) with "diesel gallon equivalent."
H.B. No. 20

AN ACT
relating to the operations of and transportation planning and
expenditures by the Texas Department of Transportation and planning
organizations.

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

SECTION 1. Section 201.809, Transportation Code, is amended
by adding Subsections (e) through (i) to read as follows:

(e) The commission by rule shall develop and implement a
performance-based planning and programming process dedicated to
providing the executive and legislative branches of government with
indicators that quantify and qualify progress toward attaining all
department goals and objectives established by the legislature and
the commission.

(f) The commission by rule shall develop and implement
performance metrics and performance measures as part of:

(1) the review of strategic planning in the statewide
transportation plan, rural transportation plans, and unified
transportation program;

(2) the evaluation of decision-making on projects
selected for funding in the unified transportation program and
statewide transportation improvement program; and

(3) the evaluation of project delivery for projects in
the department's letting schedule.

(g) The commission by rule shall adopt and shall
periodically review performance metrics and measures to:

(1) assess how well the transportation system is performing and operating in accordance with the requirements of 23 U.S.C. Section 134 or 135, as applicable;

(2) provide the department, legislature, stakeholders, and public with information to support decisions in a manner that is accessible and understandable to the public;

(3) assess the effectiveness and efficiency of transportation projects and service;

(4) demonstrate transparency and accountability; and

(5) address other issues the commission considers necessary.

(h) The requirement for the commission to develop and implement a performance-based planning and programming process does not replace or alter the requirement of the commission or department to comply with the budgetary performance measures for each biennium as established in the General Appropriations Act. The commission may not rely on the satisfaction of the requirement to report budgetary performance measures as satisfying the requirements imposed under this section.

(i) The commission shall develop and implement periodic reporting schedules for all performance metrics and measures required under this section.

SECTION 2. Subchapter P, Chapter 201, Transportation Code, is amended by adding Section 201.9901 to read as follows:

Sec. 201.9901. DEFINITIONS. In this subchapter:

(1) "Planning organization" means:
A metropolitan planning organization; or

(B) for an area that is not within the boundaries
of a metropolitan planning organization, the department district
that serves the area.

(2) "Project" means a connectivity or new capacity
roadway project in the region of a planning organization. The term
does not include a safety project, bridge project, federal
discretionary project, maintenance project, or preservation
project.

(3) "Region" means the area for which a planning
organization develops plans under this subchapter.

(4) "Transportation official" means an official in a
political subdivision who has responsibility for planning and
implementation of transportation projects.

SECTION 3. Subchapter P, Chapter 201, Transportation Code,
is amended by adding Section 201.9911 to read as follows:

Sec. 201.9911. PLANNING ORGANIZATION 10-YEAR PLAN. (a)
Each planning organization shall develop a 10-year transportation
plan for the use of the funding allocated to the region. The
department shall assist the planning organizations by providing in
a timely manner such information as is reasonably requested by the
planning organizations.

(b) The first four years of the plan shall be developed to
meet the transportation improvement plan requirements of 23 U.S.C.
Section 134 or 135, as applicable.

(c) For an area that is not within the boundaries of a
metropolitan planning organization, the department district shall
develop the 10-year transportation plan with input from municipal
and county elected officials and transportation officials in the
region.

SECTION 4. Subchapter P, Chapter 201, Transportation Code,
is amended by adding Sections 201.9932 and 201.9991 to read as
follows:

Sec. 201.9932. PROJECT RECOMMENDATION CRITERIA. Each
planning organization shall develop its own project recommendation
criteria, which must include consideration of:

(1) projected improvements to congestion and safety;
(2) projected effects on economic development
opportunities for residents of the region;
(3) available funding;
(4) effects on the environment, including air quality;
(5) socioeconomic effects, including
disproportionately high and adverse health or environmental
effects on minority or low-income neighborhoods; and
(6) any other factors deemed appropriate by the
planning organization.

Sec. 201.9991. PRIORITIZATION AND APPROVAL OF PROJECTS BY
COMMISSION. (a) The commission by rule shall prioritize and
approve projects included in the statewide transportation plan
under Section 201.601 in order to provide financial assistance
under this chapter.
(b) The commission by rule shall establish a
performance-based process for setting funding levels for the
categories of projects in the department's unified transportation
program.

(c) The commission by rule shall establish a scoring system for prioritizing projects for which financial assistance is sought from the commission by planning organizations. The criteria used to score projects must take into consideration the department's strategic goals as approved by the commission in accordance with the requirements of 23 U.S.C. Section 134 or 135, as applicable. The system must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state.

(d) The commission may make discretionary funding decisions for no more than 10 percent of the current biennial budget of the department.

SECTION 5. Section 222.001(a), Transportation Code, is amended to read as follows:

(a) Money that is required to be used for public roadways by the Texas Constitution or federal law and that is deposited in the state treasury to the credit of the state highway fund, including money deposited to the credit of the state highway fund under Title 23, United States Code, may be used only:

(1) to improve the state highway system; or

(2) to mitigate adverse environmental effects that result directly from construction or maintenance of a state highway by the department;

[(3) by the Department of Public Safety to police the state highway system and to administer state laws relating to traffic and safety on public roads].

SECTION 6. Section 223.241, Transportation Code, is amended
by adding Subdivision (3) to read as follows:

(3) "Highway project" means:

(A) a single highway facility between two defined
points in a corridor; or

(B) two or more contiguous highway facilities.

SECTION 7. Section 223.242, Transportation Code, is amended
by adding Subsections (b-1), (f), and (g) and amending Subsections
(d) and (d-1) to read as follows:

(b-1) A design-build contract under this subchapter may
include a maintenance agreement requiring a design-build
contractor to maintain a project for an initial term of not longer
than five years. The maintenance agreement may authorize the
department, in its sole discretion, to exercise options extending
the term of the maintenance agreement for additional periods beyond
the initial maintenance term with each additional period being not
longer than five years. The department shall obtain pricing for the
maintenance work for each maintenance term. The department may
require separate pricing for the maintenance work to be performed
for each year of a maintenance term.

(d) The department may enter into a design-build contract
for a highway project with a construction cost estimate of $150
[$50] million or more to the department.

(d-1) The department may not enter into more than three
contracts under this section in each fiscal year[. This subsection
expires August 31, 2015].

(f) The department shall not use the design-build method for
the construction, expansion, extension, rehabilitation,
alteration, or repair of a highway project if the project is substantially designed, to the extent described by Section 223.246(a)(5), by the department or another entity other than the design-build contractor.

(g) The department shall not include more than one highway project in a design-build contract.

SECTION 8. (a) In this section:

(1) "Commission" means the Texas Transportation Commission.

(2) "Department" means the Texas Department of Transportation.

(b) Not later than the earlier of 30 days after the effective date of this Act or September 1, 2015:

(1) the speaker of the house of representatives shall appoint nine members to a House Select Committee on Transportation Planning and designate one member as chair; and

(2) the lieutenant governor shall appoint five members to a Senate Select Committee on Transportation Planning and designate one member as chair.

(b-1) In making appointments under Subsection (b) of this section, the speaker and the lieutenant governor should consider members that reflect diverse constituencies with respect to:

(1) geographic areas in the state;

(2) urban and rural areas; and

(3) ethnicity.

(c) The committees established under this section may meet separately at the call of the chair of the committee or jointly at
the call of both chairs. In joint meetings, the chairs shall act as joint chairs.

(d) The committees established under this section, meeting separately or jointly, shall review, study, and evaluate:

(1) department projections regarding the revenue needed by the department to maintain current maintenance, congestion, and connectivity conditions;

(2) the development of funding categories, the allocation of funding to such categories by formula, project selection authority for each funding category, and the development of project selection criteria for commission, department, and district-selected projects;

(3) department rules and policies regarding the development and implementation of performance-based scoring and decision making for project prioritization and selection of commission, department, and district-selected projects;

(4) the use and utilization of alternative methods of financing that have been authorized by the legislature for projects;

(5) performance metrics and measurement tools used by the department to evaluate the performance of a department project or program;

(6) the department's collaboration with state elected officials, local governments, government trade associations, metropolitan planning organizations, regional mobility authorities, and other entities when adopting rules or formulating policies;
any proposed rule, policy, program, or plan of the
commission or department of statewide significance;
any possible benefits of utilizing zero-based
budgeting principles; and
any other matter the committee considers
appropriate.
(e) Following consideration of the factors described by
Subsection (d) of this section, the committees shall prepare a
written report on the reviewed subjects and shall, not later than
November 1, 2016, provide to the legislature the report.
(f) The committees established under this section may
exercise any power of a committee of their respective chambers and
any powers of a joint committee. For the purposes of this section,
the committees established under this section are considered a
joint committee and the cost of operation of each committee may be
borne in the same manner as the cost of a joint committee. The Texas
Legislative Council shall provide funding for the operations of the
committees. To the extent not inconsistent with this section, the
joint rules adopted by the 84th Legislature for the administration
of joint interim legislative study committees apply to the
committees established under this section.
(g) Not later than September 1, 2015, the department shall
submit an initial report to the select committees. The report shall
provide information necessary for the select committees to review,
study, and evaluate the factors described by Subsections (d)(1),
(2), and (3) of this section. Not later than March 31, 2016, the
department shall submit to the select committees a preliminary
report on the remaining factors described by Subsection (d) of this section.

(h) This section expires January 9, 2017.

SECTION 9. (a) Section 223.242(b-1), Transportation Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before that date is governed by the law as it existed on the date the contract was entered into, and that law is continued in effect for that purpose.

(b) Sections 223.242(f) and (g), Transportation Code, as added by this Act, apply only to a highway project for which a request for qualifications is issued on or after the effective date of this Act. A highway project for which a request for qualifications is issued before the effective date of this Act is governed by the law in effect on the date the request for qualifications was issued, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect August 31, 2015.