



**SHARED  
STATE LEGISLATION  
2017  
Volume 76**

Developed by the  
Committee on Shared State Legislation

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

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# **The Council of State Governments**

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Manufactured in the United States of America

ISBN: 978-0-87292-704-9

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# Sharing Capitol Ideas

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

## CSG's Mission

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

## CSG's Values

To achieve this mission, CSG will:

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

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# Foreword

The Council of State Governments (CSG) is pleased to offer the **2017 *Shared State Legislation*** volume, a valued series of compilations of legislation on topics of importance to the states. The legislation found in this book represents many hours of work by the CSG Committee on Shared State Legislation and CSG staff. The entries in this book were selected from over 150 submissions. Neither CSG nor the committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found the experiences of one state may prove beneficial to others. It is in this spirit that these drafts are presented.

The Council of State Governments  
Lexington, Kentucky

David Adkins  
Executive Director CEO

# Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of ***Shared State Legislation***. For more than 80 years, The Council of State Governments’ Shared State Legislation, or SSL, program has informed state policymakers about a broad range of legislative issues, and its national Committee on Shared State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Shared State Legislation originated as a group of state and federal officials who first met in August 1940 to review state laws relating to U.S. security. The result was ***A Legislative Program for Defense***. That group reconvened following the nation’s entry into World War II in order to develop a volume of ***Suggested State War Legislation***. That publication was succeeded by ***Suggested State Legislation***, an annual volume of draft legislation about topics of major governmental interest. In December 2015, the CSG Executive Committee voted to officially change the name of the committee to the Shared State Legislation Committee to better reflect the purpose of the committee. CSG clearly states in its Articles of Organization that the SSL Committee’s work does not represent an endorsement of state legislation and that the organization will not advocate for the adoption of legislation.

Today, the SSL Committee is made up of legislators and legislative staff representing all regions of the country. It considers legislation submitted by state officials and staff, CSG Associates and CSG staff. It will consider legislation from other sources, but only when that legislation is submitted through a state official. Other sources include public interest groups and members of the corporate community who are not CSG Associates, with similar submission requirements. All items selected for publication in SSL are presented in a general format as shown in the following ***Shared State Legislation*** Style Manual.

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

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

# SSL Process and Criteria

With the goal of sharing innovations in state policy, CSG's Shared State Legislation (SSL) Committee identifies, curates and disseminates state legislation on topics of major interest to state leaders. Committee members include two state legislators and one state legislative staff person appointed from each member jurisdiction. No private sector entities or other stakeholders are permitted to serve on CSG's SSL Committee.

SSL Committee members meet twice per year to consider legislation. The items chosen by the SSL Committee are published online at [www.csg.org/ssl](http://www.csg.org/ssl) after every meeting and are then compiled into an annual Shared State Legislation volume.

**The consideration or dissemination of such legislation by the SSL Committee does not constitute an endorsement nor will CSG advocate for the enactment of any such legislation in any member jurisdictions. The SSL Committee does not draft or create "model" legislation.**

SSL Committee members, other state officials and their staff, CSG Associates and CSG staff may submit legislation directly to the SSL Program. The committee also considers legislation from other sources, but only when that legislation is submitted through a state official.

It takes many bills to fill the dockets of a one year-long SSL cycle. Items should be submitted to CSG at least eight weeks in advance to be considered for placement on the docket of a scheduled SSL meeting. Items submitted after that date are typically held for a later meeting.

## Shared State Legislation Criteria:

(1) Does this bill:

- a) Address a current state issue of national or regional significance;
- b) Provide a benefit to bill drafters;
- c) Provide a clear, innovative and practical structure and approach; and

(2) Did this legislation become law?

Legislation that addresses a single, specific topic is preferable to omnibus legislation that addresses a general topic or references many disparate parts of a state code. Occasionally, committee members will consider and adopt uniform or proposed "model" legislation from an organization or an interstate compact. In this case, the committee strongly prefers to examine state legislation that enacts the uniform or model law or compact.

State officials and staff, CSG Associates, and CSG staff are encouraged to submit legislation that is likely to be of interest and relevance to other states. To facilitate the selection and review process, it is particularly helpful for respondents to provide a link to the chapter law, session law, or enrolled version of the legislation, a brief summary of the bill, and any background information that describes the intent and content of the bill.

Legislation and accompanying materials may be submitted to the Shared State Legislation Program, The Council of State Governments, 1776 Avenue of the States, Lexington, Kentucky 40511, (859) 244-8000 or [ssl@csg.org](mailto:ssl@csg.org).

Interested readers may find out more about the Shared State Legislation program by visiting the SSL pages at the CSG website at [www.csg.org/ssl](http://www.csg.org/ssl).

# Shared State Legislation Style

Style is the custom or plan followed in typographic arrangement or display. *Shared State Legislation* drafts generally follow the same style. Beginning with the 1997 volume, however, items presented in *Shared State Legislation* more closely reflect the style and form as they were submitted to the program.

## Introductory Matter

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

## Submitted As

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

## Standardized Sections and Form

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

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

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## Clean Indoor Air Act

This Act adds electronic smoking devices to the Clean Indoor Air Act and prohibits the use of electronic smoking devices in all public places where smoking is prohibited under current law.

It allows emissions produced by electronic smoking devices in a vapor establishment if: 1) 80% of its revenue is made through the sale of electronic smoking devices and substances used within electronic smoking devices; and 2) the vapor establishment does not share indoor common space with other businesses unless there are closed doors to the indoor common space except for ingress and egress. It prohibits anyone under the age of 18 from entering vapor establishments that have emissions produced by electronic smoking devices and requires such establishments to post signs that prohibit minors in the business.

Submitted as:

Delaware

[HB 5](#)

Status: Signed into law on July 7, 2015.

### Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Legislative intent.*]

2 The [General Assembly] finds that it is in the best interest of the people of this State to protect  
3 nonsmokers from involuntary exposure to environmental tobacco smoke and emissions produced  
4 by electronic smoking devices in most indoor areas open to the public, public meetings, foods  
5 service establishments and places of employment.  
6

7 The [General Assembly] recognizes that a balance should be struck between the health concerns  
8 of nonconsumers of tobacco products and the need to minimize unwarranted governmental  
9 intrusion into and regulation of private spheres of conduct and choice with respect to the use or  
10 nonuse of tobacco products in certain designated public areas and in private places. Therefore,  
11 the General Assembly declares that the purpose of this act is to preserve and improve the health,  
12 comfort and environment of the people of this State by limiting exposure to tobacco smoke and  
13 emissions produced by electronic smoking devices.  
14

15 Section 2. [*Definitions.*]

16 (1) "Auditorium" means the part of a public building where an audience sits and any corridors,  
17 hallways or lobbies adjacent thereto.

18 (2) "Bar" means any indoor area open to the public operated primarily for the sale and service of  
19 alcoholic beverages for on-premises consumption and where the service of food is secondary  
20 to the consumption of such beverages. An establishment which has been licensed by the  
21 [Delaware Alcoholic Beverage Control Commission] as a "taproom or tavern" shall be  
22 considered a "bar" for purposes of the application of the provisions of this chapter.

- (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.
- (4) “Employer” means any person, partnership, association, corporation or nonprofit entity that employs 1 or more persons, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.
- (5) “Environmental tobacco smoke” (ETS) or “secondhand smoke” is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as “sidestream smoke”) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking.”
- (6) “Food service establishment” means any indoor area open to the public or portion thereof in which the principal business is the sale of food for on-premises consumption including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment. An establishment which has been licensed by the [Delaware Alcoholic Beverage Control Commission] as a “restaurant” shall be considered a “food service establishment” for purposes of the application of the provisions of this chapter.
- (7) “Indoor area open to the public” means any indoor area or portion thereof generally accessible to the public.
- (8) “Place of employment” means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but that is not generally accessible to the public.
- (9) “Public building” means any building owned or operated by the State, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.
- (10) “Public meeting” means all meetings open to the public pursuant to the laws of [Delaware] and its political subdivisions.
- (11) “Smoke-free work area” means an indoor area in a place of employment where no smoking occurs.
- (12) “Smoking” means:
- The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
  - The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.
- (13) “Tobacco business” means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

- 1 (14) “Vapor establishment” means a business that:  
2 a. Generates at least 80% of its revenue from the sale of electronic smoking devices and  
3 substances for use within electronic smoking devices; and  
4 b. Does not share indoor common space with other businesses unless there are doors from  
5 the vapor establishment to the indoor common space that remain closed other than for  
6 ingress and egress.  
7 (15) “Work area” means an area in a place of employment where 1 or more employees are  
8 routinely assigned and perform services for their employer.  
9

10 Section 3. [*Smoking restrictions.*]

11 Except as is provided in Section 4 and in order to reduce the levels of exposure to environmental  
12 tobacco smoke and emissions produced by electronic smoking devices, smoking shall not be  
13 permitted and no person shall smoke in any indoor enclosed area to which the general public is  
14 invited or in which the general public is permitted, including, but not limited to:

- 15 (1) Public meetings;  
16 (2) Elevators;  
17 (3) Government owned and/or operated means of mass transportation including buses, vans,  
18 trains, taxicabs and limousines;  
19 (4) Grocery stores;  
20 (5) Gymnasiums;  
21 (6) Jury waiting and deliberation rooms;  
22 (7) Courtrooms;  
23 (8) Child day care facilities;  
24 (9) Health care facilities including hospitals, health care clinics, doctor's offices or other health-  
25 care-related facilities;  
26 (10) Any workplace not exempted;  
27 (11) Restrooms, lobbies, reception areas, hallways and other common-use areas;  
28 (12) Restaurants as licensed by the [Division of Public Health] or defined by [Insert citation.];  
29 (13) Gaming facilities that are open to the public;  
30 (14) Any indoor sports arena;  
31 (15) Lobbies, hallways and other common areas in apartment buildings, condominiums and  
32 other multiple-unit residential facilities;  
33 (16) Lobbies, hallways and other common areas in hotels and motels, and in no less than 75%  
34 of the sleeping quarters within a hotel or motel that are rented to guests;  
35 (17) Bowling alleys;  
36 (18) Billiard or pool halls;  
37 (19) Retirement facilities and nursing homes not including any private residence;  
38 (20) Public buildings;  
39 (21) Auditoria;  
40 (22) Theaters;  
41 (23) Museums;  
42 (24) Libraries;  
43 (25) Public and nonpublic schools;  
44 (26) Other educational and vocational institutions.  
45 (27) Establishments defined as a motorsports speedway, tavern or taproom by Title 4.

1 Section 4. [*Smoking restrictions inapplicable.*]

2 This chapter shall not apply to:

- 3 (1) Private homes, private residences and private automobiles; provided, however, it shall only  
4 apply when such homes, residences or vehicles are being used for child care or day care or  
5 when the private vehicle is being used for the public transportation of children or as part of  
6 health care or day care transportation;
- 7 (2) Any indoor area where private social functions are being held when seating arrangements are  
8 under the control of the sponsor of the function and not the owner, operator, manager or  
9 person in charge of such indoor area;
- 10 (3) Limousines under private hire;
- 11 (4) A hotel or motel room rented to 1 or more guests; provided that the total percentage of such  
12 hotel or motel rooms does not exceed 25%;
- 13 (5) Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a  
14 fire company, or a volunteer ambulance or volunteer rescue company; provided, however,  
15 that the fund raising activity or function takes place upon property owned or leased by the  
16 volunteer fire, rescue or ambulance company; and
- 17 (6) Any fund raising activity or function sponsored by a fraternal benefit society as defined by  
18 [Insert citation – Fraternal benefit societies]; provided, however, that the fund raising activity  
19 or function takes place upon property owned or leased by said organization.
- 20

21 Section 5. [*Posting of signs.*]

22 “Warning: Smoking Permitted” signs shall be prominently posted and properly maintained where  
23 smoking is permitted pursuant to Section 4(2) and (4). Such signs shall be posted and maintained  
24 by the owner, operator, manager or other person having control of such area. The letters on such  
25 signs shall be at least 1 inch in height.

26 Section 6. [*Implementation; rules and regulations.*]

- 27 (a) The [Department of Labor] shall adopt rules and regulations as are necessary and reasonable  
28 to implement the provisions of this chapter as they apply to employers, employees, places of  
29 employment and the work place.
- 30 (b) The [Department of Health and Social Services] shall adopt rules and regulations as are  
31 necessary and reasonable to implement remaining provisions of this chapter not affecting  
32 employers, employees and the work place.
- 33 (c) The [Department of Health and Social Services] and the [Department of Labor] may upon  
34 request waive the provisions of this chapter if they determine there are compelling reasons to  
35 do so, and such waiver will not significantly affect the health and comfort of nonconsumers  
36 of tobacco products.
- 37 (d) The [Department of Health and Social Services] and the [Department of Labor] shall file  
38 annual reports by [January 15] to the [General Assembly] outlining their enforcement efforts  
39 for the prior year and the results of those efforts. The first report shall be due 1 year after the  
40 effective date of the legislation.
- 41

42 Section 7. [*Administrative penalties.*]

- 43 (a) Any person who violates any provision of this chapter or any rule or regulation promulgated  
44 pursuant thereto shall be subject to an administrative penalty of \$100 for a first violation and  
45 not less than \$250 for each subsequent violation.

1 (b) Any employer who discharges or in any manner discriminates against an employee because  
2 that employee has made a complaint or has given information to the [Department of Labor]  
3 pursuant to this chapter, or because the employee has caused to be instituted or is about to  
4 cause to be instituted any proceedings under this chapter, or testified or is about to testify in  
5 any such proceedings, shall be deemed in violation of this chapter and shall be subject to a  
6 civil penalty of not less than \$2,000 nor more than \$10,000 for each violation.  
7

8 Section 8. [*Vapor establishments.*]

9 (a) Vapor establishments are permitted to have emissions produced by electronic smoking  
10 devices within their places of business.

11 (b) Any vapor establishment permitted to have emissions produced by electronic smoking  
12 devices in such vapor establishment pursuant to this section, and which permits such  
13 emissions, shall prohibit anyone under the age of 18 from entering and shall display a sign at  
14 all entrances stating that no one under the age of 18 is allowed in such vapor establishment.

# Flexible Credit Act

The Act authorizes open-ended credit plans extended to non-commercial borrowers for personal, family, or household purposes. Such loans may be secured or unsecured by personal property, lacking in fixed maturities or designated length of term, and are subject to prepayment of the outstanding balance at any time without penalty.

Submitted as:

Tennessee

[SB 1988](#)

Status: Signed into law on May 19, 2014.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. [*Definitions.*]

2 As used in this chapter, “commissioner” means the commissioner of financial institutions or the  
3 commissioner’s designee.  
4

### 5 Section 2. [*Authorization to make loans.*]

6 (a) No person, firm, or corporation shall engage in the business of making loans under this  
7 chapter unless such person, firm, or corporation:

8 (1) Has obtained a certificate of registration under the [Insert citation – Industrial Loan and  
9 Thrift Companies Act];

10 (2) Has provided notice to the commissioner in accordance with this chapter;

11 (3) At the time notice is provided, has a net worth of at least two million dollars (\$2,000,000)  
12 and has had its principal place of business in this state for at least three (3) consecutive  
13 years; and

14 (4) Has provided to the commissioner a copy of an audited financial statement, including  
15 balance sheet, statement of income or loss, and statement of changes in financial position,  
16 for the current year.

17 (b) The commissioner shall maintain a list of persons, firms, and corporations authorized to  
18 make loans under this chapter.  
19

### 20 Section 3. [*Notice to make loans.*]

21 A person, firm, or corporation meeting the qualifications set forth in this chapter shall be  
22 authorized to make loans under this chapter by providing notice, not less than thirty (30) days  
23 prior to making any loan under this chapter, to the commissioner of its intent to make such loans  
24 and stating an effective date. A person, firm, or corporation shall provide such notice on a form  
25 prescribed by the commissioner, complete with all information required by the commissioner.  
26

### 27 Section 4. [*Open-end credit plan.*]

28 Notwithstanding any other statutory limitation, a lender authorized to make loans under this  
29 chapter may make a loan under an open-end credit plan which is a plan under which a registrant  
30 contemplates repeated loans that may be secured by real or personal property or both, without

1 fixed maturities or limitation as to the length of term, and that are subject to prepayment at any  
2 time at a periodic interest rate not to exceed twenty-four percent (24%) per annum.

3  
4 Section 5. [*Fees and charges.*]

5 (a) Notwithstanding any other statutory limitation, a lender authorized to make loans under this  
6 chapter may charge borrowers fees and charges, in addition to interest, in a manner consistent  
7 with this section.

8 (b) A lender may charge and collect additional types of fees and charges that are agreed upon  
9 between the lender and the borrower, in amounts that are specified in or determined in  
10 accordance with the agreement between the lender and the borrower. The additional fees and  
11 charges may include, but are not limited to, the following:

12 (1) A monthly, annual, or other periodic charge or a one-time charge for the privileges or  
13 services made available to the borrower under the plan;

14 (2) Transaction charges for each purchase or cash advance under the plan;

15 (3) A minimum charge for each monthly, annual, or other scheduled billing period under the  
16 plan during any portion of which there is an outstanding unpaid indebtedness;

17 (4) A late payment or delinquency charge;

18 (5) Fees incident to the application for, or the opening, administration, and termination of a  
19 plan, which in the case of secured plans, may include, but not be limited to, fees and  
20 charges relative to the inspection, verification, and protection of the collateral and the  
21 establishment, perfection, enforcement, and release of the security interest;

22 (6) Returned payment charges;

23 (7) Charges for providing sales slips, invoices, checks, duplicate periodic statements, or other  
24 documents;

25 (8) Stop payment fees;

26 (9) Charges for exceeding a predetermined credit limit or for initiating a transaction that, if  
27 consummated, would result in an outstanding balance in excess of the credit limit; and

28 (10) Other fees and charges that may be agreed upon between the lender and the  
29 borrower.

30 (c)

31 (1) In the event a borrower defaults under the terms of a plan and the lender refers the  
32 borrower's account to an attorney, including a regular salaried employee of the lender,  
33 for collection, the lender may:

34 (A) If the agreement governing the open-end plan so provides, charge and collect from  
35 the borrower a reasonable attorney's fee; and

36 (B) If the agreement governing the plan, or in the case of secured plans, the security  
37 agreement or similar instrument, so provides, recover from the borrower all court and  
38 other collection costs including, in the case of secured plans, all costs of enforcing the  
39 security agreement or similar instrument, actually incurred by the lender, including  
40 those incurred on appeal.

41 (2) Lenders may charge and collect interest charges following default of the borrower or  
42 judgment in favor of the lender at the rates permitted by this chapter.

43 (d) The fees and charges authorized by this section are not interest for purposes of this title or  
44 any other state law.

1 Section 6. [*Audited financial statements.*]  
2 In addition to the obligations described in [Insert citation – annual reports of registrants – to  
3 governor and general assembly.], a lender authorized to make loans under this chapter shall  
4 submit to the commissioner by July 31 of each year an audited financial statement, including  
5 balance sheet, statement of income or loss, and statement of changes in financial position,  
6 summaries of the types of loans made, and other statistical information that may reasonably be  
7 required by the commissioner, consistent with generally accepted accounting practices, for the  
8 purpose of determining the general results of operations under this chapter.

# Illegal Gambling Devices

The Act clarifies that Internet gambling cafes, also known as Internet sweepstakes cafes, are illegal gambling activity. Café proprietors typically advertise for sale internet time or long-distance telephone minutes. In addition to the internet time or telephone minutes, the purchaser will receive entries in an internet sweepstakes and can participate in the sweepstakes games on the café's computers set up for that purpose. Based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through the games.

Submitted as:

Kentucky

[SB 28](#)

Status: Signed into law on March 23, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. [*Definitions.*]

2 (1) “Advancing gambling activity” -- A person “advances gambling activity” when, acting other  
3 than as a player, he engages in conduct that materially aids any form of gambling activity.  
4 The conduct shall include, but is not limited to, conduct directed toward the establishment of  
5 the particular game, contest, scheme, device, or activity involved; toward the acquisition or  
6 maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the  
7 solicitation or inducement of persons to participate therein; toward the actual conduct of the  
8 playing phases thereof; toward the arrangement of any of its financial or recording phases or  
9 toward any other phase of its operation. A person who gambles at a social game of chance on  
10 equal terms with other participants does not otherwise advance gambling activity by  
11 performing acts, without remuneration or fee, directed toward the arrangement or facilitation  
12 of the game as inviting persons to play, permitting the use of premises therefor and supplying  
13 equipment used therein.

14 (2) “Bookmaking” means advancing gambling activity by unlawfully accepting bets upon the  
15 outcome of future contingent events from members of the public as a business.

16 (3)  
17 (a) “Gambling” means staking or risking something of value upon the outcome of a contest,  
18 game, gaming scheme, or gaming device which is based upon an element of chance, in  
19 accord with an agreement or understanding that someone will receive something of value  
20 in the event of a certain outcome. A contest or game in which eligibility to participate is  
21 determined by chance and the ultimate winner is determined by skill shall not be  
22 considered to be gambling.

23 (b) Gambling shall not mean charitable gaming which is licensed and regulated under the  
24 provisions of [Insert citation – charitable gaming.]

1 (4) "Gambling device" means:

- 2 (a) Any so-called slot machine or any other machine or mechanical device an essential part  
3 of which is a drum or reel with insignia thereon, and which when operated may deliver,  
4 as a result of the application of an element of chance, any money or property, or by the  
5 operation of which a person may become entitled to receive, as the result of the  
6 application of an element of chance, any money or property;
- 7 (b) Any mechanical or electronic device permanently located in a business establishment,  
8 including a private club, that is offered or made available to a person to play or  
9 participate in a simulated gambling program in return for direct or indirect consideration,  
10 including but not limited to consideration paid for Internet access or computer time, or a  
11 sweepstakes entry, which when operated may deliver as a result of the application of an  
12 element of chance, any money or property, or by the operation of which a person may  
13 become entitled to receive, as the result of the application of an element of chance, any  
14 money or property; or
- 15 (c) Any other machine or any mechanical or other device, including but not limited to  
16 roulette wheels, gambling tables and similar devices, designed and manufactured  
17 primarily for use in connection with gambling and which when operated may deliver, as  
18 the result of the application of an element of chance, any money or property, or by the  
19 operation of which a person may become entitled to receive, as the result of the  
20 application of an element of chance, any money or property;
- 21 (d) But, the following shall not be considered gambling devices within this definition:
- 22 1. Devices dispensing or selling combination or French pools on licensed, regular  
23 racetracks during races on said tracks.
- 24 2. Devices dispensing or selling combination or French Pools on historical races at  
25 licensed, regular racetracks as lawfully authorized by the [Kentucky Horse Racing  
26 Commission.]
- 27 3. Electro-mechanical pinball machines specially designed, constructed, set up, and kept  
28 to be played for amusement only. Any pinball machine shall be made to receive and  
29 react only to the deposit of coins during the course of a game. The ultimate and only  
30 award given directly or indirectly to any player for the attainment of a winning score  
31 or combination on any pinball machine shall be the right to play one (1) or more  
32 additional games immediately on the same device at no further cost. The maximum  
33 number of free games that can be won, registered, or accumulated at one (1) time in  
34 operation of any pinball machine shall not exceed thirty (30) free games. Any pinball  
35 machine shall be made to discharge accumulated free games only by reactivating the  
36 playing mechanism once for each game released. Any pinball machine shall be made  
37 and kept with no meter or system to preserve a record of free games played, awarded,  
38 or discharged. Nonetheless, a pinball machine shall be a gambling device if a person  
39 gives or promises to give money, tokens, merchandise, premiums, or property of any  
40 kind for scores, combinations, or free games obtained in playing the pinball machine  
41 in which the person has an interest as owner, operator, keeper, or otherwise.
- 42 4. Devices used in the conduct of charitable gaming.

- 1 (5) "Lottery and gift enterprise" means:  
2 (a) A gambling scheme in which:  
3 1. The players pay or agree to pay something of value for chances, represented and  
4 differentiated by numbers or by combinations of numbers or by some other media,  
5 one (1) or more of which are to be designated the winning ones; and  
6 2. The ultimate winner is to be determined by a drawing or by some other method based  
7 upon the element of chance; and  
8 3. The holders of the winning chances are to receive something of value.  
9 (b) A gift enterprise or referral sales plan which meets the elements of a lottery listed in  
10 paragraph (a) of this subsection is to be considered a lottery under this chapter.
- 11 (6) "Mutuel" or "the numbers games" means a form of lottery in which the winning chances or  
12 plays are not determined upon the basis of a drawing or other act on the part of persons  
13 conducting or connected with the scheme, but upon the basis of the outcome or outcomes of  
14 a future contingent event or events otherwise unrelated to the particular scheme.
- 15 (7) "Player" means a person who engages in any form of gambling solely as a contestant or  
16 bettor, without receiving or becoming entitled to receive any profit therefrom other than  
17 personal gambling winnings, and without otherwise rendering any material assistance to the  
18 establishment, conduct, or operation of the particular gambling activity. A person who  
19 engages in "bookmaking" as defined in subsection (2) of this section is not a "player." The  
20 status of a "player" shall be a defense to any prosecution under this chapter.
- 21 (8) "Profiting from gambling activity" -- A person "profits from gambling activity" when, other  
22 than as a player, he accepts or receives or agrees to accept or receive money or other property  
23 pursuant to an agreement or understanding with any person whereby he participates or is to  
24 participate in the proceeds of gambling activity.
- 25 (9) "Simulated gambling program" means any method intended to be used by a person playing,  
26 participating, or interacting with an electronic device that may, through the application of an  
27 element of chance, either deliver money or property or an entitlement to receive money or  
28 property.
- 29 (10) "Something of value" means any money or property, any token, object, or article  
30 exchangeable for money or property, or any form of credit or promise directly or indirectly  
31 contemplating transfer of money or property or of any interest therein, or involving extension  
32 of a service, entertainment, or a privilege of playing at a game or scheme without charge.
- 33 (11) "Charitable gaming" means games of chance conducted by charitable organizations  
34 licensed and regulated under the provisions of [Insert citation – charitable gaming].

# Internet Taxation

This Act provides that neither the state nor a political subdivision may impose, assess, collect, or attempt to collect a tax on Internet access or the use of Internet access.

Note: The federal Internet Tax Freedom Act currently bans state and local governments from imposing taxes on Internet access, but is set to expire in October 2016.

Submitted as:

Indiana

[SB 80](#)

Status: Signed into law on April 23, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Prohibition on State or Local Tax on Internet Access.*]

1. As used in this chapter, “Internet” means the myriad of computer and telecommunications facilities, including equipment and operating software, that comprises the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol (or any predecessor or successor protocols to that protocol) to communicate information of all kinds by wire or radio.
2.
  - (a) As used in this chapter, “Internet access” means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet, without regard to whether the service is referred to telecommunications, communications, transmission, or similar services, and without regard to whether a provider of the service is subject to regulation by the Federal Communications Commission as a common carrier under 47 U.S.C. 201 et seq.
  - (b) The term also includes the following:
    - (1) The purchase, use, or sale of communications services, including telecommunications services (as defined in [Insert citation]), by a provider of a service described in subsection (a), to the extent the communications services are purchased, used, or sold to provide the service described in subsection (a) or to otherwise enable users to access content, information, or other services offered over the Internet.
    - (2) Services that are incidental to the provision of a service described in subsection (a), when furnished to users as part of such service, including a home page, electronic mail and instant messaging (including voice-capable and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity.
    - (3) A home page, electronic mail and instant messaging (including voice-capable and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity that are provided independently or that are not packaged with Internet access.

- 1 (c) The term does not include:  
2 (1) voice, audio, or video programming; or  
3 (2) other products and services, except services described in subsection (a) or (b), that  
4 use Internet protocol or any successor protocol and for which there is a charge,  
5 regardless of whether the charge is separately stated or aggregated with the charge for  
6 services described in subsection (a) or (b).
- 7 3.  
8 (a) As used in this chapter, the term “tax” means:  
9 (1) any charge that is imposed by the state or a political subdivision of the state for the  
10 purpose of generating revenues for governmental purposes and, except as provided in  
11 subsection (b), is not a fee imposed for a specific privilege, service, or benefit  
12 conferred; or  
13 (2) the imposition on a seller of an obligation to collect and to remit to the state or a  
14 political subdivision of the state any gross retail tax, sales tax, or use tax imposed on a  
15 buyer by such a governmental entity.  
16 (b) The term does not include any franchise fee or similar fee imposed by the Indiana utility  
17 regulatory commission under [Insert citation] under Section 622 or 653 of the  
18 Communications Act of 1934 (47 U.S.C. 542, 47 U.S.C. 573), or any other fee related to  
19 obligations or telecommunications carriers under the Communications Act of 1934 (47  
20 U.S.C. 151 et seq.), except to the extent that:  
21 (1) the fee is not imposed for the purpose of recovering direct costs incurred by the  
22 franchising or other governmental authority from providing the specific privilege,  
23 service, or benefit conferred to the payor of the fee; or  
24 (2) the fee is imposed for the use of a public right-of-way based on a percentage of the  
25 service revenue and the fee exceeds the incremental direct costs incurred by the  
26 governmental authority associated with the provision of that right-of-way to the  
27 provider of Internet access service.  
28 (c) For purposes of subsection (b), “direct costs” means costs incurred by a governmental  
29 authority solely because of an Internet service provider's use of the public right-of-way.  
30 The term does not include costs that the governmental authority would have incurred if  
31 the Internet service provider did not make such use of the public right-of-way. Direct  
32 costs shall be determined in a manner consistent with generally accepted accounting  
33 principles.
- 34 4.  
35 (a) As used in this chapter, “tax on Internet access or the use of Internet access” means a tax  
36 on Internet access, or any use of Internet access, regardless of whether the tax is imposed  
37 on a provider of Internet access or a buyer of Internet access and regardless of the  
38 terminology used to describe the tax.  
39 (b) The term does not include a tax levied upon or measured by net income, capital stock, net  
40 worth, or property value.
- 41 5. Neither the state nor a political subdivision of the state may impose, assess, collect, or  
42 attempt to collect a tax on Internet access or the use of Internet access.

# Interstate Racing and Wagering Compact

The Act authorizes and directs the Governor to execute an interstate compact on participation in live pari-mutuel horse racing and pari-mutuel wagering activities; define terms; establish compact commission and assign powers and duties; establish rule-making procedure; permit compact commission to charge fees; establish rights and responsibilities of member states, restrictions on authority, and construction, saving, and severability; establish effective provision based upon enactment by at least six states.

The purposes of this compact are:

- To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, rules, and regulations relating to live pari-mutuel horse or greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a member state;
- To facilitate the health and growth of the industry by simplifying the process of participating in live horse and greyhound racing and pari-mutuel wagering, improving the quality and integrity of racing and wagering, more effectively regulating simulcast and wagering systems and activities, and through cooperative action reducing the costs incurred by each member state or participant;
- To authorize the Kentucky Horse Racing Commission to participate in this compact;
- To permit officials from the member states to participate in this compact and, through the compact commission established by this compact, to enter into contracts with governmental agencies and other persons to carry out the purposes of this compact; and
- To establish the compact commission created by this compact as an interstate governmental entity duly authorized to request and to receive criminal history record information from the Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.

Submitted as:

Kentucky

[SB 24](#)

Status: Signed into law on March 16, 2011.

## Shared State Legislation

(Title, enacting clause, etc.)

- 1 The Governor of this [Commonwealth] is authorized and directed to execute a compact on behalf
- 2 of the Commonwealth with any of the United States, the District of Columbia, the
- 3 Commonwealth of Puerto Rico, and each territory or possession of the United States, legally
- 4 joining therein in the form substantially as follows:

1 Section 1. [*Purposes.*]

2 The purposes of this compact are:

- 3 (A) To enable member states to act jointly and cooperatively to create more uniform, effective,  
4 and efficient practices, programs, rules, and regulations relating to live pari-mutuel horse or  
5 greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that  
6 occur in or affect a member state;
- 7 (B) To facilitate the health and growth of the industry by simplifying the process of participating  
8 in live horse and greyhound racing and pari-mutuel wagering, improving the quality and  
9 integrity of racing and wagering, more effectively regulating simulcast and wagering  
10 systems and activities, and through cooperative action reducing the costs incurred by each  
11 member state or participant;
- 12 (C) To authorize the [Kentucky Horse Racing Commission] to participate in this compact;
- 13 (D) To permit officials from the member states to participate in this compact and, through the  
14 compact commission established by this compact, to enter into contracts with governmental  
15 agencies and other persons to carry out the purposes of this compact; and
- 16 (E) To establish the compact commission created by this compact as an interstate governmental  
17 entity duly authorized to request and to receive criminal history record information from the  
18 Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.

19  
20 Section 2. [*Definitions.*]

21 For the purposes of this compact, the following terms shall have the following meaning:

- 22 (A) “Commissioner” means the chairperson of the member state racing commission, or such  
23 person's designee, who represents the member state as a voting member of the compact  
24 commission and anyone who is serving as such person's alternate;
- 25 (B) “Compact commission” means the organization of officials from the member states that is  
26 authorized and empowered by this compact to carry out the purposes of this compact;
- 27 (C) “Compact rule” means a rule or regulation adopted by a member state through the compact  
28 to govern, for two (2) or more member states, any part of live pari-mutuel horse and  
29 greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that  
30 occur in or affect such states;
- 31 (D) “Live racing” means live horse or greyhound racing with pari-mutuel wagering;
- 32 (E) “Member state” means each state that has enacted this compact;
- 33 (F) “National industry stakeholder” means a non-governmental organization that the compact  
34 commission determines from a national perspective significantly represents one (1) or more  
35 categories of participants in live racing and pari-mutuel wagering;
- 36 (G) “Participants in live racing and pari-mutuel wagering” means all persons who participate in,  
37 operate, provide industry services for, or are involved with live racing and pari-mutuel  
38 wagering;
- 39 (H) “State” means each of the several states of the United States, the District of Columbia, the  
40 Commonwealth of Puerto Rico, and each territory or possession of the United States; and
- 41 (I) “State racing commission” means the state racing commission, or its equivalent, in each  
42 member state. Where a member state has more than one (1), it shall mean all such racing  
43 commissions, or their equivalents.

1 Section 3. [*Composition and meetings of compact commission.*]

2 The member states shall create and participate in a compact commission as follows:

- 3 (A) This compact shall come into force when enacted by any six (6) eligible states, and shall  
4 thereafter become effective as to any other member state that enacts this compact. Any state  
5 that has adopted or authorized pari-mutuel wagering or live horse or greyhound racing shall  
6 be eligible to become a party to this compact. A compact rule, fee, practice, or program shall  
7 not become effective in a new member state based merely upon it entering the compact.
- 8 (B) The member states hereby create the racing and wagering commission, a body corporate and  
9 an interstate governmental entity of the member states, to coordinate the decision-making  
10 and actions of each member state racing commission through a compact commission.
- 11 (C) The compact commission shall consist of one (1) commissioner, the chairperson of the state  
12 racing commission or such person's designee, from each member state. When a  
13 commissioner is not present to perform any duty in the compact commission, a designated  
14 alternate may serve instead. The person who represents a member state in the compact  
15 commission shall serve and perform such duties without compensation or remuneration;  
16 provided that, subject to the availability of budgeted funds, each may be reimbursed for  
17 ordinary and necessary costs and expenses. The designation of a commissioner, including the  
18 alternate, shall be effective when written notice has been provided to the compact  
19 commission. The commissioner, including the alternate, must be a member or employee of  
20 the state racing commission.
- 21 (D) The compact commissioner from each state shall participate as an agent of the state racing  
22 commission. Each commissioner shall have the assistance of the state racing commission in  
23 regard to all decision making and actions of the state in and through the compact  
24 commission.
- 25 (E) Each member state, by its commissioner, shall be entitled to one (1) vote in the compact  
26 commission. A majority vote of the total number of commissioners shall be required to issue  
27 or renew a license, to receive and distribute any funds, and to adopt, amend, or rescind the  
28 by-laws. A compact rule, fee, practice, or program shall take effect in and for each member  
29 state whose commissioner votes affirmatively to adopt it. Other compact actions shall require  
30 a majority vote of the commissioners who are meeting.
- 31 (F) Meetings and votes of the compact commission may be conducted in person or by telephone  
32 or other electronic communication. Meetings may be called by the chairperson of the  
33 compact commission or by any two (2) commissioners. Reasonable notice of each meeting  
34 shall be provided to all commissioners serving in the compact commission.
- 35 (G) No action may be taken at a compact commission meeting unless there is a quorum, which is  
36 either a majority of the commissioners in the compact commission or, where applicable, all  
37 the commissioners from any member states who propose or are voting affirmatively to adopt  
38 a compact rule, fee, practice, or program.
- 39 (H) Once effective, the compact shall continue in force and remain binding according to its terms  
40 upon each member state; provided that, a member state may withdraw from the compact by  
41 repealing the statute that enacted the compact into law. The racing commission of a  
42 withdrawing state shall give written notice of such withdrawal to the compact chairperson,  
43 who shall notify the member state racing commissions. A withdrawing state shall remain  
44 responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal  
45 from the compact shall be the effective date of the repeal.

1 Section 4. [*Operation of compact commission.*]

2 The compact commission is hereby granted, so that it may be an effective means to pursue and  
3 achieve the purposes of each member state in this compact, the power and duty:

- 4 (A) To adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or  
5 appropriate to carry out the purposes of the compact; to publish them in a convenient form;  
6 and to file a copy of them with the state racing commission of each member state;
- 7 (B) To elect annually from among the commissioners (including alternates) a chairperson, vice-  
8 chairperson, and treasurer with such authority and duties as may be specified in the by-laws;
- 9 (C) To establish and appoint committees which it deems necessary for the carrying out of its  
10 functions, including advisory committees which shall be comprised of national industry  
11 stakeholders and organizations, and such other persons as may be designated in accordance  
12 with the by-laws, to obtain their timely and meaningful input into the compact rule, fee,  
13 practice, and program making processes;
- 14 (D) To establish an executive committee, with membership established in the by-laws, which  
15 shall oversee the day-to-day activities of compact administration and management by the  
16 executive director and staff; hire and fire as may be necessary after consultation with the  
17 compact commission; administer and enforce compliance with the provisions, by-laws, rules,  
18 fees, practices, and programs of the compact; and perform such other duties as the by-laws  
19 may establish;
- 20 (E) To create, appoint, and abolish all those offices, employments, and positions, including an  
21 executive director, useful to fulfill its purposes; to hire persons for them; to prescribe their  
22 powers, duties, and qualifications; and to provide for their term, tenure, removal,  
23 compensation, fringe and retirement benefits, and other conditions of employment;
- 24 (F) To delegate day-to-day management and administration of its duties, as needed, to an  
25 executive director and support staff, such as the Association of Racing Commissioners  
26 International, Inc., or its successor;
- 27 (G) To adopt an annual budget sufficient to provide for the payment of the reasonable expenses  
28 of its establishment, organization, and ongoing activities. The budget shall be fully funded  
29 by means established by the compact commission. A member state may choose to participate  
30 in funding by means other than a compact fee or fees, in which case the compact commission  
31 shall make a finding of how much the member state, including its racing and wagering, may  
32 benefit from budget items (less program costs funded by user fees); and the member state  
33 may provide such funding by its own means. Indivisible benefits to live racing shall be  
34 allocated by proportion of annual purses. Nothing in this provision shall prevent the compact  
35 commission from paying obligations accrued in a prior year or from revising its finding of  
36 the benefit to a member state from the preceding year; and
- 37 (H) To provide a mediation and a binding dispute resolution service for member states who  
38 decide to use them to resolve a compact dispute among each other; provided, that the design  
39 and implementation of each program shall be established by compact rule making.
- 40

41 Section 5. [*General powers and duties.*]

42 To allow each member state, as and when it chooses, to achieve the purpose of this compact  
43 through joint and cooperative action, the member states are hereby granted the power and duty,  
44 by and through the compact commission:

- 1 (A) To act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing  
2 and wagering interstate regulatory framework, including but not limited to the adoption of  
3 standardized rules of racing and equine drug regulations, closing inequalities in how  
4 regulatory standards and statutory requirements apply to industry participants; improving  
5 wagering monitoring and integrity; and making industry and participant information more  
6 available to government officials;
- 7 (B) To collaborate with national industry stakeholders and industry organizations, such as the  
8 Racing Medication and Testing Consortium, in the design and implementation of compact  
9 rules, fees, practices, and programs in a manner that serves the best interests of racing;
- 10 (C) To create more uniform, effective, or efficient practices and programs, with the consent of  
11 each member state that shall participate in them, relating to any part of live pari-mutuel horse  
12 or greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that  
13 occur in or affect a member state;
- 14 (D) To adopt compact rules, which shall have the force and effect of state rules or regulations in  
15 the member states who vote to adopt them, to govern all or any part of live pari-mutuel horse  
16 and greyhound racing or pari-mutuel wagering activities;
- 17 (E) To charge and collect a fee for services provided by the compact, including licensure and  
18 renewal of each license applicant, and for defraying the actual cost of compact commission  
19 administration, procedures, activities and programs; and
- 20 (F) To issue and renew licenses for participants in live racing and pari-mutuel wagering who are  
21 found by the compact commission to have met its licensure or renewal requirements in  
22 categories it chooses to license. It shall establish the term for each category, and the license  
23 criteria and weight given to character and integrity information that in its judgment meet the  
24 most restrictive requirements of the member states. The compact commission shall not have  
25 the power or authority to deny a license. If it determines that an applicant will not be eligible,  
26 it shall notify the applicant that it will not be able to process the application any further,  
27 which shall not constitute and shall not be considered to be the denial of a license. Although  
28 an applicant shall have the right to present further evidence and to be heard, the final  
29 decision on issuance or renewal of a license shall be made by the compact commission  
30 pursuant to its established requirements. The compact commission shall have the power and  
31 duty to investigate license applicants and, as permitted by federal and state law, to gather  
32 information, including criminal history records from the Federal Bureau of Investigation and  
33 from state, local, and foreign country law enforcement agencies (including the Royal  
34 Canadian Mounted Police), necessary to decide whether an applicant meets its license  
35 requirements. Such criminal history record information may be received and reviewed only  
36 by the officials on, and employees of, the compact commission, and that information may be  
37 used only for the purposes of this compact. No such official or employee may disclose or  
38 disseminate such criminal history record information to any person or entity other than  
39 another official on, or employee of, the compact commission. The compact commission, its  
40 employees, or its designee shall take the fingerprints of each license applicant and, pursuant  
41 to Public Law 92-544 or Public Law 100-413, forward the fingerprints to a state  
42 identification bureau, the Association of Racing Commissioners International (an association  
43 of state officials regulating pari-mutuel wagering, designated by the Attorney General of the  
44 United States), or another entity with an equivalent designation, for submission to the  
45 Federal Bureau of Investigation or other receiving law enforcement agency. The compact  
46 commission shall cooperate with the Interstate Compact on Licensure of Participants in Live

1 Racing with Pari-Mutuel Wagering and, if requested by that entity, assume all of its  
2 licensing and employer duties and responsibilities with the authority of and pursuant to all of  
3 the licensing standards, laws, rules and regulations applicable to that entity.  
4

5 Section 6. [*Other powers and duties.*]

6 The compact commission may exercise such incidental powers and duties as may be necessary  
7 and proper for it to function in a useful manner, including but not limited to the power and duty:

- 8 (A) To enter into contracts and agreements with governmental agencies and other persons,  
9 including officers and employees of a member state, to provide personal services for its  
10 activities and such other services as may be necessary;  
11 (B) To borrow, accept, and contract for the services of personnel from any state, federal, or other  
12 governmental agency, or from any other person or entity;  
13 (C) To receive information from and to provide information to each member state racing  
14 commission, including its officers and staff, on such terms and conditions as may be  
15 established in the by-laws;  
16 (D) To acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease,  
17 license, and similar means and to receive additional funds through gifts, grants, and  
18 appropriations;  
19 (E) To purchase and maintain insurance and bonds, and to require others to do so;  
20 (F) When authorized by a compact rule, to conduct hearings, issue subpoenas requiring the  
21 attendance and testimony of witnesses and the production of evidence, and render decisions  
22 and orders;  
23 (G) To establish in the by-laws the requirements that shall describe and govern its duties to  
24 conduct open or public meetings and to provide public access to compact records and  
25 information, which shall include the exceptions established by law in one (1) or more  
26 member states and shield any confidential submissions made in connection with license  
27 applications; and  
28 (H) To enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of  
29 the compact using such means as may be consistent with this compact.  
30

31 Section 7. [*Compact rule making.*]

32 In the exercise of its rule making authority, the compact commission shall:

- 33 (A) Engage in formal rule making pursuant to a process that substantially conforms to the Model  
34 State Administrative Procedure Act of 1981 as amended, as may be appropriate to the  
35 actions and operations of the compact commission;  
36 (B) Gather information and engage in discussions with advisory committees, national industry  
37 stakeholders, and others to foster and conduct a collaborative approach in the design and  
38 advancement of compact rules in a manner that serves the best interests of racing and as  
39 established in the by-laws;  
40 (C) Not publish a proposed compact rule in a member state over its objection. The affirmative  
41 vote of a member state for a proposed compact rule shall be necessary and sufficient to  
42 adopt, amend, or rescind a compact rule as applicable to that member state; and  
43 (D) Have a standing committee that reviews at least quarterly the participation in and value of  
44 compact rules and, when it determines that a revision is appropriate or when requested to by  
45 any member state, submits a revising proposed compact rule. To the extent a revision would

1       only add or remove a member state or states from where a compact rule has been adopted,  
2       the vote required by this section shall be required of only such state or states.

3  
4   Section 8. [*Compact fees.*]

- 5   (A) The compact commission may charge and collect a fee for services provided by the compact,  
6       including licensure and renewal of each license applicant, and for defraying the actual cost of  
7       compact commission administration, procedures, activities, and programs; provided that  
8       such latter fee or fees shall not create a disproportionate cost for any member state.
- 9   (B) Compact fees must relate to participation in live horse or greyhound racing and pari-mutuel  
10       wagering activities, whether on-track or off-track, that occur in or affect a member state. No  
11       fee shall be adopted except after consultation with relevant advisory committees and  
12       interested national industry stakeholders.
- 13   (C) The establishment of a compact fee may include a requirement that a participant in live horse  
14       or greyhound racing with pari-mutuel wagering, as a condition of continued participation,  
15       collect, hold, and remit to the compact commission funds that belong to a third party, with  
16       which it conducts related transactions, that is obliged to pay the compact fee.
- 17   (D) The compact commission may require fee payments to occur on a periodic basis,  
18       accompanied by a sworn report attesting to accuracy and completeness, and may provide that  
19       it shall have the power to examine the books and records of any persons required to pay or  
20       remit it, for the purpose of ascertaining whether the proper amounts are being paid. Such  
21       books and records shall not thereby be made available for public inspection.
- 22   (E) No fee shall be adopted before the completion of a period of public notice and participation  
23       substantially conforming, as may be appropriate to the actions and operations of the compact  
24       commission, for making rules under the Model State Administrative Procedure Act of 1981  
25       as amended.

26  
27   Section 9. [*Status and relationship to member states.*]

- 28   (A) The compact commission, as an interstate governmental entity, shall be exempt from all  
29       taxation in and by the member states.
- 30   (B) The compact commission shall not pledge the credit of any member state except by and with  
31       the appropriate legal authority of that state.
- 32   (C) The compact commission shall adopt an annual budget that is sufficient to provide for the  
33       payment of the reasonable expenses of its establishment, organization, and ongoing  
34       activities, and by which member states shall fully fund the compact commission by the  
35       means set forth in this compact.
- 36   (D) Each member state shall reimburse or otherwise pay the expenses of its commissioner,  
37       including any alternate, in the compact commission.
- 38   (E) No member state, except as provided in section 7 of this compact, shall be held liable for the  
39       debts or other financial obligations incurred by the compact commission.
- 40   (F) No member state shall have, while it participates in the compact commission, any claim to or  
41       ownership of any property held by or vested in the compact commission or to any compact  
42       commission funds held pursuant to this compact except for state license or other fees or  
43       moneys collected by the compact commission as its agent.
- 44   (G) The compact dissolves upon the date of the withdrawal of the member state that reduces  
45       membership in the compact to one (1) state. Upon dissolution, the compact becomes null and  
46       void and shall be of no further force or effect, although rules and programs adopted through

1 this compact shall remain rules and programs in each member state that had adopted or  
2 consented to them, and the business and affairs of the racing and wagering compact shall be  
3 concluded and any surplus funds shall be distributed to the former member states in  
4 accordance with the by-laws.

5  
6 Section 10. [*Rights and responsibilities of member states.*]

- 7 (A) Each member state in the compact shall accept the decisions, duly applicable to it, of the  
8 compact commission in regard to compact rules, fees, practices, and programs, and the  
9 issuance or renewal of licenses.
- 10 (B) When the compact commission determines that an application shall not be processed further,  
11 the member states shall not treat this as the denial of a license or otherwise penalize the  
12 applicant because of such action by the compact commission.
- 13 (C) Each member state in the compact shall have and exercise the right:
- 14 (1) To charge a fee for the use of a compact license within that member state equal to the fee  
15 charged for a comparable state license;
- 16 (2) To apply its own standards and procedures to determine whether the use of a compact  
17 commission license should be suspended or revoked in its jurisdiction;
- 18 (3) To apply its own standards for licensure or renewal of state applicants who do not meet  
19 the licensure requirements of the compact commission, who are within a category of  
20 participants in racing and wagering that the compact commission does not license, or who  
21 apply to the member state for a state license; and
- 22 (4) To apply its own standards and procedures, except as may be provided by rule, to  
23 determine whether a participant in live racing or pari-mutuel wagering has violated any  
24 rule or regulation in its jurisdiction and to impose an appropriate penalty.
- 25 (D) Each member state racing commission shall promptly notify the compact commission, or its  
26 designee, whenever the member state has adjudged a violation of any state or compact rule  
27 and imposed a suspension or revocation upon a compact commission licensee.
- 28 (E) All departments, agencies, bodies, officers, and employees of each member state and its  
29 political subdivisions are authorized to cooperate with the compact commission and shall  
30 take all necessary and appropriate action, such as to publish proposed and adopted rules in  
31 state registries and administrative codes, to effectuate and in furtherance of compact duties  
32 or actions that may affect the state.
- 33 (F) This compact shall not be construed to diminish or limit the powers and responsibilities of  
34 the member state racing commission, or to invalidate any action it has previously taken,  
35 except to the extent it has, by its compact commissioner, expressed its consent to a specific  
36 rule or other action of the compact commission. The compact commissioner from each state  
37 shall serve as the agent of the state racing commission and shall possess substantial racing  
38 and wagering knowledge and experience as a regulator or participant in the racing and  
39 wagering industry in order to participate effectively in compact rule making.

40  
41 Section 11. [*Enforcement of compact.*]

- 42 (A) Any member state in the compact and the compact commission may initiate legal action in  
43 the United States District Court, in any federal district where the compact commission has an  
44 office, to enforce compliance by any member state or the compact commission with the  
45 compact provisions, by-laws, fees, findings, practices, and programs.

- 1 (B) Any member state in the compact and the compact commission may initiate legal action, in  
2 any state or federal court, to enforce the compact provisions, fees, practices, and programs  
3 against any person, including a non-member state or political subdivision. Member states  
4 that benefit from the compact commission, its employees, or one of its provisions, by-laws,  
5 fees, findings, practices, or programs shall provide or share in the cost of legal services to  
6 defend or uphold them.
- 7 (C) The compact commission shall have standing to intervene in any legal action that pertains to  
8 the subject matter of the compact and might affect its powers, duties, or actions.
- 9 (D) The courts and executive in each member state shall enforce the compact and take all actions  
10 necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws,  
11 and rules shall be received by all judges, departments, agencies, bodies, and officers of each  
12 member state and its political subdivisions as evidence of them.
- 13 (E) The compact commission may require, from the date a compact fee was required to be paid,  
14 interest not to exceed the rate of one percent (1%) per month and a penalty not to exceed five  
15 percent (5%). The compact commission may, if it determines that any fees received by it  
16 were paid in error, and provided that an application for it is filed with the compact  
17 commission within one (1) year from the time the erroneous payment is made, correct the  
18 error by a refund, without interest, including from other collected fees.
- 19 (F) The compact commission, if it determines that a payment or report is in error, may make a  
20 finding that fixes the correct amount of the fee. It must issue the finding within three (3)  
21 years from when a fee or report was due or filed. The finding shall be final and conclusive  
22 unless an application for a hearing is filed by the subject within thirty (30) days. The action  
23 of the compact commission in making a final finding, after a hearing, shall be reviewable in  
24 state court as provided in this compact.

25  
26 Section 12. *[Legal actions against compact.]*

- 27 (A) Any person may commence a claim, action, or proceeding against the compact commission  
28 in state court for damages or to challenge a compact rule, fee, practice, or program that is  
29 duly applicable to that state. The compact commission shall have the benefit of the same  
30 limits of liability, defenses, rights to indemnity and defense by the state, and other legal  
31 rights and defenses for non-compact matters of the state racing commission in the state. All  
32 legal rights and defenses that arise from this compact shall also be available to the compact  
33 commission.
- 34 (B) A compact commissioner, alternate, or other member or employee of a state racing  
35 commission who undertakes compact activities or duties does so in the course of business of  
36 their state racing commission, and shall have the benefit of the same limits of liability,  
37 defenses, rights to indemnity and defense by the state, and other legal rights and defenses for  
38 non-compact matters of state employees in their state. The executive director and other  
39 employees of the compact commission shall have the benefit of these same legal rights and  
40 defenses of state employees in the member state in which they are primarily employed. All  
41 legal rights and defenses that arise from this compact shall also be available to them.
- 42 (C) Each member state shall be liable for and pay judgments filed against the compact  
43 commission to the extent related to its participation in the compact. Where liability arises  
44 from action undertaken jointly with other member states, the liability shall be divided  
45 equally among the states for whom the applicable rule, fee, practice, program, or action or  
46 omission of the executive director or other employees of the compact commission was

undertaken; and no member state shall contribute to or pay, or be jointly or severally or otherwise liable for, any part of any judgment beyond its share as determined in accordance with this section.

Section 13. [*Restrictions on authority.*]

(A) Notwithstanding anything to the contrary herein, the compact commission shall not adopt any practice, program, or rule that may change [Kentucky] requirements governing the amount and distribution of the takeout, retention, or breakages on intrastate wagers or that imposes licensure requirements for non-racing or non-wagering employees of any racetrack or off-site wagering facility operating wholly within the state.

(B) [Kentucky] state laws applicable to pari-mutuel racing and wagering shall remain in full force and effect.

(C) Notwithstanding anything to the contrary herein, no fee except for services provided by the compact commission shall be adopted by the compact commission in [Kentucky] without the prior consent of any horsemen (as expressed by their recognized horsemen's organization) licensed by the state racing commission who, or any franchised or state racing commission licensed racing corporation that, would be obliged to pay the fee.

Section 14. [*Construction, saving and severability.*]

(A) This compact shall be liberally construed so as to effectuate its purposes. 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 the United States or of any member state, or the applicability of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected. If all or some portion of this compact is held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the state affected as to all severable matters.

(B) In the event of any allegation, finding, or ruling against the compact or its procedures or actions, provided that a member state has followed the compact's stated procedures, any rule it purported to adopt using the procedures of this statute shall constitute a duly adopted and valid state rule, and any program that it purported to create or agree to using the procedures of this statute shall constitute a duly made and valid state program and multilateral agreement with the other consenting member states.

Section 15. [*Effectiveness.*]

This Act shall only take effect with respect to any compacting state which has enacted an interstate compact entitled "Interstate Racing and Wagering Compact" and having an identical effect to that added by section 1 of this Act upon the enactment into law by at least six (6) eligible states, but if such states have already enacted such legislation, this Act shall take effect immediately; provided, however, that the provisions of section 1 of this Act shall expire upon reduction of the membership in such compact to one (1) state.

1 Section 16. [*Administrative review.*]

- 2 (1) Each proposed compact rule under consideration for adoption in [Kentucky] shall be  
3 forwarded to the [Administrative Regulation Review Subcommittee (“ARRS”)] and the  
4 subcommittee or standing committee of appropriate jurisdiction over the subject matter of the  
5 proposed compact rule ("subject matter committee") by the [Kentucky] compact  
6 commissioner for review when a rule is initially proposed and, if a rule is substantially  
7 modified during the compact commission rule-making process, when the rule is modified.  
8 (2) Each proposed compact rule adopted by the compact commission and upon which the  
9 [Kentucky] compact commissioner has voted in favor shall be forwarded to the [ARRS] and  
10 the subject matter committee simultaneously by the [Kentucky] compact commissioner for  
11 review within sixty (60) days after adoption.  
12 (3) Upon receipt of a proposed, modified, or adopted compact rule, the [ARRS] and subject  
13 matter committee shall review the rule and may forward their respective findings to the  
14 [Kentucky] compact commissioner in writing within ten (10) calendar days.

# Motion Picture Theater Accommodations

The Act requires accommodations for the hearing and visually impaired at movie theaters throughout the state. It requires a public accommodation that owns, leases, leases to, or operates a motion picture theater in more than two locations in the State to provide open movie captioning during at least two showings per week of each motion picture that is produced and offered with open movie captioning. It requires a public accommodation that owns, leases, leases to, or operates a motion picture theater in the State to provide, upon request, audio description of any motion picture that is produced and offered with audio description.

Submitted as: [HB 1272](#)

Hawaii

Status: Signed into law on May 6, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Motion picture theater accommodation.*]

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

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

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

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

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

# Physical Therapy Licensure Compact

The Physical Therapy Licensure Compact is intended to increase public access to physical therapy services, to enhance the exchange of licensure, investigatory, and disciplinary information between member states, and to support spouses of relocating military members.

The Federation of State Boards of Physical Therapy (FSBPT) developed the Compact with the purpose of increasing consumer access to physical therapy services. The Compact allows a physical therapist or physical therapist assistant to obtain one license to practice from the Home State in order to practice in any other Compact state, as long as the physical therapist or physical therapist assistant notifies the state and complies with the practice laws of the state in which the patient is located at the time care and services are rendered.

Submitted as: [SB 1504](#)

Oregon

Status: Signed into law on March 3, 2016

## Shared State Legislation

(Title, enacting clause, etc.)

### 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 [Insert citation – physical therapists.]
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.

- 1 D. A licensee providing physical therapy in a remote state is subject to that state's regulatory  
2 authority. A remote state may, in accordance with due process and that state's laws, remove a  
3 licensee's compact privilege in the remote state for a specific period of time, impose fines,  
4 and/or take any other necessary actions to protect the health and safety of its citizens. The  
5 licensee is not eligible for a compact privilege in any state until the specific time for removal  
6 has passed and all fines are paid.
- 7 E. If a home state license is encumbered, the licensee shall lose the compact privilege in any  
8 remote state until the following occur:
- 9 1. The home state license is no longer encumbered; and  
10 2. Two years have elapsed from the date of the adverse action.
- 11 F. Once an encumbered license in the home state is restored to good standing, the licensee must  
12 meet the requirements of Section 4A to obtain a compact privilege in any remote state.
- 13 G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the  
14 compact privilege in any remote state until the following occur:
- 15 1. The specific period of time for which the compact privilege was removed has ended;  
16 2. All fines have been paid; and  
17 3. Two years have elapsed from the date of the adverse action.
- 18 H. Once the requirements of Section 4G have been met, the license must meet the requirements  
19 in Section 4A to obtain a compact privilege in a remote state.  
20

21 Section 5. [*Active duty military personnel or their spouses.*]

22 A licensee who is active duty military or is the spouse of an individual who is active duty  
23 military may designate one of the following as the home state:

- 24 A. Home of record;  
25 B. Permanent Change of Station (PCS); or  
26 C. State of current residence if it is different than the PCS state or home of record.  
27

28 Section 6. [*Adverse Actions.*]

- 29 A. A home state shall have exclusive power to impose adverse action against a license issued by  
30 the home state.
- 31 B. A home state may take adverse action based on the investigative information of a remote  
32 state, so long as the home state follows its own procedures for imposing adverse action.
- 33 C. Nothing in this Compact shall override a member state's decision that participation in an  
34 alternative program may be used in lieu of adverse action and that such participation shall  
35 remain non-public if required by the member state's laws. Member states must require  
36 licensees who enter any alternative programs in lieu of discipline to agree not to practice in  
37 any other member state during the term of the alternative program without prior authorization  
38 from such other member state.
- 39 D. Any member state may investigate actual or alleged violations of the statutes and rules  
40 authorizing the practice of physical therapy in any other member state in which a physical  
41 therapist or physical therapist assistant holds a license or compact privilege.
- 42 E. A remote state shall have the authority to:
- 43 1. Take adverse actions as set forth in Section 4D against a licensee's compact privilege in  
44 the state;  
45 2. Issue subpoenas for both hearings and investigations that require the attendance and  
46 testimony of witnesses, and the production of evidence. Subpoenas issued by a physical

- 1 therapy licensing board in a party state for the attendance and testimony of witnesses,
- 2 and/or the production of evidence from another party state, shall be enforced in the latter
- 3 state by any court of competent jurisdiction, according to the practice and procedure of
- 4 that court applicable to subpoenas issued in proceedings pending before it. The issuing
- 5 authority shall pay any witness fees, travel expenses, mileage, and other fees required by
- 6 the service statutes of the state where the witnesses and/or evidence are located; and
- 7 3. If otherwise permitted by state law, recover from the licensee the costs of investigations
- 8 and disposition of cases resulting from any adverse action taken against that licensee.

9 F. Joint Investigations

- 10 1. In addition to the authority granted to a member state by its respective physical therapy
- 11 practice act or other applicable state law, a member state may participate with other
- 12 member states in joint investigations of licensees.
- 13 2. Member states shall share any investigative, litigation, or compliance materials in
- 14 furtherance of any joint or individual investigation initiated under the Compact.

15  
16 Section 7. [*Establishment of the Physical Therapy Compact Commission.*]

17 A. The Compact member states hereby create and establish a joint public agency known as the

18 Physical Therapy Compact Commission:

- 19 1. The Commission is an instrumentality of the Compact states.
- 20 2. Venue is proper and judicial proceedings by or against the Commission shall be brought
- 21 solely and exclusively in a court of competent jurisdiction where the principal office of
- 22 the Commission is located. The Commission may waive venue and jurisdictional
- 23 defenses to the extent it adopts or consents to participate in alternative dispute resolution
- 24 proceedings.
- 25 3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

26 B. Membership, Voting, and Meetings

- 27 1. Each member state shall have and be limited to one (1) delegate selected by that member
- 28 state's licensing board.
- 29 2. The delegate shall be a current member of the licensing board, who is a physical
- 30 therapist, physical therapist assistant, public member, or the board administrator.
- 31 3. Any delegate may be removed or suspended from office as provided by the law of the
- 32 state from which the delegate is appointed.
- 33 4. The member state board shall fill any vacancy occurring in the Commission.
- 34 5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules
- 35 and creation of bylaws and shall otherwise have an opportunity to participate in the
- 36 business and affairs of the Commission.
- 37 6. A delegate shall vote in person or by such other means as provided in the bylaws. The
- 38 bylaws may provide for delegates' participation in meetings by telephone or other means
- 39 of communication.
- 40 7. The Commission shall meet at least once during each calendar year. Additional meetings
- 41 shall be held as set forth in the bylaws.

42 C. The Commission shall have the following powers and duties:

- 43 1. Establish the fiscal year of the Commission;
- 44 2. Establish bylaws;
- 45 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.

- 1 3. The Commission may remove any member of the Executive Board as provided in
- 2 bylaws.
- 3 4. The Executive Board shall meet at least annually.
- 4 5. The Executive Board shall have the following Duties and responsibilities:
- 5 a. Recommend to the entire Commission changes to the rules or bylaws, changes to this
- 6 Compact legislation, fees paid by Compact member states such as annual dues, and
- 7 any commission Compact fee charged to licensees for the compact privilege;
- 8 b. Ensure Compact administration services are appropriately provided, contractual or
- 9 otherwise;
- 10 c. Prepare and recommend the budget;
- 11 d. Maintain financial records on behalf of the Commission;
- 12 e. Monitor Compact compliance of member states and provide compliance reports to the
- 13 Commission;
- 14 f. Establish additional committees as necessary; and g. Other duties as provided in rules
- 15 or bylaws.
- 16 E. Meetings of the Commission
- 17 1. All meetings shall be open to the public, and public notice of meetings shall be given in
- 18 the same manner as required under the rulemaking provisions in Section 9.
- 19 2. The Commission or the Executive Board or other committees of the Commission may
- 20 convene in a closed, non-public meeting if the Commission or Executive Board or other
- 21 committees of the Commission must discuss:
- 22 a. Non-compliance of a member state with its obligations under the Compact;
- 23 b. The employment, compensation, discipline or other matters, practices or procedures
- 24 related to specific employees or other matters related to the Commission's internal
- 25 personnel practices and procedures;
- 26 c. Current, threatened, or reasonably anticipated litigation;
- 27 d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
- 28 estate;
- 29 e. Accusing any person of a crime or formally censuring any person;
- 30 f. Disclosure of trade secrets or commercial or financial information that is privileged or
- 31 confidential;
- 32 g. Disclosure of information of a personal nature where disclosure would constitute a
- 33 clearly unwarranted invasion of personal privacy;
- 34 h. Disclosure of investigative records compiled for law enforcement purposes;
- 35 i. Disclosure of information related to any investigative reports prepared by or on behalf
- 36 of or for use of the Commission or other committee charged with responsibility of
- 37 investigation or determination of compliance issues pursuant to the Compact; or
- 38 j. Matters specifically exempted from disclosure by federal or member state statute.
- 39 3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
- 40 Commission's legal counsel or designee shall certify that the meeting may be closed and
- 41 shall reference each relevant exempting provision.
- 42 4. The Commission shall keep minutes that fully and clearly describe all matters discussed
- 43 in a meeting and shall provide a full and accurate summary of actions taken, and the
- 44 reasons therefore, including a description of the views expressed. All documents
- 45 considered in connection with an action shall be identified in such minutes. All minutes

1 and documents of a closed meeting shall remain under seal, subject to release by a  
2 majority vote of the Commission or order of a court of competent jurisdiction.

3 F. Financing of the Commission

- 4 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its  
5 establishment, organization, and ongoing activities.
- 6 2. The Commission may accept any and all appropriate revenue sources, donations, and  
7 grants of money, equipment, supplies, materials, and services.
- 8 3. The Commission may levy on and collect an annual assessment from each member state  
9 or impose fees on other parties to cover the cost of the operations and activities of the  
10 Commission and its staff, which must be in a total amount sufficient to cover its annual  
11 budget as approved each year for which revenue is not provided by other sources. The  
12 aggregate annual assessment amount shall be allocated based upon a formula to be  
13 determined by the Commission, which shall promulgate a rule binding upon all member  
14 states.
- 15 4. The Commission shall not incur obligations of any kind prior to securing the funds  
16 adequate to meet the same; nor shall the Commission pledge the credit of any of the  
17 member states, except by and with the authority of the member state.
- 18 5. The Commission shall keep accurate accounts of all receipts and disbursements. The  
19 receipts and disbursements of the Commission shall be subject to the audit and  
20 accounting procedures established under its bylaws. However, all receipts and  
21 disbursements of funds handled by the Commission shall be audited yearly by a certified  
22 or licensed public accountant, and the report of the audit shall be included in and become  
23 part of the annual report of the Commission.
- 24 6. An assessment levied, or any other financial obligation imposed, under this Compact is  
25 effective against the [State of Oregon] only to the extent that moneys necessary to pay the  
26 assessment or meet the financial obligations have been deposited in an account  
27 established under [Insert citation – depository accounts for moneys collected or received  
28 by semi-independent state agencies.] by the Physical Therapist Licensing Board pursuant  
29 to [Insert citation – physical therapy licensing board, disposition of receipts.]

30 G. Qualified Immunity, Defense, and Indemnification

- 31 1. The members, officers, executive director, employees and representatives of the  
32 Commission shall be immune from suit and liability, either personally or in their official  
33 capacity, for any claim for damage to or loss of property or personal injury or other civil  
34 liability caused by or arising out of any actual or alleged act, error or omission that  
35 occurred, or that the person against whom the claim is made had a reasonable basis for  
36 believing occurred within the scope of Commission employment, duties or  
37 responsibilities; provided that nothing in this paragraph shall be construed to protect any  
38 such person from suit and/or liability for any damage, loss, injury, or liability caused by  
39 the intentional or willful or wanton misconduct of that person.
- 40 2. The Commission shall defend any member, officer, executive director, employee or  
41 representative of the Commission in any civil action seeking to impose liability arising  
42 out of any actual or alleged act, error, or omission that occurred within the scope of  
43 Commission employment, duties, or responsibilities, or that the person against whom the  
44 claim is made had a reasonable basis for believing occurred within the scope of  
45 Commission employment, duties, or responsibilities; provided that nothing herein shall  
46 be construed to prohibit that person from retaining his or her own counsel; and provided

1 further, that the actual or alleged act, error, or omission did not result from that person's  
2 intentional or willful or wanton misconduct.

- 3 3. The Commission shall indemnify and hold harmless any member, officer, executive  
4 director, employee, or representative of the Commission for the amount of any settlement  
5 or judgment obtained against that person arising out of any actual or alleged act, error or  
6 omission that occurred within the scope of Commission employment, duties, or  
7 responsibilities, or that such person had a reasonable basis for believing occurred within  
8 the scope of Commission employment, duties, or responsibilities, provided that the actual  
9 or alleged act, error, or omission did not result from the intentional or willful or wanton  
10 misconduct of that person.

11  
12 Section 8. [*Data System.*]

13 A.

- 14 1. The Commission shall provide for the development, maintenance, and utilization of a  
15 coordinated database and reporting system containing licensure, adverse action, and  
16 investigative information on all licensed individuals in member states.  
17 2. Notwithstanding Section 9.A.1., the Physical Therapist Licensing Board shall review the  
18 rules of the Commission. The licensing board may approve and adopt the rules of the  
19 Commission as rules of the licensing board. The [State of Oregon] is subject to a rule of  
20 the Commission only if the rule of the Commission is adopted by the licensing board.  
21 B. Notwithstanding any other provision of state law to the contrary, a member state shall submit  
22 a uniform data set to the data system on all individuals to whom this Compact is applicable  
23 as required by the rules of the Commission, including:  
24 1. Identifying information;  
25 2. Licensure data;  
26 3. Adverse actions against a license or compact privilege;  
27 4. Non-confidential information related to alternative program participation;  
28 5. Any denial of application for licensure, and the reason(s) for such denial; and  
29 6. Other information that may facilitate the administration of this Compact, as determined  
30 by the rules of the Commission.  
31 C. Investigative information pertaining to a licensee in any member state will only be available  
32 to other party states.  
33 D. The Commission shall promptly notify all member states of any adverse action taken against  
34 a licensee or an individual applying for a license. Adverse action information pertaining to a  
35 licensee in any member state will be available to any other member state.  
36 E. Member states contributing information to the data system may designate information that  
37 may not be shared with the public without the express permission of the contributing state.  
38 F. Any information submitted to the data system that is subsequently required to be expunged  
39 by the laws of the member state contributing the information shall be removed from the data  
40 system.

41  
42 Section 9. [*Rulemaking.*]

43 A.

- 44 1. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in  
45 this Section and the rules adopted thereunder. Rules and amendments shall become  
46 binding as of the date specified in each rule or amendment.

- 1        2. Notwithstanding Section 9.A.1., the Physical Therapist Licensing Board shall review the
- 2        rules of the Commission. The licensing board may approve and adopt the rules of the
- 3        Commission as rules of the licensing board. The [State of Oregon] is subject to a rule of
- 4        the Commission only if the rule of the Commission is adopted by the licensing board.
- 5    B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute
- 6        or resolution in the same manner used to adopt the Compact within 4 years of the date of
- 7        adoption of the rule, then such rule shall have no further force and effect in any member
- 8        state.
- 9    C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the
- 10       Commission.
- 11   D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least
- 12       thirty (30) days in advance of the meeting at which the rule will be considered and voted
- 13       upon, the Commission shall file a Notice of Proposed Rulemaking:
- 14       1. On the website of the Commission or other publicly accessible platform; and
- 15       2. On the website of each member state physical therapy licensing board or other publicly
- 16       accessible platform or the publication in which each state would otherwise publish
- 17       proposed rules.
- 18   E. The Notice of Proposed Rulemaking shall include:
- 19       1. The proposed time, date, and location of the meeting in which the rule will be considered
- 20       and voted upon;
- 21       2. The text of the proposed rule or amendment and the reason for the proposed rule;
- 22       3. A request for comments on the proposed rule from any interested person; and
- 23       4. The manner in which interested persons may submit notice to the Commission of their
- 24       intention to attend the public hearing and any written comments.
- 25   F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written
- 26       data, facts, opinions, and arguments, which shall be made available to the public.
- 27   G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or
- 28       amendment if a hearing is requested by:
- 29       1. At least twenty-five (25) persons;
- 30       2. A state or federal governmental subdivision or agency; or
- 31       3. An association having at least twenty-five (25) members.
- 32   H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the
- 33       place, time, and date of the scheduled public hearing. If the hearing is held via electronic
- 34       means, the Commission shall publish the mechanism for access to the electronic hearing.
- 35       1. All persons wishing to be heard at the hearing shall notify the executive director of the
- 36       Commission or other designated member in writing of their desire to appear and testify at
- 37       the hearing not less than five (5) business days before the scheduled date of the hearing.
- 38       2. Hearings shall be conducted in a manner providing each person who wishes to comment
- 39       a fair and reasonable opportunity to comment orally or in writing.
- 40       3. All hearings will be recorded. A copy of the recording will be made available on request.
- 41       4. Nothing in this section shall be construed as requiring a separate hearing on each rule.
- 42       Rules may be grouped for the convenience of the Commission at hearings required by
- 43       this section.
- 44   I. Following the scheduled hearing date, or by the close of business on the scheduled hearing
- 45       date if the hearing was not held, the Commission shall consider all written and oral
- 46       comments received.

- 1 J. If no written notice of intent to attend the public hearing by interested parties is received, the  
2 Commission may proceed with promulgation of the proposed rule without a public hearing.
- 3 K. The Commission shall, by majority vote of all members, take final action on the proposed  
4 rule and shall determine the effective date of the rule, if any, based on the rulemaking record  
5 and the full text of the rule.
- 6 L. Upon determination that an emergency exists, the Commission may consider and adopt an  
7 emergency rule without prior notice, opportunity for comment, or hearing, provided that the  
8 usual rulemaking procedures provided in the Compact and in this section shall be  
9 retroactively applied to the rule as soon as reasonably possible, in no event later than ninety  
10 (90) days after the effective date of the rule. For the purposes of this provision, an emergency  
11 rule is one that must be adopted immediately in order to:
- 12 1. Meet an imminent threat to public health, safety, or welfare;
  - 13 2. Prevent a loss of Commission or member state funds;
  - 14 3. Meet a deadline for the promulgation of an administrative rule that is established by  
15 federal law or rule; or
  - 16 4. Protect public health and safety.
- 17 M. The Commission or an authorized committee of the Commission may direct revisions to a  
18 previously adopted rule or amendment for purposes of correcting typographical errors, errors  
19 in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be  
20 posted on the website of the Commission. The revision shall be subject to challenge by any  
21 person for a period of thirty (30) days after posting. The revision may be challenged only on  
22 grounds that the revision results in a material change to a rule. A challenge shall be made in  
23 writing, and delivered to the chair of the Commission prior to the end of the notice period. If  
24 no challenge is made, the revision will take effect without further action. If the revision is  
25 challenged, the revision may not take effect without the approval of the Commission.

26  
27 Section 10. [*Oversight, dispute resolution, and enforcement.*]

28 A. Oversight

- 29 1. The executive, legislative, and judicial branches of state government in each member  
30 state shall enforce this Compact and take all actions necessary and appropriate to  
31 effectuate the Compact's purposes and intent. The provisions of this Compact and the  
32 rules promulgated hereunder and adopted by the Physical Therapist Licensing Board  
33 shall have standing as statutory law.
- 34 2. All courts shall take judicial notice of the Compact and the rules in any judicial or  
35 administrative proceeding in a member state pertaining to the subject matter of this  
36 Compact which may affect the powers, responsibilities or actions of the Commission.
- 37 3. The Commission shall be entitled to receive service of process in any such proceeding,  
38 and shall have standing to intervene in such a proceeding for all purposes. Failure to  
39 provide service of process to the Commission shall render a judgment or order void as to  
40 the Commission, this Compact, or promulgated rules.

41 B. Default, Technical Assistance, and Termination

- 42 1. If the Commission determines that a member state has defaulted in the performance of its  
43 obligations or responsibilities under this Compact or the promulgated rules, the  
44 Commission shall:

- 1 a. Provide written notice to the defaulting state and other member states of the nature of
- 2 the default, the proposed means of curing the default and/or any other action to be
- 3 taken by the Commission; and
- 4 b. Provide remedial training and specific technical assistance regarding the default.
- 5 2. If a state in default fails to cure the default, the defaulting state may be terminated from
- 6 the Compact upon an affirmative vote of a majority of the member states, and all rights,
- 7 privileges and benefits conferred by this Compact may be terminated on the effective
- 8 date of termination. A cure of the default does not relieve the offending state of
- 9 obligations or liabilities incurred during the period of default.
- 10 3. Termination of membership in the Compact shall be imposed only after all other means
- 11 of securing compliance have been exhausted. Notice of intent to suspend or terminate
- 12 shall be given by the Commission to the governor, the majority and minority leaders of
- 13 the defaulting state's legislature, and each of the member states.
- 14 4. A state that has been terminated is responsible for all assessments, obligations, and
- 15 liabilities incurred through the effective date of termination, including obligations that
- 16 extend beyond the effective date of termination.
- 17 5. The Commission shall not bear any costs related to a state that is found to be in default or
- 18 that has been terminated from the Compact, unless agreed upon in writing between the
- 19 Commission and the defaulting state.
- 20 6. The defaulting state may appeal the action of the Commission by petitioning the U.S.
- 21 District Court for the District of Columbia or the federal district where the Commission
- 22 has its principal offices. The prevailing member shall be awarded all costs of such
- 23 litigation, including reasonable attorney's fees.
- 24 C. Dispute Resolution
- 25 1. Upon request by a member state, the Commission shall attempt to resolve disputes related
- 26 to the Compact that arise among member states and between member and nonmember
- 27 states.
- 28 2. The Commission shall promulgate a rule providing for both mediation and binding
- 29 dispute resolution for disputes as appropriate.
- 30 D. Enforcement
- 31 1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions
- 32 and rules of this Compact.
- 33 2. By majority vote, the Commission may initiate legal action in the United States District
- 34 Court for the District of Columbia or the federal district where the Commission has its
- 35 principal offices against a member state in default to enforce compliance with the
- 36 provisions of the Compact and its promulgated rules and bylaws. The relief sought may
- 37 include injunctive relief. In the event judicial enforcement is necessary, the prevailing
- 38 member shall be awarded all costs of such litigation, including reasonable attorney's fees.
- 39 3. The remedies herein shall not be the exclusive remedies of the Commission. The
- 40 Commission may pursue any other remedies available under federal or state law.
- 41
- 42 Section 11. *[Date of implementation of the Interstate Commission for Physical Therapy Practice*
- 43 *and associated rules, withdrawal, and amendment.]*
- 44 A. The Compact shall come into effect on the date on which the Compact statute is enacted into
- 45 law in the tenth member state. The provisions, which become effective at that time, shall be
- 46 limited to the powers granted to the Commission relating to assembly and the promulgation

1 of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to  
2 the implementation and administration of the Compact.

3 B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules  
4 shall be subject to the rules as they exist on the date on which the Compact becomes law in  
5 that state. Any rule that has been previously adopted by the Commission shall have the full  
6 force and effect of law on the day the Compact becomes law in that state.

7 C. Any member state may withdraw from this Compact by enacting a statute repealing the  
8 same.

9 1. A member state's withdrawal shall not take effect until six (6) months after enactment of  
10 the repealing statute.

11 2. Withdrawal shall not affect the continuing requirement of the withdrawing state's  
12 physical therapy licensing board to comply with the investigative and adverse action  
13 reporting requirements of this act prior to the effective date of withdrawal.

14 D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical  
15 therapy licensure agreement or other cooperative arrangement between a member state and a  
16 non-member state that does not conflict with the provisions of this Compact.

17 E. This Compact may be amended by the member states. No amendment to this Compact shall  
18 become effective and binding upon any member state until it is enacted into the laws of all  
19 member states.  
20

## 21 Section 12. [*Construction and severability.*]

22 This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions  
23 of this Compact shall be severable and if any phrase, clause, sentence or provision of this  
24 Compact is declared to be contrary to the constitution of any party state or of the United States or  
25 the applicability thereof to any government, agency, person or circumstance is held invalid, the  
26 validity of the remainder of this Compact and the applicability thereof to any government,  
27 agency, person or circumstance shall not be affected thereby. If this Compact shall be held  
28 contrary to the constitution of any party state, the Compact shall remain in full force and effect as  
29 to the remaining party states and in full force and effect as to the party state affected as to all  
30 severable matters.  
31

## 32 Section 13. [*Ratification.*]

33 The Legislative Assembly of the [State of Oregon] hereby ratifies the Physical Therapy  
34 Licensure Compact set forth in section [1-12] of this 2016 Act.  
35

## 36 Section 14. [*Processing of complaints against health professionals - Disclosure of confidential* 37 *information to another public entity.*]

38 (1) Notwithstanding any other provision of [Insert citation – processing of complaints against  
39 health professionals], a health professional regulatory board, upon a determination by the  
40 board that it possesses otherwise confidential information that reasonably relates to the  
41 regulatory or enforcement function of another public entity, may disclose that information to  
42 the other public entity.

43 (2) Any public entity that receives information pursuant to subsection (1) of this section shall  
44 agree to take all reasonable steps to maintain the confidentiality of the information, except  
45 that the public entity may use or disclose the information to the extent necessary to carry out  
46 the regulatory or enforcement functions of the public entity.

- 1 (3) For purposes of this section, “public entity” means:
- 2 (a) A board or agency of this state, or a board or agency of another state with regulatory or
- 3 enforcement functions similar to the functions of a health professional regulatory board
- 4 of this state;
- 5 (b) A district attorney;
- 6 (c) The Department of Justice;
- 7 (d) A state or local public body of this state that licenses, franchises or provides emergency
- 8 medical services; or
- 9 (e) A law enforcement agency of this state, another state or the federal government. (4)
- 10 Notwithstanding subsections (1) to (3) of this section, the Physical Therapist Licensing
- 11 Board may disclose information described in subsection (1) of this section to the Physical
- 12 Therapy Compact Commission established in section [1-13] of this Act.
- 13

14 Section 15. [*License to practice physical therapy or use designation.*]

- 15 (1) Unless a person is a licensed physical therapist or holds a permit issued under [Insert citation
- 16 – temporary permit], a person shall not:
- 17 (a) Practice physical therapy; or
- 18 (b) Use in connection with the name of the person the words or letters, “P.T.”, “R.P.T.”,
- 19 “L.P.T.”, “physical therapist”, “physiotherapist” or any other letters, words, abbreviations
- 20 or insignia indicating that the person is a physical therapist, or purports to be a physical
- 21 therapist.
- 22 (2) Unless a person holds a license as a physical therapist assistant, a person shall not:
- 23 (a) Practice as a physical therapist assistant; or
- 24 (b) Use in connection with the name of the person the words or letters, “L.P.T.A.”, “P.T.A.”,
- 25 “physical therapist assistant”, “licensed physical therapist assistant”, or any other letters,
- 26 words, abbreviations or insignia indicating that the person is a physical therapist assistant
- 27 or purports to be a physical therapist assistant.
- 28 (c) Subsections (1) and (2) of this section do not apply to an individual who is authorized to
- 29 practice as a physical therapist, or work as a physical therapist assistant, by compact
- 30 privilege as defined in sections [1-12] of this Act.
- 31

32 Section 16. [*Licensing procedures – disposition of receipts*]

- 33 (1) All moneys received under [Insert citation – physical therapy licensing.] shall be paid into an
- 34 account established by the Physical Therapist Licensing Board under [Insert citation –
- 35 depository accounts for moneys collected or received by semi-independent state agencies.]
- 36 The board may establish an additional account for the purpose of meeting financial
- 37 obligations imposed on the [State of Oregon] as a result of this state’s participation in the
- 38 Physical Therapy Licensure Compact established under sections [1-12] of this Act.
- 39 (2) The moneys paid into the accounts established by the board are continuously appropriated to
- 40 the board and may be used only for the administration and enforcement of [Insert citation –
- 41 physical therapy licensing.] and for the purpose of meeting financial obligations imposed on
- 42 the [State of Oregon] as a result of this state’s participation in the Physical Therapy
- 43 Licensure Compact established under sections [1-12] of this Act.

# Regulation of e-Cigarettes

The Act prohibits the sale of electronic smoking devices and alternative nicotine products to minors, and requires child-resistant packaging for liquid nicotine containers. The Act also requires that all tobacco products, including electronic smoking devices and alternative nicotine products, are sold with the assistance of a clerk, meaning that these products can no longer be sold in self-service displays.

Submitted as:

North Dakota

[HB 1168](#)

Status: Signed into law on April 9, 2014.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Sale of tobacco, electronic smoking devices, or alternative nicotine products to*  
2 *minors and use by minors prohibited.*]

3 1.

4 a. It is an infraction for any person to sell or furnish to a minor, or procure for a minor,  
5 cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be  
6 utilized for smoking or chewing, electronic smoking devices, or alternative nicotine  
7 products. As used in this subdivision, “sell” includes dispensing from a vending machine  
8 under the control of the actor.

9 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers,  
10 cigars, snuff, tobacco in any other form in which it may be utilized for smoking or  
11 chewing, electronic smoking devices, or alternative nicotine products through a self -  
12 service display. This subdivision does not apply to a:

13 (1) Vending machine or other coin-operated machine that is permitted under section 2; or

14 (2) Self-service display that is located in a tobacco specialty store.

15 2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars,  
16 cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or  
17 chewing, electronic smoking devices, or alternative nicotine products. However, an  
18 individual under eighteen years of age may purchase and possess tobacco, electronic  
19 smoking devices, or alternative nicotine products as part of a compliance survey program  
20 when acting with the permission of the individual's parent or guardian and while acting under  
21 the supervision of any law enforcement authority. A state agency, city, county, board of  
22 health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or  
23 association of tobacco , electronic smoking devices, or alternative nicotine products retailers  
24 may also conduct compliance surveys, after coordination with the appropriate local law  
25 enforcement authority.

26 3. It is a noncriminal offense for a minor to present or offer to another individual a purported  
27 proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the  
28 purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff,

- 1 tobacco in any other form in which it may be utilized for smoking or chewing, electronic  
2 smoking devices, or alternative nicotine products.
- 3 4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,  
4 electronic smoking devices, or alternative nicotine products to minors and use of tobacco,  
5 electronic smoking devices, or alternative nicotine products by minors which includes  
6 prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted  
7 must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and  
8 must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or  
9 older who has been charged with an offense under subsection 2 or 3. The failure to post a  
10 required bond or pay an assessed fee by an individual found to have violated the ordinance or  
11 resolution is punishable as a contempt of court, except a minor may not be imprisoned for the  
12 contempt.
- 13 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a  
14 fee of twenty-five dollars.
- 15 a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before  
16 a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if  
17 bond has been posted, may forfeit the bond by not appearing at the scheduled time. An  
18 individual appearing at the time scheduled in the citation may make a statement in  
19 explanation of that individual's action and the judge may waive, reduce, or suspend the  
20 fee or bond, or both. If the individual cited follows the procedures of this subdivision,  
21 that individual has admitted the violation and has waived the right to a hearing on the  
22 issue of commission of the violation. The bond required to secure appearance before the  
23 court must be identical to the fee. This subdivision does not allow a citing officer to  
24 receive the fee or bond.
- 25 b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the  
26 procedures provided under subdivision a, that individual may request a hearing on the  
27 issue of the commission of the violation cited. The hearing must be held at the time  
28 scheduled in the citation or at some future time, not to exceed ninety days later, set at that  
29 first appearance. At the time of a request for a hearing on the issue on commission of the  
30 violation, the individual cited shall deposit with the court an appearance bond equal to the  
31 fee for the violation cited.
- 32 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court,  
33 except a minor may not be imprisoned for the contempt.
- 34 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a  
35 preponderance of the evidence.
- 36 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of  
37 the violation to the parent or legal guardian of the minor within ten days of the citation.
- 38 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the  
39 court to a sanction or order designed to ensure compliance with the payment of the fee or fine  
40 or to an alternative sentence or sanction including community service.
- 41 9. As used in this section:
- 42 a. "Alternative nicotine product" means any noncombustible product containing nicotine  
43 that is intended for human consumption, whether chewed, absorbed, dissolved, or  
44 ingested by any other means. The term does not include any cigarette, cigar, snuff,  
45 tobacco in any other form in which it may be utilized for smoking or chewing, any  
46 electronic smoking device, or any product regulated as a drug or device by the United

1 States Food and Drug Administration under chapter V of the federal Food, Drug, and  
2 Cosmetic Act [21 U.S.C 501 et seq.].

- 3 b. “Electronic smoking device” means any electronic product that delivers nicotine or other  
4 substances to the individual inhaling from the device, including, an electronic cigarette,  
5 e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any  
6 component, part, or accessory of such a product, whether or not sold separately.  
7 Electronic smoking device does not include drugs, devices, or combination products  
8 approved for sale by the United States food and drug administration, as those terms are  
9 defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et  
10 seq.].
- 11 c. “Self-service display” means a display that contains cigarettes, cigarette papers, cigars,  
12 snuff, tobacco in any other form which it may be utilized for smoking or chewing,  
13 electronic smoking devices, or alternative nicotine products and is located in an area that  
14 is openly accessible to the retailer's customers, and from which customers can readily  
15 access those products without the assistance of a salesperson. A display case that holds  
16 those products behind locked doors does not constitute a self-service display.
- 17 d. “Tobacco specialty store” means a retail store that:  
18 (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes,  
19 cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized  
20 for smoking or chewing, electronic smoking devices , or alternative nicotine products;  
21 and  
22 (2) Does not permit minors to enter the premises unless accompanied by a parent or legal  
23 guardian.
- 24 e. “Vending machine” means a machine, appliance, or other mechanical device operated by  
25 currency, token, debit card, credit card, or other means of payment that is designed or  
26 used for vending purposes, including machines or devices that use remote control locking  
27 mechanisms.  
28

29 Section 2. [*Vending machines prohibited – penalty.*]

- 30 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
31 snuff, tobacco in any other form in which it may be utilized for smoking or chewing,  
32 electronic smoking devices, or alternative nicotine products through a vending machine,  
33 except as provided in subsection 2.
- 34 2. Subsection 1 does not apply to:  
35 a. A vending machine that is located in an area in which minors are not permitted  
36 access; or  
37 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco  
38 in any other form in which it may be utilized for smoking or chewing , electronic  
39 smoking devices , or alternative nicotine products through the operation of a device  
40 that requires a salesperson to control the dispensation of such product.
- 41 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
42 snuff, tobacco in any other form in which it may be utilized for smoking or chewing ,  
43 electronic smoking devices , or alternative nicotine products through any vending  
44 machine, if those products are placed together with any nontobacco product, other than  
45 matches, in the vending machine.

- 1       4. As used in this section, “electronic smoking devices” and “alternative nicotine products”  
2       have the same meaning as in section 1.  
3

4 Section 3. [*Child-resistant packaging for liquid nicotine containers.*]

- 5 1. Any nicotine liquid container that is sold at retail in this state must satisfy the child - resistant  
6 effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in  
7 accordance with the method described in title 16, CFR, part 1700, section 20.  
8 2. As used in this section, “nicotine liquid container” means a bottle or other container of a  
9 liquid or other substance containing nicotine in which the liquid or substance is sold,  
10 marketed, or intended for use in an electronic smoking device. The term does not include a  
11 liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended  
12 for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by  
13 the manufacturer and not intended to be opened by the consumer.  
14 3. Any person that engages in retail sales of liquid nicotine containers in violation of this  
15 section is subject to a civil penalty of not more than five hundred dollars for each separate  
16 violation of this section, to be recovered by any enforcement authority designated by the city  
17 or political subdivision in which the violation occurred.  
18

19 Section 4. [*Prohibited acts regarding sale of tobacco products, electronic smoking devices, or*  
20 *alternative nicotine products to minors.*]

- 21 1. It is unlawful for any person in the business of selling tobacco products to take an order  
22 for a tobacco product, other than from a person who is in the business of selling tobacco  
23 products, through the mail or through any telecommunications means, including by  
24 telephone, facsimile, or the internet, if in providing for the sale or delivery of the product  
25 pursuant to the order, the person mails the product or ships the product by carrier, and the  
26 person fails to comply with each of the following procedures:  
27 a. Before mailing or shipping the product, the person receives from the individual who  
28 places the order the following:  
29 (1) A copy of a valid government-issued document that provides the name, address,  
30 and date of birth of the individual; and  
31 (2) A signed statement from the individual providing a certification that the  
32 individual:  
33 (a) Is a smoker of legal minimum purchase age in the state;  
34 (b) Has selected an option on the statement as to whether the individual wants to  
35 receive mailings from a tobacco company; and  
36 (c) Understands that providing false information may constitute a violation of  
37 law.  
38 b. Before mailing or shipping the product, the person:  
39 (1) Verifies the date of birth or age of the individual against a commercially available  
40 database;  
41 (2) Obtains a photocopy or other image of the valid, government-issued identification  
42 stating the date of birth or age of the individual placing the order.  
43 c. Before mailing or shipping the product, the person provides to the prospective  
44 purchaser, by electronic mail or other means, a notice that meets the requirements of  
45 [Insert citation – remote sales of tobacco products.]

- 1 d. In the case of an order for a product pursuant to an advertisement on the internet, the  
2 person receives payment by credit card, debit card, or check for the order before  
3 mailing or shipping the product.  
4 e.  
5 (1) The person employs a method of mailing or shipping the product requiring that  
6 the individual purchasing the product:  
7 (a) Be the addressee;  
8 (b) Have an individual of legal minimum purchase age sign for delivery of the  
9 package; and  
10 (c) If the individual appears to the carrier making the delivery to be under twenty-  
11 seven years of age, take delivery of the package only after producing valid  
12 government-issued identification that bears a photograph of the individual,  
13 indicates that the individual is not under the legal age to purchase cigarettes,  
14 and indicates that the individual is not younger than the age indicated on the  
15 government-issued document.  
16 (2) The bill of lading clearly states the requirements in subdivision a and specifies  
17 that state law requires compliance with the requirements.  
18 f. The person notifies the carrier for the mailing or shipping, in writing, of the age of the  
19 addressee as indicated by the government-issued document.  
20 2. It is unlawful for any person in the business of selling electronic smoking devices or  
21 alternative nicotine products to take an order for an electronic smoking device or  
22 alternative nicotine product, other than from a person who is in the business of selling  
23 electronic smoking devices or alternative nicotine products through the mail or through  
24 any telecommunications means, including by telephone, facsimile, or the internet, if in  
25 providing for the sale or delivery of the product pursuant to the order, the person mails  
26 the product or ships the product by carrier, and the person fails to comply with each of  
27 the following procedures:  
28 a. Before the sale of the electronic smoking device or alternative nicotine product  
29 verifies the purchaser is at least eighteen years of age through a commercially  
30 available database that is regularly used by business or governmental entities for the  
31 purpose of age and identity verification; and  
32 b. Uses a method of mailing, shipping, or delivery which requires an individual of legal  
33 minimum purchase age to sign for delivery before the electronic smoking device or  
34 alternative nicotine product is released to the purchaser.  
35 3. As used in subsection 2, “electronic smoking devices” and “alternative nicotine products”  
36 have the same meaning as in section 1.  
37

38 Section 5. [*Expiration Date.*]

39 Section 3 of this Act is effective until the date the attorney general certifies to the legislative  
40 council that final regulations issued by the United States food and drug administration or  
41 another federal agency are in effect which mandate child-resistant effectiveness standards for  
42 liquid nicotine containers, and after that date is ineffective.  
43

# **Regulation of Vapor Products, Alternative Nicotine Products, and E-liquid Products (Statement)**

This act amends existing laws in Arkansas relating to the Arkansas Tobacco Products Tax Act of 1977, which regulates tobacco products, to include vapor products, alternative nicotine products, and e-liquid products.

A “vapor product” is defined as “an electronic oral device of any size or shape that contains a vapor of nicotine, e-liquid, or any another substance that when used or inhaled simulates smoking, regardless of whether a visible vapor is produced, including without limitation a device that:

- (A) Is composed of a heating element, battery, electronic circuit, chemical process, mechanical device, or a combination of heating element, battery, electronic circuit, chemical process, or mechanical device;
- (B) Works in combination with a cartridge, other container, or liquid delivery device containing nicotine or any other substance and manufactured for use with vapor products;
- (C) Is manufactured, distributed, marketed, or sold as any type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any other product name or descriptor; and
- (D) Does not include a product regulated as a drug or device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as it existed on January 1, 2015.”

An “alternative nicotine product” is defined as “a product that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means.” However, an alternative nicotine product does not include a cigarette; a tobacco product; a vapor product; a product that is a drug under 21 U.S.C. § 321(g)(1); a product that is a device under 21 U.S.C. § 321(h); or a product that constitutes a combination drug, device, or biological product as described in 21 U.S.C. § 353(g).

An “e-liquid product” or “e-liquid” is defined as “a liquid product, which may or may not contain nicotine, that is vaporized and inhaled when using a vapor product, and that may or may not include without limitation propylene glycol, vegetable glycerin, nicotine from any source, and flavorings.”

## **Licenses and Permits**

The act requires a license or permit for the sale of vapor products, alternative nicotine products, and e-liquid products.

The act adds a permit at a fee of \$100 for a “retail exclusive vapor product and alternative nicotine product store” meaning a retail store that generates 90% or more of its gross revenue from the sale and service of vapor products, alternative nicotine products, or e-liquid products.

The act amends the penalty for failure to have a license or permit to a Class A misdemeanor. The act amends the name on a permit to include the president or chief executive officer and the partnership or limited liability company when the permittee is a managing partner or managing

member of a limited liability company that is a partnership, limited liability company, or corporation.

The act adds a prohibition on a permittee or licensee who has unpaid fines or an unserved permit or license suspension to transfer, sell, or give of tobacco product, vapor product, alternative nicotine product, or e-liquid product inventory until all fines are paid in full and all suspensions are completed successfully.

### **Regulations**

The act amends certain tobacco product regulations to require applicability to vapor products, alternative nicotine products, and e-liquid products.

Below is a list of the regulations that now apply to vapor products, alternative nicotine products, and e-liquid products:

- The definitions of invoice price, manufacturer, place of business, retailer, salesperson, warehouse, and wholesaler;
- The privilege to do business in Arkansas;
- The keeping of invoices for the purchase or sale of products;
- The penalty for failure to have a license or permit to do business in Arkansas;
- The prohibition for a retailer to purchase products from unregistered or unlicensed dealer;
- The common carrier obligations and restrictions;
- The wholesaler restrictions and criminal violations of wholesalers;
- The salesperson restrictions and criminal violations of salespersons;
- The retailer and vendor restrictions and criminal violations of retailer and vendor;
- The seizure, forfeiture, and disposition of products and other property;
- The order by a circuit court to seize property;
- The destruction of products upon conviction and the procedure involved;
- The membership of the Arkansas Tobacco Control Board to include wholesalers and retailers in all areas;
- The duties of the Arkansas Tobacco Control Board to include vapor products, alternative nicotine products, and e-liquid products; and
- The reports of wholesalers to the Arkansas Tobacco Control Board.

### **Child-Resistant Packaging and Safety Inspections**

The act requires alternative nicotine products and e-liquid products that contain nicotine to have child-resistant packaging.

“Child-resistant packaging” is defined as “packaging that is designed or constructed to be:

(A) Significantly difficult for children under five (5) years of age to:

(1) Open; or

(2) Obtain a toxic or harmful amount of the substance contained therein within a reasonable time; and

(B) Not difficult for an average adult to use properly.”

“Child-resistant packaging” does not mean packaging that children cannot open or obtain a toxic or harmful amount within a reasonable time when tested in accordance with the method described in 16 C.F.R. § 1700.20, as it existed on January 1, 2015.

The act amends the health inspections to include vapor products, alternative nicotine products, and e-liquid products.

The act also adds duties to the Director of the Arkansas Tobacco Control Board to adopt safety and hygiene rules for persons that prepare or mix e-liquid products or alternative nicotine products.

The act prohibits the use of a tobacco product, vapor product, alternative nicotine product, and e-liquid product in or on the grounds of any school, child care facility, or healthcare facility.

### **Preemption & Agents of Arkansas Tobacco Control**

The act creates a new section preempting county, municipal, or other local regulations regarding vapor products, alternative nicotine products, and e-liquid products that are more restrictive. The act also creates a new section regarding the selection and qualifications of enforcement agents of the Arkansas Tobacco Control. This section is identical to the provision that is repealed from a different Title of the Arkansas Code within this act.

### **Arkansas Tobacco Control Revenue Fund**

The act creates a new fund on the books of the Treasurer of Arkansas called the "Arkansas Tobacco Control Revenue Fund." All permit and license fees will be deposited into the fund to be used for expenses of the Arkansas Tobacco Control Board in organization, maintenance, operation, and merchant education and training.

### **Criminal Violations**

The act amends the existing criminal violation for a person to use tobacco products on the grounds of a school, child care facility, or healthcare facility to include vapor products, alternative nicotine products, and e-liquid products.

### **Repeal Certain Existing Law**

The act repeals existing law concerning providing alternative nicotine products to minors, the selection and qualifications of enforcement agents of the Arkansas Tobacco Control, and the criminal offenses of providing minors with e-cigarettes and e-cigarette products, of purchase, use, or possession of e-cigarettes and e-cigarette products by minors, and of self-service displays and vending machines of e-cigarettes and e-cigarette products.

Submitted as:

Arkansas

[SB 978](#)

Status: Signed into law on April 8, 2015.

# Revised Uniform Athlete Agents Act

The Revised Uniform Athlete Agents Act updates the 2000 version of the act adopted by Idaho in 2001 due to the increased occurrences of improper activity and benefits between student athletes and agents and for the ever-evolving sports commercial marketplace. The Act governs relations among student athletes, athlete agents, and educational institutions. It further protects the interest of student athletes and academic institutions by regulating the activities of athlete agents. The 2015 revision updates the definition of “athlete agent”; requires reciprocal agent licensing; and enhances notice requirements to educational institutions.

The Revised Uniform Athlete Agents Act (2015) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The Revised Act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

Submitted as:

Idaho

[HB 398, Uniform Law Act](#)

Status: Signed into law on March 24, 2016.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short title.*]

This chapter may be cited as the “Revised Uniform Athlete Agents Act.”

Section 2. [*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

- 1 employee of an educational institution acting exclusively as an employee of  
2 the institution for the benefit of the institution; or
- 3 2. Manages the business affairs of the athlete by providing assistance with bills,  
4 payments, contracts or taxes; or
- 5 (iii) In anticipation of representing a student athlete for a purpose related to the  
6 athlete's participation in athletics:
  - 7 1. Gives consideration to the student athlete or another person;
  - 8 2. Serves the athlete in an advisory capacity on a matter related to finances,  
9 business pursuits or career management decisions; or
  - 10 3. Manages the business affairs of the athlete by providing assistance with bills,  
11 payments, contracts or taxes; but
- 12 (b) Does not include an individual who:
  - 13 (i) Acts solely on behalf of a professional sports team or organization; or
  - 14 (ii) Is a licensed, registered or certified professional and offers or provides services to  
15 a student athlete customarily provided by members of the profession, unless the  
16 individual:
    - 17 1. Also recruits or solicits the athlete to enter into an agency contract;
    - 18 2. Also, for compensation, procures employment or offers, promises, attempts or  
19 negotiates to obtain employment for the athlete as a professional athlete or  
20 member of a professional sports team or organization; or
    - 21 3. Receives consideration for providing the services calculated using a different  
22 method than for an individual who is not a student athlete.
- 23 (3) "Athletic director" means the individual responsible for administering the overall athletic  
24 program of an educational institution or, if an educational institution has separately  
25 administered athletic programs for male students and female students, the athletic program  
26 for males or the athletic program for females, as appropriate.
- 27 (4) "Bureau" means the [bureau of occupational licenses].
- 28 (5) "Educational institution" includes a public or private elementary school, secondary school,  
29 technical or vocational school, community college, college and university.
- 30 (6) "Endorsement contract" means an agreement under which a student athlete is employed or  
31 receives consideration to use on behalf of the other party any value that the athlete may have  
32 because of publicity, reputation, following or fame obtained because of athletic ability or  
33 performance.
- 34 (7) "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls" has  
35 a corresponding meaning.
- 36 (8) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility  
37 requirements for participation by a student athlete are established by a national association  
38 that promotes or regulates collegiate athletics.
- 39 (9) "Interscholastic sport" means a sport played between educational institutions that are not  
40 community colleges, colleges or universities.
- 41 (10) "Licensed, registered or certified professional" means an individual licensed, registered  
42 or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate  
43 broker or sales agent, tax consultant, accountant or member of a profession, other than that of  
44 athlete agent, who is licensed, registered or certified by the state or a nationally recognized  
45 organization that licenses, registers or certifies members of the profession on the basis of  
46 experience, education or testing.

- 1 (11) "Person" means an individual, estate, business or nonprofit entity, public corporation,  
2 government or governmental subdivision, agency or instrumentality, or other legal entity.
- 3 (12) "Professional-sports-services contract" means an agreement under which an individual is  
4 employed as a professional athlete or agrees to render services as a player on a professional  
5 sports team or with a professional sports organization.
- 6 (13) "Record" means information that is inscribed on a tangible medium or that is stored in an  
7 electronic or other medium and is retrievable in perceivable form.
- 8 (14) "Recruit or solicit" means attempt to influence the choice of an athlete agent by a student  
9 athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not  
10 include giving advice on the selection of a particular agent in a family, coaching or social  
11 situation unless the individual giving the advice does so because of the receipt or anticipated  
12 receipt of an economic benefit, directly or indirectly, from the agent.
- 13 (15) "Registration" means registration as an athlete agent under this chapter.
- 14 (16) "Sign" means, with present intent to authenticate or adopt a record:  
15 (a) To execute or adopt a tangible symbol; or  
16 (b) To attach to or logically associate with the record an electronic symbol, sound or process.
- 17 (17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
18 United States Virgin Islands or any territory or insular possession subject to the jurisdiction  
19 of the United States.
- 20 (18) "Student athlete" means an individual who is eligible to attend an educational institution  
21 and engages in, is eligible to engage in, or may be eligible in the future to engage in, any  
22 interscholastic or intercollegiate sport. The term does not include an individual permanently  
23 ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

24  
25 Section 3. [*Bureau of Occupational Licenses – authority – procedure.*]

- 26 (1) [State Administrative Procedure Act] shall apply to this chapter. The [bureau] may adopt  
27 rules pursuant to [State Administrative Procedure Act] to implement the provisions of this  
28 chapter.
- 29 (2) By acting as an athlete agent in this state, a nonresident individual appoints the [bureau] as  
30 the individual's agent for service of process in any civil action in this state related to the  
31 individual acting as an athlete agent in this state.
- 32 (3) The [bureau] may issue subpoenas for any material that is relevant to the administration of  
33 this chapter.

34  
35 Section 3. [*Athlete agent registration required – void contract.*]

- 36 (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as  
37 an athlete agent in this state without holding a certificate of registration under this chapter.
- 38 (2) Before being issued a certificate of registration under this chapter, an individual may act as  
39 an athlete agent in this state for all purposes except signing an agency contract, if:  
40 (a) A student athlete or another person acting on behalf of the athlete initiates  
41 communication with the individual; and  
42 (b) Not later than seven (7) days after an initial act that requires the individual to register as  
43 an athlete agent, the individual submits an application for registration as an athlete agent  
44 in this state.
- 45 (3) An agency contract resulting from conduct in violation of this section is void, and the athlete  
46 agent shall return any consideration received under the contract.

1  
2 Section 4. [*Registration as athlete agent – application – requirements – reciprocal registration*].

3 (1) An applicant for registration as an athlete agent shall submit an application for registration to  
4 the [bureau] in a form prescribed by the [bureau]. The applicant must be an individual, and  
5 the application must be signed by the applicant under penalty of perjury. An application filed  
6 under this section is a public record. The application must contain at least the following:

- 7 (a) The name and date and place of birth of the applicant and the following contact  
8 information for the applicant:
- 9 (i) The address of the applicant's principal place of business;
  - 10 (ii) Work and mobile telephone numbers; and
  - 11 (iii) Any means of communicating electronically, including a facsimile number,  
12 electronic-mail address and personal and business or employer websites;
- 13 (b) The name of the applicant's business or employer, if applicable, including for each  
14 business or employer, its mailing address, telephone number, type of business  
15 organization and the nature of the business;
- 16 (c) Each social media account with which the applicant or the applicant's business or  
17 employer is affiliated;
- 18 (d) Each business or occupation in which the applicant engaged within five (5) years before  
19 the date of the application, including self-employment and employment by others, and  
20 any professional or occupational license, registration or certification held by the applicant  
21 during that time;
- 22 (e) A description of the applicant's:
- 23 (i) Formal training as an athlete agent;
  - 24 (ii) Practical experience as an athlete agent; and
  - 25 (iii) Educational background relating to the applicant's activities as an athlete agent;
- 26 (f) The name of each student athlete for whom the applicant acted as an athlete agent within  
27 five (5) years before the date of the application or, if the individual is a minor, the name  
28 of the parent or guardian of the minor, together with the athlete's sport and last known  
29 team;
- 30 (g) The name and address of each person that:
- 31 (i) Is a partner, member, officer, manager, associate or profit sharer or directly or  
32 indirectly holds an equity interest of five percent (5%) or greater of the athlete  
33 agent's business if it is not a corporation; and
  - 34 (ii) Is an officer or director of a corporation employing the athlete agent or a  
35 shareholder having an interest of five percent (5%) or greater in the corporation;
- 36 (h) A description of the status of any application by the applicant, or any person named under  
37 paragraph (g) of this subsection, for a state or federal business, professional or  
38 occupational license, other than as an athlete agent, from a state or federal agency,  
39 including any denial, refusal to renew, suspension, withdrawal or termination of the  
40 license and any reprimand or censure related to the license;
- 41 (i) Whether the applicant, or any person named under paragraph (g) of this subsection, has  
42 pleaded guilty or no contest to; has been convicted of; entered an Alford plea for;  
43 received a withheld judgment, suspended sentence or deferred prosecution for; or has  
44 charges pending for, a crime that would involve moral turpitude or be a felony if  
45 committed in this state and, if so, identification of:
- 46

- 1 (i) The crime;
- 2 (ii) The law enforcement agency involved; and
- 3 (iii) If applicable, the date of the conviction and the fine or penalty imposed;
- 4 (j) Whether, within fifteen (15) years before the date of application, the applicant, or any
- 5 person named under paragraph (g) of this subsection, has been a defendant or respondent
- 6 in a civil proceeding, including a proceeding seeking an adjudication of legal
- 7 incompetence and, if so, the date and a full explanation of each proceeding;
- 8 (k) Whether the applicant, or any person named under paragraph (g) of this subsection, has
- 9 an unsatisfied judgment or a judgment of continuing effect, including spousal support or
- 10 a domestic order in the nature of child support, that is not current at the date of the
- 11 application;
- 12 (l) Whether, within ten (10) years before the date of application, the applicant, or any person
- 13 named under paragraph (g) of this subsection, was adjudicated bankrupt or was an owner
- 14 of a business that was adjudicated bankrupt;
- 15 (m) Whether there has been any administrative or judicial determination that the applicant, or
- 16 any person named under paragraph (g) of this subsection, made a false, misleading,
- 17 deceptive or fraudulent representation;
- 18 (n) Each instance in which conduct of the applicant, or any person named under paragraph
- 19 (g) of this subsection, resulted in the imposition of a sanction, suspension or declaration
- 20 of ineligibility to participate in an interscholastic, intercollegiate or professional athletic
- 21 event on a student athlete or a sanction on an educational institution;
- 22 (o) Each sanction, suspension or disciplinary action taken against the applicant, or any
- 23 person named under paragraph (g) of this subsection, arising out of occupational or
- 24 professional conduct;
- 25 (p) Whether there has been a denial of an application for, suspension or revocation of, refusal
- 26 to renew or abandonment of the registration of the applicant, or any person named under
- 27 paragraph (g) of this subsection, as an athlete agent in any state;
- 28 (q) Each state in which the applicant currently is registered as an athlete agent or has applied
- 29 to be registered as an athlete agent;
- 30 (r) If the applicant is certified or registered by a professional league or players association:
- 31 (i) The name of the league or association;
- 32 (ii) The date of certification or registration and the date of expiration of the
- 33 certification or registration, if any; and
- 34 (iii) If applicable, the date of any denial of an application for, suspension or revocation
- 35 of, refusal to renew, withdrawal of, or termination of the certification or
- 36 registration, or any reprimand or censure related to the certification or
- 37 registration; and
- 38 (s) Any additional information requested by the [bureau].
- 39 (2) Instead of proceeding under subsection (1) of this section, an individual registered as an
- 40 athlete agent in another state may apply for registration as an athlete agent in this state by
- 41 submitting to the [bureau]:
- 42 (a) A copy of the application for registration in the other state;
- 43 (b) A statement that identifies any material change in the information on the application or
- 44 verifies there is no material change in the information, signed under penalty of perjury;
- 45 and
- 46 (c) A copy of the certificate of registration from the other state.

- 1 (3) The [bureau] shall issue a certificate of registration to an individual who applies for  
2 registration under subsection (2) of this section, if the [bureau] determines:  
3 (a) The application and registration requirements of the other state are substantially similar to  
4 or more restrictive than this chapter; and  
5 (b) The registration has not been revoked or suspended and no action involving the  
6 individual's conduct as an athlete agent is pending against the individual or the  
7 individual's registration in any state.  
8 (4) For purposes of implementing subsection (3) of this section, the [bureau] shall:  
9 (a) Cooperate with national organizations concerned with athlete agent issues, and agencies  
10 in other states that register athlete agents, to develop a common registration form and  
11 determine which states have laws that are substantially similar to or more restrictive than  
12 this chapter; and  
13 (b) Exchange information, including information related to actions taken against registered  
14 athlete agents or their registrations, with those organizations and agencies.  
15

16 Section 5. [*Certificate of registration – issuance or denial – renewal.*]

- 17 (1) Except as otherwise provided in subsection (2) of this section, the [bureau] shall issue a  
18 certificate of registration to an applicant for registration who complies with section 4(1).  
19 (2) The [bureau] may refuse to issue a certificate of registration to an applicant for registration  
20 under section 4(1), if the [bureau] determines that the applicant has engaged in conduct that  
21 significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making  
22 the determination, the [bureau] may consider whether the applicant has:  
23 (a) Pleaded guilty or no contest to; has been convicted of; entered an Alford plea for;  
24 received a withheld judgment, suspended sentence or deferred prosecution for; or has  
25 charges pending for, a crime that would involve moral turpitude or be a felony if  
26 committed in this state;  
27 (b) Made a materially false, misleading, deceptive or fraudulent representation in the  
28 application or as an athlete agent;  
29 (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary  
30 capacity;  
31 (d) Engaged in conduct prohibited by section 13;  
32 (e) Had a registration as an athlete agent suspended, revoked or denied in any state;  
33 (f) Been refused renewal of registration as an athlete agent in any state;  
34 (g) Engaged in conduct resulting in imposition of a sanction, suspension or declaration of  
35 ineligibility to participate in an interscholastic, intercollegiate or professional athletic  
36 event on a student athlete or a sanction on an educational institution; or  
37 (h) Engaged in conduct that adversely reflects on the applicant's credibility, honesty or  
38 integrity.  
39 (3) In making a determination under subsection (2) of this section, the [bureau] shall consider:  
40 (a) How recently the conduct occurred;  
41 (b) The nature of the conduct and the context in which it occurred; and  
42 (c) Other relevant conduct of the applicant.  
43 (4) An athlete agent registered under subsection (1) of this section may apply to renew the  
44 registration by submitting an application for renewal in a form prescribed by the [bureau].  
45 The applicant shall sign the application for renewal under penalty of perjury and include  
46 current information on all matters required in an original application for registration.

- 1 (5) An athlete agent registered under section 4(3), may renew the registration by proceeding  
2 under subsection (4) of this section or, if the registration in the other state has been renewed,  
3 by submitting to the [bureau] copies of the application for renewal in the other state and the  
4 renewed registration from the other state. The [bureau] shall renew the registration if the  
5 [bureau] determines:  
6 (a) The registration requirements of the other state are substantially similar to or more  
7 restrictive than this chapter; and  
8 (b) The renewed registration has not been suspended or revoked and no action involving the  
9 individual's conduct as an athlete agent is pending against the individual or the  
10 individual's registration in any state.  
11 (6) A certificate of registration or renewal of registration under this chapter is valid for two (2)  
12 years.

13  
14 Section 6. [*Suspension, Revocation or Refusal to Renew Registration.*]

- 15 (1) The [bureau] may limit, suspend, revoke or refuse to renew a registration of an individual  
16 registered under section 5(1), for conduct that would have justified refusal to issue a  
17 certificate of registration under section 5(2).  
18 (2) The [bureau] may suspend or revoke the registration of an individual registered under section  
19 4(3), or renewed under section 5(5), for any reason that the [bureau] could have refused to  
20 grant or renew registration or for conduct that would justify refusal to issue a certificate of  
21 registration under section 5(2).  
22 (3) The [bureau] may deny, suspend, revoke or refuse to renew a certificate of registration or  
23 licensure only after proper notice and an opportunity for a hearing in accordance with the  
24 provisions of [State Administrative Procedure Act]  
25

26 Section 7. [*Temporary Registration.*]

27 The [bureau] may issue a temporary certificate of registration as an athlete agent while an  
28 application for registration or renewal of registration is pending.  
29

30 Section 8. [*Registration and Renewal Fees.*]

- 31 (1) An application for registration or renewal of registration as an athlete agent must be  
32 accompanied by a fee in an amount prescribed by the [bureau], but not to exceed [two  
33 hundred and fifty dollars (\$250)] for any registration period for the following:  
34 (a) An initial application for registration;  
35 (b) Registration based on a certificate of registration issued by another state;  
36 (c) An application for renewal of registration; or  
37 (d) Renewal of registration based on a renewal of registration in another state.  
38 (2) All fees received under the provisions of this chapter shall be deposited in the state treasury  
39 to the credit of the [occupational licenses fund] and all costs and expenses incurred by the  
40 [bureau] under the provisions of this chapter shall be a charge against and paid from said  
41 fund for such purposes. Notwithstanding the provisions of any other law, the funds collected  
42 hereunder shall be immediately available for the administration of this chapter. In no event  
43 will the occupational licenses fund be obligated to pay any claims which, in aggregate with  
44 claims already paid, exceed the income to the [occupational licenses fund] that has been  
45 derived by the application of this chapter.

- 1 (3) The money paid into the [occupational licenses fund] is continuously appropriated to the  
2 [bureau] for expenditure in the manner prescribed herein to defray the expenses of the  
3 [bureau] in carrying out and enforcing the provisions of this chapter.  
4

5 Section 9. [*Required Form of Agency Contract.*]

- 6 (1) An agency contract must be in a record signed by the parties.

- 7 (2) An agency contract must contain:

- 8 (a) A statement that the athlete agent is registered as an athlete agent in this state and a list of  
9 any other states in which the agent is registered as an athlete agent;  
10 (b) The amount and method of calculating the consideration to be paid by the student athlete  
11 for services to be provided by the agent under the contract and any other consideration  
12 the agent has received or will receive from any other source for entering into the contract  
13 or providing the services;  
14 (c) The name of any person not listed in the agent's application for registration or renewal of  
15 registration that will be compensated because the athlete signed the contract;  
16 (d) A description of any expenses the athlete agrees to reimburse;  
17 (e) A description of the services to be provided to the athlete;  
18 (f) The duration of the contract; and  
19 (g) The date of execution.

- 20 (3) Subject to subsection (7) of this section, an agency contract must contain a conspicuous  
21 notice in boldface type and in substantially the following form:  
22

23 **WARNING TO STUDENT ATHLETE IF YOU SIGN THIS CONTRACT:**

- 24 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT**  
25 **ATHLETE IN YOUR SPORT;**

- 26 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER**  
27 **SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC**  
28 **EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH**  
29 **YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC**  
30 **DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND**  
31 **PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE**  
32 **AGENT; AND**

- 33 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.**  
34 **CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR**  
35 **ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.**  
36

- 37 (4) An agency contract must be accompanied by a separate record signed by the student athlete  
38 or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing  
39 the contract may result in the loss of the athlete's eligibility to participate in the athlete's  
40 sport.

- 41 (5) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void  
42 an agency contract that does not conform to this section. If the contract is voided, any  
43 consideration received from the athlete agent under the contract to induce entering into the  
44 contract is not required to be returned.

- 1 (6) At the time an agency contract is executed, the athlete agent shall give the student athlete or,  
2 if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract  
3 and the separate acknowledgment required by subsection (4) of this section.  
4 (7) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of  
5 the minor and the notice required by subsection (3) of this section must be revised  
6 accordingly.

7  
8 Section 10. [*Notice to educational institution.*]

- 9 (1) As used in this section, “communicating or attempting to communicate” means contacting or  
10 attempting to contact by an in-person meeting, a record or any other method that conveys or  
11 attempts to convey a message.  
12 (2) Not later than seventy-two (72) hours after entering into an agency contract or before the  
13 next scheduled athletic event in which the student athlete may participate, whichever occurs  
14 first, the athlete agent shall give notice in a record of the existence of the contract to the  
15 athletic director of the educational institution at which the athlete is enrolled or at which the  
16 agent has reasonable grounds to believe the athlete intends to enroll.  
17 (3) Not later than seventy-two (72) hours after entering into an agency contract or before the  
18 next scheduled athletic event in which the student athlete may participate, whichever occurs  
19 first, the athlete shall inform the athletic director of the educational institution at which the  
20 athlete is enrolled that the athlete has entered into an agency contract and the name and  
21 contact information of the athlete agent.  
22 (4) If an athlete agent enters into an agency contract with a student athlete and the athlete  
23 subsequently enrolls at an educational institution, the agent shall notify the athletic director  
24 of the institution of the existence of the contract not later than seventy-two (72) hours after  
25 the agent knew or should have known that the athlete enrolled.  
26 (5) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an  
27 educational institution and receives an athletic scholarship from the institution, the agent  
28 shall notify the institution of the relationship not later than ten (10) days after the enrollment  
29 if the agent knows or should have known of the enrollment and:  
30 (a) The relationship was motivated in whole or in part by the intention of the agent to recruit  
31 or solicit the athlete to enter an agency contract in the future; or  
32 (b) The agent directly or indirectly recruited or solicited the athlete to enter an agency  
33 contract before the enrollment.  
34 (6) An athlete agent shall give notice in a record to the athletic director of any educational  
35 institution at which a student athlete is enrolled before the agent communicates or attempts to  
36 communicate with:  
37 (a) The athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence  
38 the athlete or parent or guardian to enter into an agency contract; or  
39 (b) Another individual to have that individual influence the athlete or, if the athlete is a  
40 minor, the parent or guardian of the athlete to enter into an agency contract.  
41 (7) If a communication or attempt to communicate with an athlete agent is initiated by a student  
42 athlete or another individual on behalf of the athlete, the agent shall notify in a record the  
43 athletic director of any educational institution at which the athlete is enrolled. The  
44 notification must be made not later than ten (10) days after the communication or attempt.

- 1 (8) An educational institution that becomes aware of a violation of this chapter by an athlete  
2 agent shall notify the [bureau] and any professional league or players association with which  
3 the institution is aware the agent is licensed or registered of the violation.  
4

5 Section 11. [*Student athlete's right to cancel.*]

- 6 (1) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel  
7 an agency contract by giving notice in a record of cancellation to the athlete agent not later  
8 than fourteen (14) days after the contract is signed.  
9 (2) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may not  
10 waive the right to cancel an agency contract.  
11 (3) If a student athlete, parent or guardian cancels an agency contract, the athlete, parent or  
12 guardian is not required to pay any consideration under the contract or return any  
13 consideration received from the athlete agent to influence the athlete to enter into the  
14 contract.  
15

16 Section 12. [*Required records.*]

- 17 (1) An athlete agent shall create and retain for five (5) years records of the following:  
18 (a) The name and address of each individual represented by the agent;  
19 (b) Each agency contract entered into by the agent; and  
20 (c) The direct costs incurred by the agent in the recruitment or solicitation of each student  
21 athlete to enter into an agency contract.  
22 (2) Records described in subsection (1) of this section are open to inspection by the [bureau]  
23 during normal business hours.  
24

25 Section 13. [*Prohibited conduct.*]

- 26 (1) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a  
27 parent or guardian of the athlete to enter into an agency contract, may not take any of the  
28 following actions or encourage any other individual to take or assist any other individual in  
29 taking any of the following actions on behalf of the agent:  
30 (a) Give materially false or misleading information or make a materially false promise or  
31 representation;  
32 (b) Furnish anything of value to the athlete before the athlete enters into the contract; or  
33 (c) Furnish anything of value to an individual other than the athlete or another registered  
34 athlete agent.  
35 (2) An athlete agent may not intentionally do any of the following or encourage any other  
36 individual to do any of the following on behalf of the agent:  
37 (a) Initiate contact, directly or indirectly, with a student athlete or, if the athlete is a minor, a  
38 parent or guardian of the athlete, to recruit or solicit the athlete, parent or guardian to  
39 enter an agency contract unless registered under this chapter;  
40 (b) Fail to create or retain or to permit inspection of the records required by section 12;  
41 (c) Fail to register when required by section 3;  
42 (d) Provide materially false or misleading information in an application for registration or  
43 renewal of registration;  
44 (e) Predate or postdate an agency contract; or  
45 (f) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the  
46 athlete, before the athlete, parent or guardian signs an agency contract for a particular

1 sport that the signing may make the athlete ineligible to participate as a student athlete in  
2 that sport.

3  
4 Section 14. [*Criminal penalty.*]

5 An athlete agent who violates section 13 shall be guilty of a misdemeanor.

6  
7 Section 15. [*Civil remedy.*]

8 (1) An educational institution or student athlete may bring an action for damages against an  
9 athlete agent if the institution or athlete is adversely affected by an act or omission of the  
10 agent in violation of this chapter. An educational institution or student athlete is adversely  
11 affected by an act or omission of the agent only if, because of the act or omission, the  
12 institution or an individual who was a student athlete at the time of the act or omission and  
13 enrolled in the institution:

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

17 (b) Suffers financial damage.

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

22  
23 Section 16. [*Civil penalty.*]

24 The [bureau] may assess a civil penalty against an athlete agent not to exceed [twenty-five  
25 thousand dollars (\$25,000)] for a violation of this chapter.

26  
27 Section 17. [*Uniformity of application and construction.*]

28 In applying and construing this uniform act, consideration must be given to the need to promote  
29 uniformity of the law with respect to its subject matter among states that enact it.

30  
31 Section 18. [*Relation to Electronic Signatures in Global and National Commerce Act.*]

32 This chapter modifies, limits or supersedes the electronic signatures in global and national  
33 commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section  
34 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the  
35 notices described in section 103 (b) of that act, 15 U.S.C. section 7003(b).

36  
37 Section 19. [*Severability.*]

38 If any provision of this chapter or its application to any person or circumstance is held invalid,  
39 the invalidity does not affect other provisions or applications of this chapter that can be given  
40 effect without the invalid provision or application, and to this end the provisions of this chapter  
41 are severable.

# Senior Savings Protection Act

This Act permits certain individuals to report the occurrence or suspected occurrence of financial exploitation of qualified adults, defined as a person who is either 60 years of age or older or has a disability as defined under current law and is between the ages of 18 and 59. The Act permits certain individuals to notify an immediate family member, legal guardian, conservator, co-trustee, successor trustee, or agent under power of attorney of the qualified adult if they are of the belief that the qualified adult is, or may become, a victim of financial exploitation.

The Act permits certain individuals to refuse to make a disbursement from the account of a qualified adult or an account on which a qualified adult is a beneficiary or beneficial owner if the individual reasonably believes the request will result in financial exploitation. If the individual refuses disbursement, he or she must make a reasonable effort to notify all parties authorized to transact business on the account of such refusal within two business days. The individual must further notify the Department of Health and Senior Services and the Commissioner of Securities within three business days. The Act grants immunity from civil liability when complying with the provisions of this act with reasonable care and good faith.

Submitted as:

Missouri

[SB 244](#)

Status: Signed into law on June 12, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]
- 2 (1) “Agencies”, the [department of health and senior services] and the [commissioner of
- 3 securities];
- 4 (2) “Agent”, an individual, other than a broker-dealer, who represents a broker-dealer in
- 5 effecting or attempting to effect purchases or sales of securities or represents an issuer in
- 6 effecting or attempting to effect purchases or sales of the issuer's securities. But a partner,
- 7 officer, or director of a broker-dealer or issuer, or an individual having a similar status or
- 8 performing similar functions is an agent only if the individual otherwise comes within the
- 9 term. The term does not include an individual excluded by rule adopted or order issued under
- 10 this act.
- 11 (3) “Broker-dealer”, a person engaged in the business of effecting transactions in securities for
- 12 the account of others or for the person's own account. The term does not include:
- 13 (A) An agent;
- 14 (B) An issuer;
- 15 (C) A bank, a trust company organized or chartered under the laws of this state, or a savings
- 16 institution, if its activities as a broker-dealer are limited to those specified in [Insert
- 17 citation.]

- 1 (4) “Financial exploitation”, the wrongful or unauthorized taking, withholding, appropriation, or  
2 use of money, real property, or personal property of a qualified adult;  
3 (5) “Immediate family member”, a spouse, child, parent, or sibling of a qualified adult;  
4 (6) “Qualified adult”:  
5 (a) A person sixty years of age or older; or  
6 (b) A person who:  
7 a. Has a disability, a mental or physical impairment that substantially limits one or more  
8 major life activities, whether the impairment is congenital or acquired by accident,  
9 injury or disease, where such impairment is verified by medical findings; and  
10 b. Is between the ages of eighteen and fifty-nine.  
11 (7) “Qualified individual”, a person associated with a broker- dealer who serves in a supervisory,  
12 compliance, or legal capacity as part of his or her job.  
13

14 Section 2. [*Financial exploitation of a qualified adult.*]

15 If a qualified individual reasonably believes that financial exploitation of a qualified adult has  
16 occurred, has been attempted, or is being attempted, the qualified individual may notify the  
17 agencies. Subsequent to notifying the agencies, an agent or qualified individual may notify an  
18 immediate family member, legal guardian, conservator, co-trustee, successor trustee, or agent  
19 under a power of attorney of the qualified adult of such belief.  
20

21 Section 3. [*Refusal of request for disbursement.*]

- 22 1. A qualified individual may refuse a request for disbursement from the account of a qualified  
23 adult, or an account on which a qualified adult is a beneficiary or beneficial owner, if:  
24 (1) The qualified individual reasonably believes that the requested disbursement will result in  
25 financial exploitation of the qualified adult; and  
26 (2) The broker-dealer or qualified individual:  
27 (a) Within two business days makes a reasonable effort to notify all parties authorized to  
28 transact business on the account orally or in writing, unless such parties are  
29 reasonably believed to have engaged in suspected or attempted financial exploitation  
30 of the qualified adult; and  
31 (b) Within three business days notifies the agencies.  
32 2. Any refusal of a disbursement as authorized by this section shall expire upon the sooner of:  
33 (1) The time when the broker-dealer or qualified individual reasonably believes that the  
34 disbursement will not result in financial exploitation of the qualified adult; or  
35 (2) Ten business days after the initial refusal of disbursement by the qualified individual.  
36 3. A court of competent jurisdiction may enter an order extending the refusal of a disbursement  
37 or any other protective relief.  
38

39 Section 4. [*Immunity from civil liability.*]

40 Notwithstanding any other provision of law to the contrary, a broker-dealer, agent, or qualified  
41 individual who, in good faith and exercising reasonable care, complies with sections 2 and 3  
42 shall be immune from any civil liability under those sections.

1 Section 5. [*Law enforcement access to records.*]

2 A broker-dealer may provide access to or copies of records that are relevant to the suspected  
3 financial exploitation of a qualified adult to the agencies or law enforcement. The records may  
4 include historical records or records relating to the most recent disbursement as well as  
5 disbursements that comprise the suspected financial exploitation of a qualified adult. All records  
6 made available to the agencies under this section shall not be considered a public record as  
7 defined under [Insert citation.]

8  
9 Section 6. [*Training resources.*]

10 No later than [Insert date], the [commissioner of securities] shall develop and make available a  
11 website that includes training resources to assist broker-dealers and agents in the prevention and  
12 detection of financial exploitation of qualified adults. Such resources shall include, at a  
13 minimum, indicators of financial exploitation of qualified adults and potential steps broker-  
14 dealers and agents may take to prevent suspected financial exploitation of qualified 8 adults as  
15 authorized by law.

# Ticket Bots

The use or sale of software with the purpose to interfere with or disrupt the operation of Internet ticket sales is found to be an unfair or deceptive act in trade or commerce and an unfair method of competition for the purposes of applying the Consumer Protection Act (CPA). The use or sale of applicable software is only a violation of the CPA if the user or seller knows or should know that the purpose of the software is to interfere with or disrupt ticket sales over the Internet.

Submitted as: [HB 1091](#)

Washington

Status: Signed into law on April 28, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. [*Intent.*]

2 It is the intent of the legislature to protect consumers and ticket sellers from software that  
3 simulates the action of a human being purchasing tickets from a ticket seller in order to evade  
4 controls and measures on a ticket seller's web site. The legislature is concerned by the use of  
5 software, commonly referred to as BOTs (web robots), to interfere with the operation of ticket  
6 sales over the internet, gaining unauthorized priority access to purchasing tickets, and thereby  
7 reducing access to the general public of online ticket sales at the intended original price. In order  
8 to protect consumers and ticket sellers, the legislature intends to prohibit acts and practices of  
9 persons that use or sell software to circumvent, thwart, interfere with, or evade a security  
10 measure, access control system, or other control or measure on a ticket seller's internet web site.  
11 It is not the intent of the legislature to interrupt the online ticket buying process established by  
12 the authorized ticket seller, including the distribution of tickets to season ticket holders.  
13

### 14 Section 2. [*Definitions.*]

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

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

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

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

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

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

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

- 1 (7) "Presale" means a sale of admission tickets at or below the price printed on the ticket by, or  
2 with the permission of, a ticket seller, prior to their release to the general public.
- 3 (8) "Promoter" means a person who organizes financing and publicity for an entertainment  
4 event.
- 5 (9) "Ticket seller" means a person that makes admission tickets available, directly or indirectly,  
6 at an initial presale or sale to the general public, and may include an owner or operator of a  
7 place of entertainment, a sponsor or promoter of an event, a sports team participating in an  
8 event, a fan club or affinity group, a theater company, a musical group, or similar participant  
9 in an event, or an employee or agent of any such person.

10  
11 Section 3. [*Ticket sellers – Internet Sales – Unauthorized Interference.*]

12 (1) A person may not:

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

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

22 (3) The legislature finds that the conduct described in subsection (1) of this section vitally affects  
23 the public interest for the purpose of applying the [Consumer Protection Act, [Insert  
24 citation.]] Using or selling software to circumvent, thwart, or evade a control or measure,  
25 which is used on a ticket seller's internet web site to ensure an equitable distribution of  
26 tickets, is not reasonable in relation to the development and preservation of business and is an  
27 unfair or deceptive act in trade or commerce and an unfair method of competition for the  
28 purposes of applying the [Consumer Protection Act, [Insert citation.]]

# Uniform Business Organizations Code (Note)

Since the early 1990s, the Uniform Law Commission (ULC) has promulgated, or in several cases, revised eight unincorporated business entity acts:

- Revised Uniform Partnership Act (1997)
- Revised Uniform Limited Partnership Act (2001)
- Revised Uniform Limited Liability Company Act (2006)
- Model Registered Agents Act (2006)
- Uniform Limited Cooperative Association Act (2007)
- Model Entity Transactions Act (2007)
- Revised Uniform Unincorporated Nonprofit Association Act (2008)
- Uniform Statutory Trust Entity Act (2009)

In 2006, the ULC authorized a project to integrate these eight into the Uniform Business Organizations Code (UBOC), using the same type of hub-and-spoke structure used in the Uniform Commercial Code. The project, known as the Harmonization of Business Entity Acts Project (Harmonization Project), involved four steps: (1) the creation of the Hub, which contains provisions such as definitions, filing requirements, etc., which appear in almost all of the eight statutes; (2) harmonizing and updating the eight acts (which also continue to exist as stand-alone acts); (3) making the stand-alone acts “Code-ready” by removing from each act all provisions contained in the Hub and all provisions contained in the Model Entity Transactions Act; and (4) compiling the UBOC, by converting the Code-ready acts into separate articles of the UBOC.

The ULC approved the Hub, which is Article 1 of the Uniform Business Organizations Code, in 2011. The harmonization of the unincorporated entities acts phase of the Harmonization Project was completed and approved in 2013. The integration of the various Code-ready acts into the UBOC was completed in 2015.

**Article 1 (Hub)** contains 50 definitions that apply to all the UBOC articles; basic provisions dealing with the filing of documents in the office of the Secretary of State (or equivalent state filing office); entity names and reservation and registration of entity names; the registered agent provisions in the Model Registered Agents Act; foreign entities; administrative dissolution and reinstatement provisions; miscellaneous provisions, including reservation of the power to amend or repeal the UBOC, effective date, severability and savings provisions, and the applicability of supplemental principles of law.

- Enacted in Idaho ([SB 1025](#), signed into law on April 3, 2015), Washington ([SB 5387](#), signed into law on May 6, 2015), and the District of Columbia ([Bill 19-532](#), signed into law on October 31, 2012).
- [Act Text](#) / [Act Summary](#)
- [Legislative Fact Sheet](#)

**Article 2**, is the **Model Entity Transaction Act (META)**, which contains intra- and inter-species merger, interest exchange, conversion, and domestication provisions for all forms of for-profit and nonprofit unincorporated and corporate entities. In most states, the statutes dealing with these types of reorganization transactions are incomplete, and in many cases, inconsistent.

Having a thorough and consistent statutory framework for these transactions in one statute is a significant benefit to lawyers and their business entity clients.

- Enacted in Alaska ([HB 57](#), signed into law on September 10, 2013), Arizona ([SB 1353](#), signed into law on April 21, 2014), Idaho ([SB 1025](#), signed into law on April 3, 2015), and Pennsylvania ([HB 2234](#), signed into law October 22, 2014).
- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)

**Article 3** is the [Uniform Partnership Act \(1997\) \(Last Amended 2013\)](#), minus the provisions that are in Articles 1 and 2 of the UBOC. The original Uniform Partnership Act was promulgated in 1914 and was enacted in all states except Louisiana, which has a European Civil Law General Partnership Act. The revised uniform act has been enacted in approximately two-thirds of the states. A general partnership is the default for-profit entity. A for-profit entity is a general partnership if the owners have not filed with the state filing office a document that states that the entity is an entity other than a general partnership. The main disadvantage of being a general partnership is that the owners are jointly and severally liable for the debts and other liabilities of the partnership that cannot be satisfied by the assets of the partnership. Part 9 of the revised uniform act authorizes the filing of a document that states that the partnership is a limited liability partnership (LLP). The principal advantage of being an LLP is that the owners have the same limited liability protection as shareholders of a corporation. The protection against personal liability is the reason many law firms and other professional businesses are LLPs.

- Enacted in Idaho ([SB 1025](#), signed into law on April 3, 2015) and Utah ([SB 21](#), signed into law on April 1, 2013).
- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)
- [Why States Should Adopt](#)

**Article 4** is the [Uniform Limited Partnership Act \(2001\) \(Last Amended 2013\)](#), minus the provisions that are in Articles 1 and 2 of the UBOC. All states have some version of the Uniform Limited Partnership Act. The initial version was promulgated in 1916. The revised harmonized act is specifically designed for real estate ventures and family businesses, which constitute the bulk of existing limited partnerships. The revised act also authorizes a limited liability limited partnership (LLLP), which provides limited liability to the general partners as well as to the limited partners.

- Enacted in Idaho ([SB 1025](#), signed into law on April 3, 2015), Mississippi ([SB 2310](#), signed into law on April 20, 2015), and Utah ([SB 21](#), signed into law on April 1, 2013).
- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)
- [Why States Should Adopt](#)

**Article 5** is the [\*\*Uniform Limited Liability Company Act \(2006\) \(Last Amended 2013\)\*\*](#), minus the provisions that are in Articles 1 and 2 of the UBOC. A limited liability company (LLC) is a relatively new form of business entity. Most states enacted their initial LLC act in the 1990s. In a very short time, LLCs became the most prevalent form of new business formation. Currently, the number of newly formed LLCs annually in most states is three times or more than the number of new corporations formed in the state. The harmonized 2013 version of the uniform act is a state-of-the-art LLC act which deals in a comprehensive manner with all the issues that must be taken into account in drafting an operating agreement and in advising the owners and creditors about problems that arise in the operation of LLCs. Many of the current state LLC acts are 20 or more years old, or are very incomplete, and in many cases, contain inconsistencies or provisions that have adverse unintended consequences. Enacting the 2013 version of the uniform act will provide a state with a clear, innovative, and practical statute for LLCs formed in the state.

- Enacted in Alabama ([HB 2](#), signed into law on March 4, 2014), Florida ([SB 1300](#), signed into law on June 14, 2013), Idaho ([SB 1025](#), signed into law on April 3, 2015), Minnesota ([HF 977](#), signed into law on April 11, 2014), North Dakota ([HB 1136](#), signed into law on April 15, 2015), South Dakota ([HB 1106](#), signed into law on February 27, 2013), Utah ([SB 21](#), signed into law on April 1, 2013), Vermont ([HB 310](#), signed into law on May 7, 2015), and Washington ([SB 5030](#), signed into law on May 7, 2015).
- [Act Text / Act Summary](#)
- [Legislative Summary](#)
- [Why States Should Adopt](#)

**Article 6** is the [\*\*Uniform Limited Cooperative Associations Act \(2007\) \(Last Amended 2013\)\*\*](#), minus the provisions in Articles 1 and 2 of the UBOC. The Uniform Limited Cooperative Associations Act (ULCAA) does not replace the state's existing cooperative acts. The ULCAA is different from most states' existing cooperative acts in that it authorizes a cooperative formed under its provisions to engage in any type of for-profit and nonprofit activity whereas the existing state cooperative acts generally restrict a cooperative to a single purpose such as agricultural products. The ULCAA also allows non-patrons to be on the cooperative's board, as long as the majority of the voting power is held by the patron members, and expands the possibilities of outside nonmember financing.

- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)
- [Why States Should Adopt](#)

**Article 7** is the [\*\*Uniform Unincorporated Nonprofit Association Act \(2008\) \(Last Amended 2013\)\*\*](#), minus the provisions that are in Articles 1 and 2 of the UBOC. A nonprofit activity is an unincorporated nonprofit association (UNA) if it has not been formed as a nonprofit corporation or as some other form of business under a statute that allows nonprofit activities. There are thousands of UNAs in every state, ranging from churches who cannot, or do not, want to incorporate to local little league teams and book clubs. Common law principles, including joint and several liability of the members for the debts and other liabilities of the UNA, provide the governing law of UNAs in most states; and statutory framework for UNAs is fragmentary. The Uniform Unincorporated Nonprofit Association Act (UUNAA) provides the same limited liability protection to the members of a UNA as shareholders of a corporation have and also contains a basic set of default governance provisions. In addition, the UUNAA has provisions

resolving many of the uncertainties under the common law, such as how to transfer real property to and from an UNA. The UUNAA has been enacted and has worked well in several states.

- Enacted in Kentucky ([HB 440](#), signed into law on March 20, 2015) and Pennsylvania ([SB 304](#), signed into law on July 9, 2013).
- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)
- [Why States Should Adopt](#)

**Article 8** is the [Uniform Statutory Trust Entity Act \(2009\) \(Last Amended 2013\)](#), minus the provisions that are in Articles 1 and 2 of the UBOC. Statutory trusts are widely used for mutual funds, securitization transactions and other non-operating business financing transactions. The Uniform Statutory Trust Entity Act (USTEA) provides a comprehensive modern statutory framework for statutory trusts. The USTEA also has provisions for series statutory trusts. Under this framework, a statutory trust can create one or more series without having to form separate entities. For example, a mutual fund series statutory trust can form any number of mutual funds under the initial filing it made to become a statutory trust.

- [Act Text / Act Summary](#)
- [Legislative Fact Sheet](#)
- [Why States Should Adopt](#)

It is contemplated that in the future the ULC and the American Bar Association (ABA) Business Law Section will approve the inclusion of the Model Business Corporation Act and the Model Nonprofit Corporation Act as part of the UBOC. Articles 9 and 10 are listed as “Reserved” for this purpose.

States can choose to enact the entire UBOC, or substantial portions of it, for example Articles 1-5 (the Hub, META, Uniform Partnership, Uniform Limited Partnership, and Uniform Limited Liability Company Acts) in a single bill or enact the individual stand-alone harmonized entity acts. Idaho enacted Articles 1-5 in a single bill in 2015. The Idaho act also included the basic provisions in the UUNAA and the existing Idaho for-profit and nonprofit corporation acts. States may also choose to enact one or more of the stand-alone entity acts and then enact the UBOC. This is what Utah did. Utah enacted one bill that contained the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Limited Liability Company Act. The Bar committee that reviewed the UBOC concluded that the lawyers in Utah would prefer to have independent all-inclusive acts rather than the UBOC approach of having separate Hub and META articles. The Idaho bar review committee, on the other hand, preferred the UBOC format.

Enacting the UBOC is not difficult, particularly by a state that already has one or more of the major stand-alone entity acts, such as the Uniform Limited Liability Company Act (2006). The issues warranting specific review are basically the same in all the articles. Thus, one bar association or legislative study review committee can review all the articles of the UBOC that are included in the proposed bill. This review process is much more efficient than having separate review committees for each act. Even though combining all or most of the harmonized acts into a single bill will result in a very long statute, the separate enactment of any of the stand-alone harmonized acts will also result in a long and complex act. In many states it will be easier

to go to the state legislature with one long bill than with long individual acts over a period of years.

Moreover, because the language in parallel provisions is the same in all the articles dealing with specific entities, it is a simple process to make sure that amendments to one provision are made in all the articles with similar provisions. Similarly, if a state has enacted the UBOC, an amendment can be made in the filing provisions or in the other provisions in Article 1 and it will no longer be necessary to make sure that the amendment is made in all the state's other entity acts, a process that often does not occur, leading to unintended inconsistent provisions in the state's entity acts.

# Uniform Real Property Transfer on Death Act

Asset-specific mechanisms for the non-probate transfer of property to a beneficiary at death are now common. The proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in payable on death (POD) bank accounts, are examples of personal property that can be automatically transferred to a named beneficiary. Millions of Americans have benefitted from this trend in modern law to recognize and support the use of non-probate transfers. However, until recently there was no similarly straightforward, inexpensive, and reliable means of passing real estate directly to a beneficiary at death outside of the probate process. This was a significant gap in the law; for many people in low- and middle-income families a home is the single most valuable asset in their estate.

The Uniform Real Property Transfer on Death Act (URPTODA) was first approved by the Uniform Law Commission in 2009. URPTODA enables an owner to pass real property to a beneficiary at the owner's death simply, directly, and without probate by executing and recording a TOD deed. Just as importantly, URPTODA permits the owner to retain all ownership rights in the property while living, including the right to sell the property, revoke the deed, or name a different beneficiary.

Key elements of URPTODA include:

- The TOD deed is not subject to the statute of wills and passes title directly to the named beneficiary without probate.
- The TOD deed must contain all of the essential elements and formalities of any other properly recordable deed.
- The TOD deed must be signed by the transferor and properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located.
- The capacity required to create a TOD deed is the same as the capacity to make a will.
- A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording a revocatory instrument such as a direct revocation of the TOD deed, or a subsequent TOD deed that names a different beneficiary. If the transferor sells the property while living, the TOD deed is ineffective.
- Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD deed creates no legal or equitable interest in the designated beneficiary; it does not affect the designated beneficiary's eligibility for public assistance; it does not subject the property to the designated beneficiary's creditors.
- At the time of the transferor's death, title to the property is transferred automatically to the beneficiary, subject to any conveyances, encumbrances, assignments, liens, or other interests in the property. In other words, the beneficiary receives only the interest that the transferor owned at the time of death, and the holders of any security interests in the property are protected.
- The beneficiary is liable for claims against the transferor's estate only when the estate is insolvent.
- The beneficiary may disclaim all or part of the transferred interest in the same manner as state law permits for any other testamentary devise.
- URPTODA includes optional TOD deed and revocation forms that each state legislature may choose whether to enact.

Submitted as:  
District of Columbia  
[B19-0753 / Uniform Act](#)  
Status: Signed into law on November 20, 2012.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. [*Definitions.*]

2 For the purposes of this subchapter, the term:

3 (1) “Beneficiary” means a person that receives property under a transfer on death deed.

4 (2) “Designated beneficiary” means a person designated to receive property in a transfer on  
5 death deed.

6 (3) “Joint owner” means an individual who owns property concurrently with one or more  
7 other individuals with a right of survivorship. The term “joint owner” includes a joint  
8 tenant and tenancy by the entirety. The term “joint owner” does not include a tenancy in  
9 common.

10 (4) “Person” means an individual, estate, business or nonprofit entity, public corporation,  
11 government or governmental subdivision, agency, or instrumentality, or any other legal  
12 entity.

13 (5) “Property” means an interest in real property located in the District of Columbia, which is  
14 transferable on the death of the owner.

15 (6) “Transfer on death deed” means a deed authorized under this subchapter.

16 (7) “Transferor” means an individual who makes a transfer on death deed.  
17

### 18 Section 2. [*Applicability.*]

19 This subchapter applies to a transfer on death deed made before, on, or after the effective date of  
20 this subchapter by a transferor dying on or after the effective date of this subchapter.  
21

### 22 Section 3. [*Nonexclusivity.*]

23 This subchapter does not affect any method of transferring property otherwise permitted under  
24 the law of the [District of Columbia].  
25

### 26 Section 4. [*Transfer on death deed authorized.*]

27 An individual may transfer property to one or more beneficiaries effective at the transferor’s  
28 death by a transfer on death deed.  
29

### 30 Section 5. [*Transfer on death deed revocable.*]

31 A transfer on death deed is revocable under section 10 even if the deed or another instrument  
32 contains a contrary provision.  
33

### 34 Section 6. [*Transfer on death deed nontestamentary.*]

35 A transfer on death deed is nontestamentary.

1 Section 7. [*Capacity of transferor.*]

2 The capacity required to make or revoke a transfer on death deed is the same as the capacity  
3 required to make a will.  
4

5 Section 8. [*Requirements.*]

6 (a) Except as provided in subsection (b) of this section, a transfer on death deed shall contain the  
7 essential elements and formalities of a properly recordable inter vivos deed.

8 (b) A transfer on death deed shall state that the transfer to the designated beneficiary is to occur  
9 at the transferor's death.

10 (c) A transfer on death deed shall be recorded before the transferor's death in the Office of  
11 Recorder of Deeds.  
12

13 Section 9. [*Notice, delivery, acceptance, consideration not required.*]

14 A transfer on death deed is effective without:

15 (1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's  
16 life; or

17 (2) Consideration.  
18

19 Section 10. [*Revocation by instrument authorized; revocation by act not permitted.*]

20 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded  
21 transfer on death deed, or any part of it, only if the instrument:

22 (1) Is one of the following:

23 (A) A transfer on death deed that revokes the deed or part of the deed expressly or by  
24 inconsistency;

25 (B) An instrument of revocation that expressly revokes the deed or part of the deed; or

26 (C) An inter vivos deed that expressly revokes the transfer on death deed or part of the  
27 deed; and

28 (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked  
29 and recorded before the transferor's death in the public records in the Office of the  
30 Recorder of Deeds.

31 (b) If a transfer on death deed is made by more than one transferor:

32 (1) Revocation by a transferor does not affect the deed as to the interest of another transferor;  
33 and

34 (2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

35 (c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the  
36 deed.

37 (d) This section does not limit the effect of an inter vivos transfer of the property.  
38

39 Section 11. [*Effect of transfer on death deed during transferor's life.*]

40 During a transferor's life, a transfer on death deed does not:

41 (1) Affect an interest or right of the transferor or any other owner, including the right to  
42 transfer or encumber the property;

43 (2) Affect an interest or right of a transferee, even if the transferee has actual or constructive  
44 notice of the deed;

45 (3) Affect an interest or right of a secured or unsecured creditor or future creditor of the  
46 transferor, even if the creditor has actual or constructive notice of the deed;

- (4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- (5) Create a legal or equitable interest in favor of the designated beneficiary; or
- (6) Subject the property to claims or process of a creditor of the designated beneficiary.

Section 12. [*Effect of transfer on death deed at transferor's death.*]

- (a) Except as otherwise provided in the transfer on death deed, in this section, or in [Insert citations - antilapse, revocation by divorce or homicide, survival and simultaneous death, and elective share, if applicable to nonprobate transfers], on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:
  - (1) Subject to paragraph (2) of this section, the interest in the property is transferred to the designated beneficiary in accordance with the deed.
  - (2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest lapses if a designated beneficiary fails to survive the transferor.
  - (3) Subject to paragraph (4) of this section, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.
  - (4) If the transferor has identified 2 or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.
- (b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.
- (c) If a transferor is a joint owner and is survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship.
- (d) If a transferor is a joint owner and is the last surviving joint owner, the transferon death-deed is effective.
- (e) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

Section 13. [*Disclaimer.*]

A beneficiary may disclaim all or part of the beneficiary's interest as provided by Chapter 15 of this title.

Section 14. [*Liability for creditor claims and statutory allowances.*]

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [Insert citation.]

Section 15. [*Optional form of transfer on death deed.*]

The following form may be used to create a transfer on death deed. The other sections of this subchapter govern the effect of this or any other instrument used to create a transfer on death deed:

REVOCABLE TRANSFER ON DEATH DEED  
NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name	Mailing address
--------------	-----------------

Printed name	Mailing address
--------------	-----------------

Legal description of the property:

\_\_\_\_\_

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed name	Mailing address, if available
--------------	-------------------------------

ALTERNATE BENEFICIARY – Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

Printed name	Mailing address, if available
--------------	-------------------------------

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

Signature	[(SEAL)]	Date
-----------	----------	------

Signature	[(SEAL)]	Date
-----------	----------	------

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

### COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each [county] where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the “legal description” of the property necessary? Yes.

How do I find the “legal description” of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in [the office of the county recorder of deeds] for the [county] where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I “record” the TOD deed? Take the completed and acknowledged form to [the office of the county recorder of deeds] of the [county] where the property is located. Follow the instructions given by the [county recorder] to make the form part of the official property records. If the property is in more than one [county], you should record the deed in each [county].

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each [county] where the property is located. (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each [county] where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.]

1 Section 16. [Optional form of revocation.]

2 The following form may be used to create an instrument of revocation under this subchapter.  
3 The other sections of this subchapter govern the effect of this or any other instrument used to  
4 revoke a transfer on death deed.

5  
6 (front of form)

7 REVOCATION OF TRANSFER ON DEATH DEED

8 NOTICE TO OWNER

9 This revocation must be recorded before you die or it will not be effective. This revocation is  
10 effective only as to the interests in the property of owners who sign this revocation.

11  
12 IDENTIFYING INFORMATION

13 Owner or Owners of Property Making This Revocation:

14  
15 \_\_\_\_\_  
16 Printed name

\_\_\_\_\_ Mailing address

17  
18 \_\_\_\_\_  
19 Printed name

\_\_\_\_\_ Mailing address

20 Legal description of the property:  
21 \_\_\_\_\_

22 REVOCATION

23 I revoke all my previous transfers of this property by transfer on death deed.

24  
25 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

26 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

27 Signature

\_\_\_\_\_ Date

28 \_\_\_\_\_ [(SEAL)] \_\_\_\_\_

29 Signature

\_\_\_\_\_ Date

30  
31 ACKNOWLEDGMENT

32 (insert acknowledgment here)

33  
34 (back of form)

35 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

36  
37 How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it  
38 acknowledged before a notary public or other individual authorized to take acknowledgments.  
39 Record the form in the public records in [the office of the county recorder of deeds] of each  
40 [county] where the property is located. The form must be acknowledged and recorded before  
41 your death or it has no effect.

42  
43 How do I find the “legal description” of the property? This information may be on the TOD  
44 deed. It may also be available in [the office of the county recorder of deeds] for the [county]  
45 where the property is located. If you are not absolutely sure, consult a lawyer.

1 How do I “record” the form? Take the completed and acknowledged form to [the office of the  
2 county recorder of deeds] of the [county] where the property is located. Follow the instructions  
3 given by the [county recorder] to make the form part of the official property records. If the  
4 property is located in more than one [county], you should record the form in each of those  
5 [counties].

6  
7 I am being pressured to complete this form. What should I do? Do not complete this form under  
8 pressure. Seek help from a trusted family member, friend, or lawyer.

9  
10 I have other questions about this form. What should I do? This form is designed to fit some but  
11 not all situations. If you have other questions, consult a lawyer.]

12  
13 Section 17. [*Uniformity of application and construction.*]

14 In applying and construing this uniform act, consideration must be given to the need to promote  
15 uniformity of the law with respect to its subject matter among the states that enact it.

16  
17 Section 18. [*Relation to Electronic Signatures in Global and National Commerce Act.*]

18 This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National  
19 Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.) (“Electronic  
20 Signatures Act”), but does not modify, limit, or supersede section 101(c) of the Electronic  
21 Signatures Act, or authorize electronic delivery of any of the notices described in section 103(b)  
22 of the Electronic Signatures Act.

23  
24 Section 19. [*Conforming Amendments.*]

# Uniform Trust Decanting Act (Statement)

“Decanting” is the term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the settlor’s intent. The Uniform Trust Decanting Act (UTDA) permits decanting for appropriate purposes while preventing abuse and preserving the intent of the settlor.

Because decanting is an exercise of the trustee’s discretion and does not require beneficiaries to consent, certain tax penalties that would otherwise apply can be avoided. Every state allows decanting in some form, but only some states have statutes governing decanting, and those vary widely.

The UTDA includes one stricter set of rules that apply when the settlor gave the trustee limited discretion over distributions, and another more liberal set of rules that apply when the trustee has expanded discretion. In both cases, the person exercising the decanting power is subject to all applicable fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

When the trustee has limited discretion over distributions, decanting is permitted for administrative or tax purposes, but the beneficial interests under the second trust instrument must be substantially similar to the beneficial interests under the first trust. In other words, the trustee may not exercise the decanting power to reduce or eliminate the interest of any beneficiary. However, if the trustee already has expanded discretion to reduce or eliminate the interest of beneficiaries under the terms of the first trust, the UTDA provides more flexibility.

One common reason for decanting is to provide for a beneficiary who becomes disabled after the settlor executed the first trust. If the settlor did not anticipate the possibility of disability, the beneficiary may be ineligible for governmental benefits that would otherwise be available. Section 13 of the UTDA gives additional flexibility to trustees in those cases.

The UTDA limits decanting when it would defeat a charitable or tax-related purpose of the settlor, and Section 14 provides for prior notice to the state official that is responsible for protecting charitable interests. Section 16 prohibits decanting for the purpose of adjusting trustee compensation without the unanimous consent of the beneficiaries or court approval.

## ***Overview of the Act:***

Sections 1 through 6 of the act deal with the scope and application of the act, fiduciary duty and definitions. Section 1 names the act. Section 2 contains definitions. Definitions of terms used only in one Section are found within that Section. Section 3 addresses the types of trusts to which the act applies (or does not apply) and Section 5 describes the connections to the adopting state that are sufficient for a trust to utilize the act. Section 4 addresses fiduciary duty in exercising or not exercising the decanting power. Section 6 addresses reliance on prior decantings, including decantings performed under other states’ laws.

Sections 7 through 10 of the act deal with the procedures for exercising the decanting power. Section 7 sets forth the notice requirements for decanting. Section 8 is an optional provision dealing with representation of beneficiaries, including the representation of certain charitable interests by the state's Attorney General or other appropriate official. Section 9 describes the authority of the court with respect to decanting. Section 10 describes the formalities for decanting.

Sections 11 through 23 contain the heart of the decanting power and describe what modifications can be made by decanting. Section 11 delineates the decanting power when the authorized fiduciary has expanded distributive discretion and Section 12 delineates the decanting power when the authorized fiduciary has limited distributive discretion.

Section 13 contains special rules to facilitate decanting into a special-needs trust for a beneficiary with a disability. The Uniform Trust Decanting Act permits a trust to be decanted to modify the interest of the beneficiary with a disability even if the trustee does not have expanded distributive discretion. When a trust has a beneficiary with a disability, it may not be in the beneficiary's interest to make mandatory distributions to the beneficiary. Further, it may be in the beneficiary's interest to restructure the trust as a special-needs trust so that the trust does not adversely affect the beneficiary's qualification for governmental benefits. This carries out the settlor's probable intent if the settlor had known of the beneficiary's disability.

Section 14 provides special rules to protect charitable interests.

Sections 15 through 20 generally provide limitations on the exercise of the decanting power. Section 15 addresses how express restrictions contained within the first-trust instrument may limit the decanting power. Sections 16, 17, and 18 impose limitations on an authorized fiduciary exercising the decanting power in ways that might be considered self-dealing. Section 16 restricts decanting to increase the authorized fiduciary's compensation. Section 17 restricts decanting to increase the authorized fiduciary's protection from liability. Section 18 restricts the modification or elimination of a provision permitting a person to remove or replace the authorized fiduciary. Section 19 imposes limitations on the decanting power that may be necessary to avoid disqualifying a trust for a particular tax benefit. Section 20 addresses limits on the duration of a trust, such as the rule against perpetuities.

Section 21 makes clear that even though the extent of the authorized fiduciary's power to decant is generally determined based upon the degree of discretion over principal distributions, the authorized fiduciary may exercise the decanting power even if the authorized fiduciary would not have made a discretionary distribution at such time.

Section 22 contains the remediation provision that is intended to salvage imperfect decantings. Section 23 authorizes under certain circumstances decanting of trusts for the care of a nonhuman animal.

Sections 24 through 32 contain miscellaneous provisions. These provisions include Section 25, which recognizes that when a trust has been decanted it may no longer be obvious who is the settlor for different purposes and addresses who should be treated as the settlor for different

purposes. Section 26 provides a default rule for determining whether the first trust or second trust owns later-discovered property. Section 27 makes clear that liabilities of the first trust are also liabilities of the second trust to the extent it received property from the first trust.

Submitted as:

New Mexico

[HB 280, \(Uniform Law Commission Act\)](#)

Status: Signed into law on March 8, 2016.

## Accommodations for School Attendance for Children Certified for the Medical Use of Marijuana

A child who holds a written certification for the medical use of marijuana may not be denied eligibility to attend school solely because the child requires medical marijuana in a nonsmokeable form as a reasonable accommodation necessary for the child to attend school. The Act also allows primary caregivers to possess and administer marijuana in a nonsmokeable form in a school bus and on the grounds of a school in which a minor qualifying patient is enrolled.

Submitted as:

Maine

[LD 557 / HP 381](#)

Status: Governor's veto overridden on June 30, 2015.

### Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Eligibility to attend school.*]

A child who holds a written certification for the medical use of marijuana under [*Insert citation – medical marijuana - authorized conduct by a medical provider.*] may not be denied eligibility to attend school solely because the child requires medical marijuana in a nonsmokeable form as a reasonable accommodation necessary for the child to attend school.

Section 2. [*Medical Use of Marijuana Act – scope -- limitations.*]

1. Limitations. This chapter does not permit any person to:

A. Except as provided in section 3, possess marijuana or otherwise engage in the medical use of marijuana:

(1) In a school bus;

(2) On the grounds of any preschool or primary or secondary school; or

(3) In any correctional facility;

Section 3. [*Medical Use of Marijuana Act – scope -- school exceptions.*]

Notwithstanding section 2, a primary caregiver designated pursuant to [*Insert citation – Medical Use of Marijuana Act – authorized conduct for the medical use of marijuana – primary caregiver*] may possess and administer marijuana in a nonsmokeable form in a school bus and on the grounds of the preschool or primary or secondary school in which a minor qualifying patient is enrolled only if:

A. A medical provider has provided the minor qualifying patient with a current written certification for the medical use of marijuana under this chapter; and

B. Possession of marijuana in a nonsmokeable form is for the purpose of administering marijuana in a nonsmokeable form to the minor qualifying patient.

# College Credit Based on Military Training

The Act directs the Higher Education Department (HED) to work with the state's colleges and universities to apply skills and knowledge gained from military service to academic and career training credit. The Act seeks to provide a more unified approach from the state's colleges and universities to granting college credit for skills and training from military service.

Submitted as: [SB 153](#)

New Mexico

Status: Signed into law on February 26, 2016.

## Shared State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Consistent policy and articulation agreement regarding the evaluation and award of*
- 2 *college credit based on military training.*]
- 3 The higher education department, in coordination with the institutions of higher education in
- 4 [state], shall study, create and implement a consistent policy and develop a single articulation
- 5 agreement for the state, regarding the evaluation and award of academic credit based on an active
- 6 duty member of the United States military or a veteran's military training and experience toward
- 7 associate's, bachelor's, master's and doctoral degrees. The department shall present a report on
- 8 the policy, its implementation and the articulation agreement to the [military and veterans' affairs
- 9 committee] and the [legislative education study committee] by [Insert date.]

# Student Due Process

The Act provides students enrolled in the state's public colleges and universities the right to be represented at their expense by an attorney or advocate in non-academic suspension and expulsion hearings. It also requires a uniform policy for disciplinary proceedings across all North Dakota University System campuses. The Act also allows suspended or expelled students to appeal the university's decision, and to be reimbursed for tuition and fees paid during the period of suspension or expulsion if the appeal is successful

Submitted as:

North Dakota

[SB 2150](#)

Status: Signed into law on April 22, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Disciplinary proceedings - Right to counsel for students and organizations – Appeals.*]

1. Any student enrolled at an institution under the control of the state board of higher education has the right to be represented, at the student's expense, by the student's choice of either an attorney or a nonattorney advocate, who may fully participate during any disciplinary proceeding or during any other procedure adopted and used by that institution to address an alleged violation of the institution's rules or policies. This right applies to both the student who has been accused of the alleged violation and to the student who is the accuser or victim. This right only applies if the disciplinary proceeding involves a violation that could result in a suspension or expulsion from the institution. This right does not apply to matters involving academic misconduct. Before the disciplinary proceeding is scheduled, the institution shall inform the students in writing of the students' rights under this section.
2. Any student organization officially recognized by an institution under the control of the state board of higher education has the right to be represented, at the student organization's expense, by the student organization's choice of either an attorney or nonattorney advocate, who may fully participate during any disciplinary proceeding or during any other procedure adopted and used by the institution to address an alleged violation of the institution's rules or policies. This right only applies if the disciplinary proceeding involves a violation that could result in the suspension or the removal of the student organization from the institution. This right applies to both the student organization that has been accused of the alleged violation and to the accuser or victim.
3.
  - a. Any student who is suspended or expelled from an institution under the control of the state board of higher education for a violation of the rules or policies of that institution and any student organization that is found to be in violation of the rules or policies of that institution must be afforded an opportunity to appeal the institution's initial decision to an institutional administrator or body that did not make the initial decision for a period of one year after receiving final notice of the institution's decision. The right to appeal the

- 1 result of the institution's disciplinary proceeding also applies to the student who is the  
2 accuser or victim.
- 3 b. The right of the student or the student organization under subsection 1 or 2 to be  
4 represented, at the student's or the student organization's expense, by the student's or the  
5 student organization's choice of either an attorney or a nonattorney advocate, also applies  
6 to the appeal.
- 7 c. The issues that may be raised on appeal include new evidence, contradictory evidence,  
8 and evidence that the student or student organization was not afforded due process. The  
9 institutional body considering the appeal may consider police reports, transcripts, and the  
10 outcome of any civil or criminal proceeding directly related to the appeal.
- 11 4. Upon consideration of the evidence, the institutional body considering the appeal may grant  
12 the appeal, deny the appeal, order a new hearing, or reduce or modify the suspension or  
13 expulsion. If the appeal results in the reversal of the decision or a lessening of the sanction,  
14 the institution may reimburse the student for any tuition and fees paid to the institution for  
15 the period of suspension or expulsion which had not been previously refunded.
- 16 5. For purposes of this section, "fully participate" includes the opportunity to make opening and  
17 closing statements, to examine and cross-examine witnesses, and to provide the accuser or  
18 accused with support, guidance, and advice. This section does not require an institution to  
19 use formal rules of evidence in institutional disciplinary proceedings. The institution,  
20 however, shall make good faith efforts to include relevant evidence and exclude evidence  
21 which is neither relevant or probative.
- 22 6. This section does not affect the obligation of an institution to provide equivalent rights to a  
23 student who is the accuser or victim in the disciplinary proceeding under this section,  
24 including equivalent opportunities to have others present during any institutional disciplinary  
25 proceeding, to not limit the choice of attorney or nonattorney advocate in any meeting or  
26 institutional disciplinary proceeding, and to provide simultaneous notification of the  
27 institution's procedures for the accused and the accuser or victim to appeal the result of the  
28 institutional disciplinary proceeding.

29  
30 Section 2. *[State Board of Higher Education to develop policy – report to legislative*  
31 *management.]*

32 The state board of higher education shall develop and implement a procedure for student and  
33 student organization disciplinary proceedings which is applied uniformly to all institutions under  
34 the control of the state board of higher education. Before [insert date], the state board of higher  
35 education shall report to the legislative management on the status of the implementation of the  
36 uniform procedure.

# Student Loan Consumer Protection (Note)

By Jennifer Horne, associate director of policy and special libraries

According to the Consumer Finance Protection Bureau, 41 million Americans owe more than \$1.2 trillion, surpassing the amount of credit card debt and car loans, and making student loan debt the second-largest class of consumer debt after mortgages. The average debt has grown by almost 60 percent since 2007, from \$18,000 to nearly \$30,000. More than one in four loan borrowers are now delinquent or in default on a student loan.

High levels of student loan debt can negatively affect the savings and spending habits of the borrower, and also have negative effects on the economy as a whole.

States have taken several approaches to help borrowers, including ensuring that borrowers better understand the obligations they are taking on and regulating student loan servicers who manage accounts, process payments, and communicate directly with borrowers. There are currently no federal standards for student loan servicers.

A 2015 [report](#) from the Consumer Financial Protection Bureau described the types of problems reported by borrowers when dealing with their student loan servicers, including difficulties accessing information about their loans, inaccurate billing statements, difficulties rectifying errors, surprise fees, confusion following servicing transfers, and roadblocks to refinancing to lower-interest loans.

In 2013, Oklahoma lawmakers passed the Private Student Loan Transparency and Improvement Act ([HB 1829](#) (Sections 8 through 11)). The law prohibits private education lenders from:

- Offering or providing gifts to a covered educational institution in exchange for any advantage or consideration for the lender;
- Providing items of value to an employee of a covered educational institution that serves on an advisory board, commission or group established by the private lender;
- Engaging in revenue sharing with a covered educational institution;
- Offering a student any tangible item to induce him/her to apply for a credit plan, if the offer is made on or near the campus or at an event sponsored by the college or university.
- Using the name, emblem, mascot or logo associated with the covered educational institution to market private education loans in a way that implies that the covered educational institution endorses the loans offered by the lender; and
- Imposing a fee for early repayment or prepayment.

The Act also requires the lender of any private education loans to disclose to the borrower, “clearly and conspicuously” the following information:

- The term of the loan and interest rate, including the potential range of interest applicable to the loan, whether the rate is fixed or variable and limitation on rate adjustments;
- Fees and finance charges, including late fees and penalties;
- A good-faith estimate of the total cost of the loan over its life;
- The availability of federal student financial assistance and associated interest rates;

The Act also establishes the timeline for accepting a loan and disbursement of funds. During the 30 days after loan approval and receipt of the required disclosures, a lender can only change the interest rate based on adjustments to the index used for the loan.

In 2015, Indiana lawmakers passed a bill ([HB 1042](#)) that requires postsecondary educational institutions that enroll students who receive state financial aid to annually provide each student with certain information concerning the student's education loans. It provides that an eligible institution does not incur liability for any information provided to students.

Under the law, colleges and universities must provide students with specific information about their loans, including:

- An estimate of the total amount of education loans the student has taken out.
- An estimate of the potential total amount the student will owe.
- An estimate of the monthly repayment amounts that a similarly situated borrower might encounter, including principal and interest.
- An estimate of the percentage of the borrowing limit the student has reached.

The law is modeled after a similar program at Indiana University's Bloomington campus, where federal Stafford Loan disbursements dropped by 11 percent, or \$31 million, in the first nine months after implementation.

In 2015, Connecticut passed comprehensive legislation ([HB 6915](#)) known as the "Student Loan Bill of Rights." The law has three main components:

- Requires student loan servicers be licensed by the state Department of Banking to ensure that they offer sufficient consumer protections. The law exempts banks and credit unions from the licensure requirements.
- Establishes an ombudsman's office within the Department of Banking. Funded by fees paid by student loan servicers, the ombudsman will track and assist borrowers in any complaints about the loan repayment process. The office may conduct investigations and examinations and take enforcement action against violators.
- Creation of a borrower education and information course for students and their families so that they will better understand the loan process and their obligations before taking out a loan.

In 2016, California lawmakers passed similar legislation ([AB 2251](#)), the Student Loan Servicing Act. According to sponsor Assemblyman Mark Stone, the bill will help ensure that "student loan borrowers have reliable information, receive quality customer service, and have meaningful access to repayment and loan forgiveness programs."

The law, which takes effect in 2016, will create a program within the Department of Business Oversight (DBO) to license student loan servicers that are not banks or credit unions, allowing for additional oversight and regulatory authority over the student loan process. The DBO may conduct investigations and examinations to determine servicer compliance.

The bill establishes new consumer protections designed to protect borrowers, including prohibiting servicers from directly or indirectly employing any scheme, device, or artifice to defraud or mislead a student loan borrower; requiring that student loan servicers clearly explain loan terms to the borrower; and prohibiting servicers from knowingly misapplying or recklessly applying payments.

# Student Online Personal Information Protection

The Act governs how online service providers can collect, access, and use student data and prohibits online service providers from using student data for commercial or secondary purposes, while still allowing for personalized learning and service innovation and improvement. This law will allow educators to use online services while still safeguarding student privacy.

Submitted as:

Arkansas

[HB 1961](#)

Status: Signed into law on April 7, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Student Online Personal Information Act.*]

2 (a) As used in this section:

3 (1) “Covered information” means personally identifiable information or materials regarding  
4 a public school student in this state, in any media or format, when the information is:

5 (A) Created or provided by a student or the student's parent or guardian, to an operator in  
6 the course of the student's, parent's, or guardian's use of the operator's website,  
7 service, or application;

8 (B) Created or provided by an employee or agent of a public school, school district, local  
9 education agency, or Department of Education to the operator for public school  
10 purposes; or

11 (C) Gathered by an operator through the operation of the website, service, or application  
12 and personally identifies a student, including without limitation a student's:

13 (i) First and last name;

14 (ii) Email address;

15 (iii) Home address;

16 (iv) Telephone number;

17 (v) Discipline records;

18 (vi) Test results;

19 (vii) Special education data;

20 (viii) Juvenile dependency records;

21 (ix) Grades;

22 (x) Medical or health records;

23 (xi) Social Security number;

24 (xii) Biometric information;

25 (xiii) Socioeconomic information;

26 (xiv) Political affiliations;

27 (xv) Religious information;

28 (xvi) Student identifiers;

29 (xvii) Search activity, photos, voice recordings; or

30 (xviii) Geolocation information;

- 1 (2) Public school purpose means a purpose that customarily takes place at the direction of the  
2 public school teacher, administrator, or superintendent to aid in the administration of  
3 school activities primarily for the use and benefit of the school, including without  
4 limitation:  
5 (A) Instruction in the classroom or at home;  
6 (B) Administrative activities; or  
7 (C) Collaboration between student, school personnel, or parents;  
8 (3)  
9 (A) “Operator” means, to the extent that the owner is operating in the capacity defined  
10 under this subdivision (a)(3), owner of an Internet website, online service, online  
11 application, or mobile application with actual knowledge that the website, service, or  
12 application is:  
13 (i) Used primarily for public school purposes;  
14 (ii) Designed and marketed for public school purposes; and  
15 (iii) Operating at capacity.  
16 (B) An operator does not include the Department of Education, a school district, or an  
17 open-enrollment public charter school; and  
18 (4)  
19 (A) “Targeted advertising” means presenting advertisements to a student where the  
20 advertisement is selected based on information obtained or inferred from a student's  
21 online behavior, usage of applications, or covered information.  
22 (B) “Targeted advertising” does not include advertising to a student at an online location  
23 based on a student's current visit to that online location or using the search query,  
24 without the collection and retention of the student's online activities over time.  
25 (b) An operator shall not engage knowingly in the following activities with respect to the  
26 website, service, or application:  
27 (1) Target advertising when the targeting of the advertising is based on any covered  
28 information that the operator has acquired because of the use of the operator's website,  
29 service or application;  
30 (2)  
31 (A) Create or gather covered information obtained by the operator's website, service, or  
32 application to compile a profile about a public school student except in furtherance of  
33 public school purposes.  
34 (B) Compiling a profile does not include the collection and retention of account  
35 registration records or information that remains under the control of a student, parent,  
36 public school, or school district;  
37 (3) Sell a public school student's covered information, other than with respect to the  
38 purchase, merger, or other acquisition of an operator by another entity provided that the  
39 other entity is subject to the provisions of this section with respect to previously acquired  
40 student information that is subject to this section;  
41 (4) Disclose covered information of a public school student unless the disclosure is:  
42 (A) Done in furtherance of public school purposes or to allow or improve operation and  
43 functionality within the student's classroom or school;

- 1 (B) Necessary disclosure to:
- 2 (i) Ensure legal or regulatory compliance or protect against liability;
- 3 (ii) Respond to or participate in the judicial process; or
- 4 (iii) Protect the safety or integrity of users or others or the security of the website,
- 5 service, or application;
- 6 (C) Done to a service provider, if the operator contractually:
- 7 (i) Prohibits the service provider from using any covered information for any
- 8 purpose other than providing the contracted service to or on behalf of the
- 9 operator;
- 10 (ii) Prohibits the service provider from disclosing any covered information
- 11 provided by the operator with subsequent third parties, unless the disclosure is
- 12 expressly permitted under this section; and
- 13 (iii) Requires the service provider to implement and maintain reasonable security
- 14 procedures and practices as provided under subsection (d) of this section; or
- 15 (D) Done for the public school, educational, or employment purpose requested by the
- 16 student or the student's parent or guardian, provided that the information is not used
- 17 or further disclosed for any other purpose.
- 18 (c) Subsection (b) does not prohibit an operator from using covered information to maintain,
- 19 develop, support, improve, or diagnose the operator's website, service or application.
- 20 (d) An operator shall:
- 21 (1) Implement and maintain reasonable security measures that are appropriate to the nature
- 22 of the covered information obtained and protect the covered information from
- 23 unauthorized access, destruction, use, modification, or disclosure; and
- 24 (2) Delete a public school student's covered information within a reasonable time frame if the
- 25 school or school district requests the deletion of covered information under the control of
- 26 the public school or school district.
- 27 (e) Subdivisions (b)(1), (2), and (4) of this section shall not be construed to prohibit the use or
- 28 disclosure of covered information with the affirmative consent of the public school, the
- 29 student, or the student's parent or guardian in response to clear and conspicuous notice of the
- 30 use or disclosure.
- 31 (f) Notwithstanding subdivision (b)(4), an operator may disclose covered information of a public
- 32 school student under the following circumstances;
- 33 (1) If other provisions of federal or state law require the operator to disclose the covered
- 34 information and the operator complies with the applicable requirements of federal and
- 35 state law in protecting and disclosing the covered information;
- 36 (2) For legitimate research purposes:
- 37 (A) As required by federal or state law and subject to the restrictions under the applicable
- 38 federal or state law;
- 39 (B) As allowed by federal or state law and under the direction of a school, school district,
- 40 or Department of Education if no covered information is used for advertising or to
- 41 compile a profile of a public school student; or
- 42 (C) As permitted by federal or state law, to a state or local educational agency, including
- 43 a school or school district, for public school purposes; or
- 44 (3) To a state or local educational agency, including public schools and school districts, for
- 45 public school purposes, as permitted by federal or state law.

- 1 (g) This section does not prohibit an operator from:
- 2 (1) Using aggregated or deidentified covered information of a public school student as
- 3 follows:
- 4 (A) Within the operator's website, service, or application or other websites, services, or
- 5 applications owned by the operator to develop or improve educational products; or
- 6 (B) To demonstrate the effectiveness of the operator's website, service, or application,
- 7 including the operator's marketing of the website, service, or application; or
- 8 (2) Sharing aggregated or deidentified covered information of a public school student for the
- 9 development or improvement of educational websites, services, or applications.
- 10 (h) This section does not limit:
- 11 (1) The authority of a law enforcement agency to obtain any content or information from an
- 12 operator that is authorized by law or pursuant to an order of a court of competent
- 13 jurisdiction;
- 14 (2) The ability of an operator to use student data, including covered information, for adaptive
- 15 learning or customized student learning purposes;
- 16 (3) Internet service providers from providing Internet connectivity to public schools, school
- 17 districts, or students;
- 18 (4) The ability of an operator to use recommendation engines to recommend additional
- 19 content or services to a student within an operator's website, service, or application
- 20 without the response being determined in whole or in part by payment or other
- 21 consideration from a third-party;
- 22 (5) The ability of an operator to respond to a student's request for information or for feedback
- 23 without the information or response being determined in whole or in part by payment or
- 24 other consideration from a third-party; or
- 25 (6) The ability of an operator to use or retain student information to ensure legal or
- 26 regulatory compliance or to take precautions against liability.
- 27 (i) This section does not apply to general audience websites, services, or applications, even if
- 28 login credentials created on the operator's website, service, or application are used to access
- 29 those general audience websites, services, or applications.
- 30 (j) This section does not impose a duty on a provider of an:
- 31 (1) Electronic store, gateway, marketplace, or other means of purchasing or downloading
- 32 software or applications to review or enforce compliance of this section on those software
- 33 or applications; or
- 34 (2) Interactive computer service, as defined in 47 U.S.C § 230, to review or enforce
- 35 compliance with this section by a third-party content provider.
- 36 (k) This section does not limit the ability of a student or the student's parent or guardian to
- 37 download, export, transfer, or otherwise save or maintain his or her own student data or
- 38 documents.

# Student Safety, Sexual Assault (Note)

*By Elizabeth Whitehouse, director of education and workforce development*

In a [Washington Post – Kaiser Family Foundation Poll](#) 25% of young women and 7% of young men said they suffered unwanted sexual incidents while in college. As the issue of campus sexual assault has been at the center of media attention in recent years, policymakers have made it a top priority. In 2015, at least 29 states, legislators introduced bills to address the issue of campus sexual assault according to a [report](#) by the Education Commission of the States and the National Association of Student Personnel Administrators. The report categorizes the bills into four main policy areas: the role of law enforcement, affirmative consent, the role of legal counsel and transcript notation.

**The role of local law enforcement:** state policymakers have sought to define, clarify and/or expand the role of local law enforcement in reporting at the campus and in the investigative processes following a report of sexual assault or a survivor's disclosure or report of assault.

New York [SB 5965](#), signed into law on July 7, 2015, requires all colleges and universities in the State of New York to implement uniform prevention and response policies and procedures relating to sexual assault, domestic violence, dating violence, and stalking. The law also includes a statewide definition of affirmative consent. Additionally, the law requires that an institution adopt, implement and provide information on a "Students' Bill of Rights" as part of its code of conduct. The Bill of Rights shall include, but is not limited to, the opportunity to report a sexual assault to law enforcement or the institution, to be protected from retaliation, and to access services and resources.

Louisiana [SB 255](#), signed into law on June 23, 2015, mandates every higher education institution conduct a voluntary sexual assault climate survey and report the results to the Legislature and the governor. The law requires each institution and area law enforcement and criminal justice agency located within the parish to enter into a memorandum of understanding (MOU) to clearly delineate responsibilities and share information in accordance with applicable federal and state confidentiality laws, including but not limited to trends about sexually-oriented criminal offenses occurring against students of the institution. SB 255 also requires the Board of Regents to establish uniform policies and best practices to implement measures to address the reporting of sexually-oriented criminal offenses on institution campuses, the prevention of these crimes, and the medical and mental health care needed for these alleged victims.

**Defining affirmative consent:** state policymakers have worked to set a common understanding and definition of consent via statute or by requiring universities and colleges to define consent and provide educational outreach on it.

California [SB 967](#), signed into law on September 28, 2014, applies to all California post-secondary schools, public and private, that receive state money for student financial aid. The law requires the governing boards to adopt policies concerning sexual assault, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a complainant. The bill would require these governing boards to the extent feasible, to enter into memoranda of understanding

or other agreements or collaborative partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. The bill would also require the governing boards to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking. SB 967 builds upon existing law requiring the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt and implement written procedures or protocols to ensure that students, faculty, and staff who are victims of sexual assault on the grounds or facilities of their institutions receive treatment and information, including a description of on-campus and off-campus resources.

Illinois' [H.B.821](#) signed August 21, 2015 includes an affirmative consent standard, as does Connecticut's [HB 5376](#) signed June 1, 2016 and New York's [AB 8244](#) signed into law June 14, 2015.

**The role of legal counsel:** state policymakers have addressed the role legal counsel in campus adjudication process.

Minnesota's law [SF 005](#), signed into law on May 22, 2015 expands requirements governing higher education institution policies on sexual harassment and sexual violence including amending victim rights provisions, providing amnesty from sanction for violations of policies on the personal use of drugs or alcohol for students who report in good faith, and requiring higher education institutions to provide an online reporting system to receive anonymous reports. It requires campuses to enter into a memorandum of understanding with the primary local law enforcement agency that serves the campus. The law also requires institutions to prepare annual statistical reports on sexual assault with provisions to protect the privacy of this data. It also requires comprehensive training for students as well as those charged with investigating and adjudicating complaints of sexual assault. Training must address dynamics of sexual assault, neurobiological responses to trauma, and best practices for preventing, responding to, and investigating sexual assault. The law also requires student health services providers to screen students for incidents of sexual assault and to provide information on resources available to students.

**Transcript notation:** state policymakers addressed notation of serious violations of a campus' code of conduct, including sexual assault, on student transcripts.

New York's [AB 8244](#) signed into law June 14, 2015, requires that higher education institutions, chartered by the New York Board of Regents or incorporated by a special act of the state legislature and maintain a campus in New York include a transcript notation for students who were suspended or expelled after being found responsible for a code of conduct violation that was violent in nature – including sexual violence.

# Suicide Prevention in Schools (Note)

By Elizabeth Whitehouse, director of education and workforce development

According to the [US Center for Disease Control and Prevention](#), suicide is the third leading cause of death between the ages of 10 and 24. Another frightening statistic comes from the [American College Health Association's National College Health Assessment](#) which reports that eight percent of college students seriously considered suicide. Suicide prevention in K-12 schools and college campuses has become a lead issue for education policymakers in recent years with media attention bringing the issue to light and data showing the serious impact of mental health needs on college campuses.

Recent legislation to combat the problem has taken several forms, including:

- **Suicide Prevention Policy and Awareness:** state policymakers have introduced legislation requiring schools and institutions of higher learning to develop suicide prevention policies and to produce education and awareness outreach to students, faculty and administrators
- **Suicide Prevention Training:** as a part of the focus on prevention, state policymakers have introduced legislation requiring training and education for faculty and administrators.
- **Optional Student Disclosure of Mental Health:** state policymakers have sponsored legislation allowing mental health information of college students to be shared with parents

## Suicide Prevention Policy and Awareness

On April 27, 2016, the District of Columbia enacted the nation's first law ([21-361](#)) to require a suicide policy directed towards LGBTQ youth in schools. The new law requires that all teachers and principals receive training every two year on youth suicide.

Pennsylvania's ([HB 1559](#)), signed into law in 2014, focuses on grades 6-12, and requires schools to adopt a youth suicide awareness and prevention policy, as well as provide development and education for youth suicide awareness for educators.

## Suicide Prevention Training

In 2016, California lawmakers passed [AB 2246](#), which requires local education agencies that serve students in grades 7 to 12 to adopt policies on the prevention of student suicides. It also requires the Department of Education to develop and maintain a model suicide prevention policy.

On June 10, 2016, Colorado's [Senate Bill 16-147](#) was signed into law authorizing the Office of Suicide Prevention Commission to partner with public and private agencies to develop the Zero suicide model which includes a requirement for suicide prevention planning and training.

Delaware's [HB 90](#) enacted in 2016, requires all public school employees to receive 90 minutes of suicide prevention training each year. The bill also requires all public schools to establish a

suicide prevention committee. Furthermore, the bill requires local education agencies to create a suicide prevention policy. It also allows teachers to anonymously report concerns about students.

In Florida, [HB 7029](#) signed on April 4, 2016 requires the Department of Education to provide suicide prevention training materials for an encouraged but not mandatory certification for schools in suicide prevention. The Suicide Prevention Certified School requires 2 hours of training for all educational staff as part of the certification requirements.

### **Optional Student Disclosure of Mental Health**

Illinois' [HB 3599](#) signed into law on August 5, 2015, allows mental health information of college students to be shared with parents. Under the plan, students will fill out a form upon enrolling at an institution to designate what mental health information can be released and to whom. The law says mental health information can be released only to the designated person if a qualified health examiner has decided the student is a clear danger to themselves or others. The law requires that all institutions of higher learning shall create a policy and supporting procedures (rather than just a policy) to ensure that every new student is given the opportunity to complete and submit the authorization form if he or she so desires.

## Tax and Other Exemptions for Work Performed in Connection with a State of Emergency

The Act creates exemptions from certain state taxes and certain state and local license, permit, and registration requirements for out-of-state businesses and out-of-state employees that perform work to repair or service infrastructure in Wisconsin that has been damaged in connection with a state of emergency declared by the Governor.

This bill provides that a business or employee that is not a state resident is exempt from certain licensing and other requirements for work performed in this state during a state of emergency declared by the governor. If a proper notice concerning the disaster relief work is given, such an out-of-state business or employee is exempt from all of the following with respect to the work:

1. Any applicable state or local government fee.
2. Any applicable state income, franchise, or withholding tax.
3. Any applicable state or local government license, certificate, registration, permit, or other credential or approval.
4. The use tax imposed on tangible personal property and services purchased outside of this state and brought into this state for disaster relief work.

Submitted as:

Wisconsin

[AB 405](#)

Status: Signed into law on November 11, 2015.

### Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Work performed by an out-of-state business or employee.*]

2 (a) In this subsection:

- 3 1. “Declared state of emergency” means a state of emergency declared by the governor
- 4 under [Insert citation – powers and duties related to emergency management –
- 5 declaration by governor.]
- 6 2. “Disaster period” means the time that begins 10 days before a declared state of
- 7 emergency and ends 60 days after the declared state of emergency ends.
- 8 3. “Disaster relief work” means work, including repairing, renovating, installing, building,
- 9 or performing other services or activities, relating to infrastructure in this state that has
- 10 been damaged, impaired, or destroyed in connection with a declared state of emergency.
- 11 4. “Doing business in this state” includes, except as prohibited under [The Interstate Income
- 12 Act of 1959 (P.L. 86-272)], issuing credit, debit, or travel and entertainment cards to
- 13 customers in this state; regularly selling products or services of any kind or nature to
- 14 customers in this state that receive the product or service in this state; regularly soliciting
- 15 business from potential customers in this state; regularly performing services outside this
- 16 state for which the benefits are received in this state; regularly engaging in transactions
- 17 with customers in this state that involve intangible property and result in receipts flowing

- 1 to the taxpayer from within this state; holding loans secured by real or tangible personal  
2 property located in this state; owning, directly or indirectly, a general or limited  
3 partnership interest in a partnership that does business in this state, regardless of the  
4 percentage of ownership; and owning, directly or indirectly, an interest in a limited  
5 liability company that does business in this state, regardless of the percentage of  
6 ownership, if the limited liability company is treated as a partnership for federal income  
7 tax purposes. A taxpayer doing business in this state for any part of the taxable year is  
8 considered to be doing business in this state for the entire taxable year. Except that  
9 members of a combined group, meaning the group of all persons whose income and  
10 apportionment factors are required to be taken into account under [Insert citation –  
11 corporations required to use combined reporting.] to determine a member’s share of the  
12 net business income or loss apportionable to this state that is attributable to a unitary  
13 business, are not considered to be doing business in this state based solely on another  
14 member of the combined group doing business in this state. A business shall be  
15 considered to be doing business in this state for purposes of [Insert citation – taxation.] if  
16 it performs disaster relief work in this state.
- 17 5. “Infrastructure” means property and equipment owned or used by a telecommunications  
18 provider or cable operator or that is used for communications networks, including  
19 telecommunications, broadband, and multichannel video networks; electric generation,  
20 transmission, and distribution systems; gas distribution systems; water pipelines; and any  
21 related support facilities that service multiple customers or citizens, including buildings,  
22 offices, lines, poles, pipes, structures, equipment, and other real or personal property.
- 23 6. “Out-of-state business” means a sole proprietorship, partnership, limited liability  
24 company, joint venture, corporation, or other organization or enterprise, whether operated  
25 for profit or not for profit, that is not organized under the laws of this state and that,  
26 except for disaster relief work during a disaster period, was not doing business in this  
27 state during the 3 taxable years immediately preceding the disaster period or the current  
28 taxable year in which the declared state of emergency occurs.
- 29 7. “Out-of-state employee” means an individual who does not work in this state, except for  
30 disaster relief work during a disaster period, and who immediately prior to that declared  
31 state of emergency was not a resident of this state, was not doing business in this state  
32 that required a tax return to be filed in this state, and was not performing services in this  
33 state that required a tax return to be filed in this state.
- 34 8. “Taxable year” means the taxable period upon the basis of which the taxable income of  
35 the taxpayer is computed for federal income tax purposes. The taxable year of a taxpayer  
36 who keeps his or her accounting records on the basis of a 52-53 week period ends on the  
37 last day of the month closest to the end of the 52-53 week period.
- 38 (b) Subject to (c), any out-of-state business or out-of-state employee is exempt from all of the  
39 following for disaster relief work performed during a disaster period:
- 40 1. Any applicable state withholding, income, franchise, or use tax, and any related  
41 registration requirement or fee, as provided [Insert citations – Persons required to file –  
42 nonresidents; Sales factor – not included under definition of sales; Income computation –  
43 exempt and excludable income – income from work performed during a declared state of  
44 emergency; Imposition of tax – activities that do not create nexus; Situs of income;  
45 allocation and apportionment – sales factor – items that are not sales; disaster relief  
46 work; Income computation – net income – corporations; Employers required to

- 1 withhold – withholding from payments made to nonresidents; Withholding registration;  
2 Imposition of retail sales tax; and Imposition of use tax.] The department of revenue may  
3 examine and inspect the books, records, memoranda, and property of any out-of-state  
4 business or out-of-state employee to verify an exemption claimed under this subdivision.  
5 2. Any applicable fee imposed by a state agency, local unit of government, or other  
6 subdivision or instrumentality of the state or of a local unit of government.  
7 3. Any applicable license, certificate, registration, permit, or other credential or approval of  
8 a state agency, local unit of government, or other subdivision or instrumentality of the  
9 state or of a local unit of government.  
10 (c) No later than 90 days after the last day of a disaster period, any out-of-state business, and the  
11 employer of any out-of-state employee, that wishes to claim an exemption under (b) shall  
12 provide notice to the department of revenue, in the manner prescribed by the department, that  
13 the out-of-state business or out-of-state employee is in the state solely to perform disaster  
14 relief work. The notice shall include all of the following information for each out-of-state  
15 business and each out-of-state employee:  
16 1. Legal name and business name, if any.  
17 2. State of domicile or residence.  
18 3. Principal address.  
19 4. Federal tax identification number.  
20 5. The date of entry to the state for the purpose of performing the disaster relief work.  
21 6. Contact information.  
22 (d) A business organized under the laws of this state shall provide the information required under  
23 (c) for any out-of-state business that is a related entity that enters the state to perform disaster  
24 relief. “Related entity,” which means any person related to a taxpayer as provided under  
25 section 267 or 1563 of the Internal Revenue Code during all or a portion of the taxpayer's  
26 taxable year and any real estate investment trust under section 856 of the Internal Revenue  
27 Code, except a qualified real estate investment trust, if more than 50 percent of any class of  
28 the beneficial interests or shares of the real estate investment trust are owned directly,  
29 indirectly, or constructively by the taxpayer, or any person related to the taxpayer, during all  
30 or a portion of the taxpayer's taxable year. For purposes of this subsection, the constructive  
31 ownership rules of section 318 (a) of the Internal Revenue Code, as modified by  
32 section 856 (d) (5) of the Internal Revenue Code, shall apply in determining the ownership of  
33 stock, assets, or net profits of any person.  
34

35 Section 2. [*Persons required to file – natural persons – nonresidents.*]

36 Every nonresident person and every person who changes domicile into or out of this state during  
37 the taxable year shall file a return if the person is unmarried and has gross income of \$2,000 or  
38 more, or if the person is married and the combined gross income of the person and his or her  
39 spouse is \$2,000 or more, except that a return is not required to be filed if all the income is  
40 exempt from income tax under [Insert citation – income from work performed during a declared  
41 state of emergency.]

1 Section 3. [*Situs of income; allocation and apportionment – sales factor.*]

2 The following items are among those that are not included in “sales” in this subsection:

3 (a) Gross receipts from sales of property or services as part of performing disaster relief work.

5 Section 4. [*Imposition of tax – Activities that do not create nexus.*]

6 Except as provided in [Insert citation – combined reporting – member’s share of business income  
7 of the combined group.], an out-of-state business may do business in this state without subjecting  
8 itself to the imposition of the income or franchise tax under [Insert citation] if its only activity in  
9 this state is disaster relief work.

11 Section 5. [*Sales factor – items that are not sales.*]

12 The following items are among those that are not included in “sales” in this subsection:

13 (a) Gross receipts from sales of property or services as part of performing disaster relief work.

15 Section 6. [*Situs of income; allocation and apportionment – disaster relief work.*]

16 For purposes of the apportionment of any income under this section, the disaster relief work of  
17 an out-of-state business shall not increase the amount of income apportioned to this state. For  
18 purposes of [Insert citation – property factor.], any property brought temporarily into this state by  
19 an out-of-state business in connection with performing disaster relief work is not considered  
20 property located in this state. For purposes of [Insert citation – payroll factor.], compensation  
21 paid to out-of-state employees who are performing disaster relief work is not considered  
22 compensation paid in this state. For purposes of [Insert citation – sales factor.], gross receipts  
23 from the sale of property or services as part of performing any disaster relief work are not  
24 considered gross receipts from sales received in this state.

26 Section 7. [*Income computation – net income.*]

27 Corporations in general. The “net income” of a corporation means the gross income as computed  
28 under the Internal Revenue Code and modified as follows:

29 (a) Minus the income of an out-of-state business from disaster relief work.

31 Section 8. [*Employers required to withhold – withholding from payments made to nonresidents.*]

32 No amount shall be withheld from wages paid to an out-of-state employee for disaster relief  
33 work.

35 Section 10. [*Withholding registration.*]

36 (a) Except as provided under (b), each employer who is required to withhold under this chapter  
37 shall obtain a valid certificate under [Insert citation – business tax registration.]

38 (b) An out-of-state business whose only payments to employees are to out-of-state employees is  
39 not required to obtain a certificate under [Insert citation – business tax registration.]

41 Section 11. [*Imposition of retail sales tax – permit for operations.*]

42 (a) Except as provided in (b), every person desiring to operate as a seller within this state who  
43 holds a valid certificate under [Insert citation – business tax registration.] shall file with the  
44 department an application for a permit for each place of operations. Every application for a  
45 permit shall be made upon a form prescribed by the department and shall set forth the name  
46 under which the applicant intends to operate, the location of the applicant's place of

1 operations, and the other information that the department requires. Except as provided in (b),  
2 the application shall be signed by the owner if a sole proprietor; in the case of sellers other  
3 than sole proprietors, the application shall be signed by the person authorized to act on behalf  
4 of such sellers. A nonprofit organization that has a sales price taxable under [Insert citation –  
5 imposition of sales tax – general exemptions – nonprofits and associations.] shall obtain a  
6 seller's permit and pay taxes under this subchapter on all taxable sales prices received after it  
7 is required to obtain that permit. If that organization becomes eligible later for the exemption  
8 under [Insert citation – imposition of sales tax – general exemptions – nonprofits and  
9 associations.] except for its possession of a seller's permit, it may surrender that permit.

- 10 (b) An out-of-state business performing disaster relief work is not required to register with the  
11 department under (a) and is not required to obtain a certificate under [Insert citation –  
12 business tax regulation.] for sales made during a disaster period.  
13

14 Section 12. *[Imposition of use tax.]*

- 15 (a) Except as provided in (b), every retailer selling tangible personal property, or items, property,  
16 or goods or taxable services for storage, use or other consumption in this state shall register  
17 with the [department] and obtain a certificate under [Insert citation – business tax  
18 registration.] and give the name and address of all agents operating in this state, the location  
19 of all distribution or sales houses or offices or other places of business in this state, the  
20 standard industrial code classification of each place of business in this state and the other  
21 information that the department requires. Any person who may register under this subsection  
22 may designate an agent to register with the department under this subsection, in the manner  
23 prescribed by the department.  
24 (b) An out-of-state business performing disaster relief work is not required to register with the  
25 [department] under (a) and is not required to obtain a certificate under [Insert citation –  
26 business tax registration.] for sales made during the disaster period.  
27

28 Section 13. *[Imposition of use tax.]*

29 This [Insert citation – use tax.] does not apply to the storage, use, or other consumption in this  
30 state of tangible personal property, property, or goods or taxable services, purchased outside this  
31 state, by an out-of-state business and brought into this state and used solely for disaster relief  
32 work.

## Birth Certificates with a Sex Designation Change

The Act establishes the documentation required when requesting the Department of Health to issue a new birth certificate with a sex designation change. The Act eliminates the requirement that someone must first undergo gender reassignment surgery before making the change.

Submitted as:

Hawaii

[HB 631](#)

Status: Signed into law on July 13, 2015.

### Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Establishment of new certificates of birth, when.*]

2 (a) The [department of health] shall establish, in the following circumstances, a new certificate  
3 of birth for a person born in this State who already has a birth certificate filed with the  
4 department and who is referred to below as the “birth registrant”:

5 (1) Upon receipt of an affidavit of paternity, a court order establishing paternity, or a  
6 certificate of marriage establishing the marriage of the natural parents to each other,  
7 together with a request from the birth registrant, or the birth registrant’s parent or other  
8 person having legal custody of the birth registrant, that a new birth certificate be prepared  
9 because previously recorded information has been altered pursuant to law;

10 (2) Upon receipt of a certified copy of a final order, judgment, or decree of a court of  
11 competent jurisdiction that determined the nonexistence of a parent and child relationship  
12 between a person identified as a parent on the birth certificate on file and the birth  
13 registrant;

14 (3) Upon receipt of a certified copy of a final adoption decree, or of an abstract of the decree,  
15 pursuant to [Insert citation – vital statistics – adoption, adoption – record of adoption.];

16 (4) Upon receipt of an affidavit from a United States licensed physician attesting that:

17 (A) The physician has a bona fide physician-patient relationship with the birth registrant;

18 (B) The physician has treated and evaluated the birth registrant and has reviewed and  
19 evaluated the birth registrant’s medical history;

20 (B) The birth registrant has had appropriate clinical treatment for gender transition to the  
21 new gender and has completed the transition to the new gender; and

22 (C) The new gender does not align with the sex designation on the birth registrant’s birth  
23 certificate; or

24 (5) Upon request of a law enforcement agency certifying that a new birth certificate showing  
25 different information would provide for the safety of the birth registrant; provided that  
26 the new birth certificate shall contain information requested by the law enforcement  
27 agency, shall be assigned a new number and filed accordingly, and shall not substitute for  
28 the birth registrant’s original birth certificate, which shall remain in place.

- 1 (b) When a new certificate of birth is established under this section, it shall be substituted for the  
2 original certificate of birth. The new certificate shall not be marked as amended and shall in  
3 no way reveal the original language changed by any amendment. Thereafter, the original  
4 certificate and the evidence supporting the preparation of the new certificate shall be sealed  
5 and filed. The sealed documents shall be opened only by an order of a court of record or, for  
6 those documents amended pursuant to subsection (a)(4), by request of the birth registrant.
- 7 (c) If a new certificate of birth is established under subsection (a)(4), it shall reflect, or shall be  
8 reissued to reflect, any legal name change made before, simultaneously, or after the change  
9 in sex designation; provided appropriate documentation of the name change is submitted.
- 10 (d) If a new certificate of birth is established under subsection (a)(4), the department shall not  
11 require any additional medical information or records other than those required by subsection  
12 (a)(4).”

# Border Prosecution Unit

The Act amends the Government Code to codify the structure and duties of the currently existing Texas border prosecution unit and update policies and procedures relating to the unit. The Act requires the governor to establish the border prosecution unit within the criminal justice division of the governor's office to provide the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature with information regarding border crime.

The Act requires the unit to advise the criminal justice division, serve as a clearinghouse for information related to border crime, and assist in developing training for sexual sex regarding border crime issues, including the investigation and prosecution of border crime. An attorney employed by a border prosecuting attorney as regional counsel is required, among other duties, to assist the border prosecuting attorneys and other regional counsel as needed in prosecuting border crime cases and to serve as a liaison between the unit and other criminal justice entities, including the Department of Public Safety and federal, state, and local prosecutors and law enforcement agencies located in the border region.

Submitted as:

Texas

[HB 12](#)

Status: Signed into law on June 9, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]
- 2 (1) “Border crime” means any crime involving transnational criminal activity that undermines
- 3 public safety or security, including an offense:
- 4 (A) during the prosecution of which an affirmative finding may be requested under [Insert
- 5 citation – deadly weapon used or exhibited during the commission of a felony offense or
- 6 during immediate flight therefrom];
- 7 (B) under [Insert citations – criminal homicide; kidnapping, unlawful restraint, and
- 8 smuggling of persons; trafficking of persons; sexual offenses; assaultive offenses;
- 9 weapons; gambling; organized crime.];
- 10 (C) under [Insert citations – offenses against property; offenses against public
- 11 administration.];
- 12 (D) under [Insert citation – Controlled Substances Act];
- 13 (E) committed by a person who is not a citizen or national of the United States and is not
- 14 lawfully present in the United States; or
- 15 (F) that is coordinated with or related to activities or crimes that occur or are committed in
- 16 the United Mexican States

- 1 (2) "Border region" means the portion of this state is located in a county that:  
2 (A) is adjacent to an international border;  
3 (B) is adjacent to a county described by paragraph (A);  
4 (C) is served by a prosecuting attorney whose jurisdiction includes a county described by  
5 paragraph (A) or (B).  
6 (3) "Eligible prosecuting attorney" means an attorney who represents the state in the prosecution  
7 of felonies and who:  
8 (A) serves a county located in the border region;  
9 (B) serves a county or counties that the criminal justice division determines to be  
10 significantly affected by border crime.  
11 (4) "Border prosecuting attorney" means a prosecuting attorney in a border region who  
12 represents the state in the prosecution of felony border crimes.  
13 (5) "Criminal justice division" means the criminal justice division established under [Insert  
14 citation.]  
15 (6) "Prosecuting attorney" means a district attorney, criminal district attorney, or county  
16 attorney with felony criminal jurisdiction.  
17 (7) "Unit" means the border prosecution unit.  
18

19 Section 2. [*General function of border prosecution unit.*]

20 The governor shall establish the border prosecution unit within the criminal justice division to  
21 cooperate with and support members of the unit in prosecuting border crime.  
22

23 Section 3. [*Membership.*]

- 24 (a) The unit is composed of the following prosecuting attorneys: [*Insert membership.*]  
25 (b) A prosecuting attorney described by subsection (a) shall serve on the unit in addition to the  
26 (c) Each member of the unit shall enter into a memorandum of understanding with the criminal  
27 justice division to collaborate and cooperate in the prosecution of border crime.  
28

29 Section 4. [*Officers.*]

- 30 (a) The unit, on a majority vote, shall elect from among its membership a presiding officer and  
31 an assistant presiding officer.  
32 (b) The presiding officer and the assistant presiding officer serve terms of one year.  
33 (c) The assistant presiding officer serves as presiding officer in the presiding officer's absence or  
34 if a vacancy occurs in that office until a new presiding officer is elected as provided by  
35 subsection (d).  
36 (d) If a vacancy occurs in the office of presiding officer or assistant presiding officer before the  
37 end of the vacating officer's term, the unit shall elect a person to serve the remainder of the  
38 term.  
39

40 Section 5. [*Reimbursement for expenses.*]

41 A member of the unit is not entitled to compensation for service on the unit but is entitled to be  
42 reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a  
43 member of the unit as provided by the [General Appropriations Act].

1 Section 6. [*Duties of unit.*]

- 2 (a) The unit shall meet at least once annually to provide the governor, the lieutenant governor,  
3 the speaker of the house of representatives, and the members of the legislature with  
4 information regarding:  
5 (1) the status of border crime and its effect on prosecutorial resources;  
6 (2) the border crimes prosecuted by members of the unit; and  
7 (3) the number of border crimes that are committed by a person who is not lawfully present  
8 in the United States.
- 9 (b) The unit shall advise the criminal justice division on:  
10 (1) the allocation of grants under the prosecution of border crime grant program established  
11 under [Insert citation.];  
12 (2) the division of the border region into two or more subregions for training purposes; and  
13 (3) any additional prosecutorial needs of the border prosecuting attorneys, including a need  
14 for the employment of regional counsel described by section 7 to assist with the  
15 prosecution of border crimes.
- 16 (c) The unit shall facilitate the coordination and collaboration of the border prosecuting attorneys  
17 with any regional counsel described by section 7 and with other law enforcement agencies,  
18 including the Department of Public Safety, in the investigation and prosecution of border  
19 crime.
- 20 (d) The unit shall develop a nonexclusive list of offenses not otherwise described under the  
21 definition of “border crime” in section 1 that constitute border crime to provide guidance and  
22 enhance uniformity in the investigation and prosecution of border crime.
- 23 (e) The unit shall serve as a clearinghouse for information related to the investigation and  
24 prosecution of border crime and shall develop best practices and guidelines, including best  
25 practices for the collection and protection of confidential law enforcement information.
- 26 (f) The unit shall assist in developing a training program and providing training to members of  
27 the unit and law enforcement agencies in the border region on specific issues and techniques  
28 relating to the investigation and prosecution of border crime.
- 29 (g) The unit shall develop accountability and performance measures for members of the unit who  
30 receive a grant under the prosecution of border crime grant program established under [Insert  
31 citation.]

32  
33 Section 7. [*Duties of regional counsel.*]

- 34 (a) An attorney employed by a border prosecuting attorney as regional counsel shall assist the  
35 border prosecuting attorneys and other regional counsel, as needed, in:  
36 (1) the prosecution of border crime;  
37 (2) the screening of cases involving border crime;  
38 (3) the presenting of cases involving border crime to a grand jury; and  
39 (4) the preparation and trial of cases involving border crime.
- 40 (b) The regional counsel shall serve as a liaison between the unit and other criminal justice  
41 entities, including the Department of Public Safety and federal, state, and local prosecutors  
42 and law enforcement agencies located in the border region, by:  
43 (1) working closely with those entities, as needed, to coordinate and assist in the  
44 investigation and prosecution of border crime; and

- 1 (2) attending multiagency task force hearings and meetings held by federal, state, and local  
2 prosecutors and law enforcement agencies on the investigation and prosecution of border  
3 crime.
- 4 (c) The regional counsel shall provide legal and technical assistance to law enforcement agencies  
5 investigating border crime, including by:
- 6 (1) providing legal advice and recommendations regarding Fourth Amendment search and  
7 seizure issues, relevant statutes, and case law;
- 8 (2) drafting and reviewing affidavits requesting the issuance of search warrants, wiretap  
9 orders, pen register and trap and trace orders, mobile tracking device orders, and similar  
10 court orders; and drafting requests for court orders authorizing:
- 11 (A) the interception of oral, wire, and electronic communications;
- 12 (B) the installation and use of a pen register or trap and trace device;
- 13 (C) the disclosure of subscriber or customer records and information; and
- 14 (D) other similar court orders that are required to be filed by a prosecutor.
- 15 (d) The regional counsel shall coordinate training with the unit for border prosecuting attorneys  
16 and law enforcement agencies, including by:
- 17 (1) assisting in identifying training needs in the county or subregion, if any is created, in  
18 which the border prosecuting attorney's office or the agency is located;
- 19 (2) assisting in the development of training curricula and guidelines for the investigation and  
20 prosecution of border crime; and
- 21 (3) participating in and hosting training presentations and sessions in each subregion, if any  
22 is created.
- 23 (e) The regional counsel shall provide legal and technical assistance to border prosecuting  
24 attorneys, including by:
- 25 (1) performing legal research relating to investigating and prosecuting border crime, if  
26 requested; and
- 27 (2) coordinating with border prosecuting attorneys and law enforcement agencies to identify  
28 experts in the investigation and prosecution of complex, long-term cases against  
29 organized criminal enterprises.

30  
31 Section 8. [*Gifts and grants.*]

32 The criminal justice division may apply for and accept gifts, grants, and donations from any  
33 organization described in Section 501(c)(3) or (4) of the Internal Revenue Code of 1986 for the  
34 purposes of funding any activity of the unit under this subchapter. The criminal justice division  
35 may apply for and accept grants under federal and state programs.

# Convention of the States: Faithful Delegates (Note)

*By Liz Edmondson, J.D., Director of energy and environmental policy*

Faithful delegate laws have emerged amid state concerns over challenges to amending the U.S. Constitution. Of the 27 amendments ratified since the inception of the U.S. Constitution in 1789, all have been proposed by the U.S. Congress. While states can petition the U.S. Congress to call a convention to propose constitutional amendments, the state-initiated amendment process is fraught with uncertainties. Thus, some states have passed legislation in an effort to address some of the known obstacles and uncertainties inherent in the convention process.

To amend the U.S. Constitution, an amendment must be proposed and ratified. Article V prescribes two methods to propose amendments: (1) by the approval of two-thirds of both houses of the U.S. Congress, or (2) by the convention of states. If two-thirds of the states apply to Congress for a convention, Congress must call a convention “for proposing amendments.”<sup>1</sup>

The purpose of this dual proposal structure is to prevent a single entity from controlling the amendment process. However, varying degrees of uncertainty exist among policymakers and legal scholars as to how a state-initiated convention would play out, including the rules and scope of the convention. Perhaps those concerns are part of the reason the convention method has never been used.

One of the concerns in applying for a convention is the possibility of a “runaway convention.” Unlike an amendment proposed by Congress where a specifically worded amendment must be approved by two-thirds of each house, some worry that a convention called for a specifically worded amendment may ‘run away’ or expand beyond the language and scope for which it was called.

Since a state-initiated convention has never been called, it is unclear whether a convention called with a limited scope could propose an amendment outside the stated topic. For example, if a state-initiated convention was called to propose a balanced budget amendment, could the convention propose an amendment addressing a contentious topic such as abortion or religious freedom? Another concern is that if states called for a limited-purpose convention, Congress might determine that a limited convention is not allowed and reject the application, allow a convention with no limitations, or misinterpret the limitation the states intended.

In response to these concerns, some states have passed “Faithful Delegate Laws” designed to require delegates sent to a convention of the states convened to propose one or more amendments to the Constitution to follow statutory instructions and/or take an oath to follow the instructions provided by the Legislature. In the event the delegate does not, he or she would be subject to certain penalties, including the voiding of the delegate’s vote, removal of the delegate, and/or criminal charges. These statutory instructions typically prohibit the delegate from voting for or proposing an amendment outside the subject matter directed by the legislature-

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<sup>1</sup> Article V outlines the method of ratification after Congress or a convention proposes an amendment. This note is not intended to address the ratification uncertainties.

For example, North Dakota [HB 1441](#) prohibits delegates from approving any amendments not previously authorized by the legislature. In addition the delegate must execute an oath affirming that the delegate will not vote to allow consideration of, or vote to approve, any “unauthorized amendment” proposed for ratification. An “unauthorized amendment” is defined as one that varies from the exact text of the amendment contained in the application made by the state legislature or one outside the scope of the subject matter contained in that application. A delegate that casts or attempts to cast a vote at a convention that violates the above will be removed as a delegate and the delegate’s vote is void.

Tennessee [SB 1432](#) requires that in the event of a convention to propose amendments to the Constitution, the General Assembly will adopt a resolution and provide instructions to the delegates regarding the rules of procedure and any other instructions relating to the convention. A delegate who violates the instructions is subject to removal, the delegate’s vote is void, and the delegate will be charged with a Class E felony. In addition, if the legislature was not in session during the time when delegates must be elected, the governor is required to call a special session to determine the method of electing delegates.

Georgia [HB 930](#) requires delegates to execute an oath and to comply with instructions issued by the legislature. If a delegate votes or attempts to vote in contrast to instructions issued by the legislature or limits placed in the state’s resolution calling for a convention, the delegate’s vote is void, the delegate forfeits his or her appointment and is subject to a misdemeanor, with a potential up to \$1000 fine and/or one year in jail. If all delegates and alternate delegates vote or attempt to vote in contrast to legislative instructions or the state’s resolution calling for a convention, the state’s application to call a convention shall be treated as having no effect. In addition, HB 930 requires the governor to call a special session if the legislature is not in effect at the time a convention is called.

Similarly, Indiana [SB 224](#) provides that a vote cast by a delegate that is outside the scope of the instructions given by the general assembly is void, is a forfeiture of the delegate’s appointment, and the delegate is subject to a Class D felony. In addition, if all delegates and alternate delegates vote or attempt to vote contrary to the general assembly’s instructions, the state’s call for an Article V convention is withdrawn.

Florida [HB 609](#) would require the legislature to provide instructions to delegates through a resolution passed by the House and Senate and require delegates to swear an oath to follow the instructions of the legislature. Failure to follow such instructions would void the delegate’s vote, result in a forfeiture the delegate’s appointment to the convention, and would be classified as a third degree felony.

The state power to initiate conventions for amending the Constitution was deemed necessary by the founders to provide a check on federal power. To that end, several states have called for conventions to impose term limits on federal officials, requiring a balanced federal budget, or to prohibit federal agencies from preempting state laws. However, because Article V gives little guidance, numerous questions exist as to how a state-initiated convention would work in practice, including whether a convention could propose an amendment outside the scope of the original purpose for which the convention was called.

Proponents of faithful delegate legislation argue that these laws will prevent runaway conventions and ensure that conventions of the states are limited to the purposes for which they are called. By alleviating state fears of runaway conventions, these laws will embolden states to act to ensure that states have adequate checks on the powers of the federal government.

Others, however, question whether Faithful Delegate laws would work as designed, since an Article V Convention to propose amendments to the U.S. Constitution has never been convened and questions as to rules, process and jurisdiction remain. For example, it is unclear if the convention delegates could adopt rules that would usurp faithful delegate laws or whether it is lawful for state legislatures to direct the actions of convention delegates. Questions regarding whether the laws usurp the free speech rights of delegates and whether criminal penalty provisions are enforceable, among others, also exist.

Despite these concerns, a court cannot make a decision on the legality of faithful delegate laws until a party attempts to invoke the law. Thus, whether these concerns are valid will not be determined until a state-initiated convention is called and litigation placing the faithful delegate law at issue is initiated.

# Authorized Electronic Monitoring in Long-Term Care Facilities Act

The Act establishes that residents of long-term care facilities have the right to purchase and use an electronic monitoring device of their choice that can record or broadcast audio and video. The Act also stipulates that any recording made can only be used for civil, criminal, or administrative proceedings related to the health, safety or welfare of a resident. It establishes provisions for obtaining consent from residents and/or their guardians and their roommates, notification to the facility, and a prohibition against retaliation against a resident consenting to use electronic monitoring.

Submitted as:

Illinois

[HB 2462](#)

Status: Signed into law on August 21, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*]

This Act may be cited as the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

Section 2. [*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 [Insert citation.] that has 30 beds or more, a long-term care for under age 22 facility licensed under the [Insert citation], or a facility licensed under the [Insert citation].

“Resident” means a person residing in a facility. "Resident's representative" has the meaning given to that term in [Insert citation] if the resident resides in a facility licensed under the Nursing Home Care Act or [Insert citation.] if the resident resides in a facility licensed under the [Insert citation.]

1 Section 3. [*Authorized electronic monitoring.*]

- 2 (a) A resident shall be permitted to conduct authorized electronic monitoring of the resident's  
3 room through the use of electronic monitoring devices placed in the room pursuant to this  
4 Act.  
5 (b) Nothing in this Act shall be construed to allow the use of an electronic monitoring device to  
6 take still photographs or for the nonconsensual interception of private communications  
7

8 Section 4. [*Consent.*]

- 9 (a) Except as otherwise provided in this subsection, a resident, a resident's plenary guardian of  
10 the person, or the parent of a resident under the age of 18 must consent in writing on a  
11 notification and consent form prescribed by the Department to the authorized electronic  
12 monitoring in the resident's room. If the resident has not affirmatively objected to the  
13 authorized electronic monitoring and the resident's physician determines that the resident  
14 lacks the ability to understand and appreciate the nature and consequences of electronic  
15 monitoring, the following individuals may consent on behalf of the resident, in order of  
16 priority:  
17 (1) a health care agent named under the [Insert citation – power of attorney.];  
18 (2) a resident's representative, as defined in Section 2 of this Act;  
19 (3) the resident's spouse;  
20 (4) the resident's parent;  
21 (5) the resident's adult child who has the written consent of the other adult children of the  
22 resident to act as the sole decision maker regarding authorized electronic monitoring; or  
23 (6) the resident's adult brother or sister who has the written consent of the other adult siblings  
24 of the resident to act as the sole decision maker regarding authorized electronic  
25 monitoring.  
26 (b) Prior to another person, other than a resident's plenary guardian of the person, consenting on  
27 behalf of a resident 18 years of age or older in accordance with this Section, the resident must  
28 be asked by that person, in the presence of a facility employee, if he or she wants authorized  
29 electronic monitoring to be conducted. The person must explain to the resident:  
30 (1) the type of electronic monitoring device to be used;  
31 (2) the standard conditions that may be placed on the electronic monitoring device's use,  
32 including those listed in paragraph (7) of subsection (b) of Section 5;  
33 (3) with whom the recording may be shared according to Section 3; and  
34 (4) the resident's ability to decline all recording. For the purposes of this subsection, a  
35 resident affirmatively objects when he or she orally, visually, or through the use of  
36 auxiliary aids or services declines authorized electronic monitoring. The resident's  
37 response must be documented on the notification and consent form.  
38 (c) A resident or roommate may consent to authorized electronic monitoring with any conditions  
39 of the resident's choosing, including, but not limited to, the list of standard conditions  
40 provided in paragraph (7) of subsection (b) of Section 5. A resident or roommate may request  
41 that the electronic monitoring device be turned off or the visual recording component of the  
42 electronic monitoring device be blocked at any time.  
43 (d) Prior to the authorized electronic monitoring, a resident must obtain the written consent of  
44 any other resident residing in the room on the notification and consent form prescribed by the  
45 Department. Except as otherwise provided in this subsection, a roommate, a roommate's  
46 plenary guardian of the person, or the parent of a roommate under the age of 18 must consent

1 in writing to the authorized electronic monitoring in the resident's room. If the roommate has  
2 not affirmatively objected to the authorized electronic monitoring in accordance with  
3 subsection (b) and the roommate's physician determines that the roommate lacks the ability  
4 to understand and appreciate the nature and consequences of electronic monitoring, the  
5 following individuals may consent on behalf of the roommate, in order of priority:

6 (1) a health care agent named under the [Insert citation – power of attorney.];

7 (2) a roommate's resident's representative, as defined in Section 2 of this Act;

8 (3) the roommate's spouse;

9 (4) the roommate's parent;

10 (5) the roommate's adult child who has the written consent of the other adult children of the  
11 resident to act as the sole decision maker regarding authorized electronic monitoring; or

12 (6) the roommate's adult brother or sister who has the written consent of the other adult  
13 siblings of the resident to act as the sole decision maker regarding authorized electronic  
14 monitoring.

15 (e) Consent by a roommate under subsection (d) authorizes the resident's use of any recording  
16 obtained under this Act, as provided in Section 3 of this Act.

17 (f) Any resident previously conducting authorized electronic monitoring must obtain consent  
18 from any new roommate before the resident may resume authorized electronic monitoring. If  
19 a new roommate does not consent to authorized electronic monitoring and the resident  
20 conducting the authorized electronic monitoring does not remove or disable the electronic  
21 monitoring device, the facility may turn off the device.

22 (g) Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of  
23 consent shall be documented in the resident's clinical record. If a roommate withdraws  
24 consent and the resident conducting the authorized electronic monitoring does not remove or  
25 disable the electronic monitoring device, the facility may turn off the electronic monitoring  
26 device.

27 (h) If a resident who is residing in a shared room wants to conduct authorized electronic  
28 monitoring and another resident living in or moving into the same shared room refuses to  
29 consent to the use of an electronic monitoring device, the facility shall make a reasonable  
30 attempt to accommodate the resident who wants to conduct authorized electronic monitoring.  
31 A facility has met the requirement to make a reasonable attempt to accommodate a resident  
32 who wants to conduct authorized electronic monitoring when upon notification that a  
33 roommate has not consented to the use of an electronic monitoring device in his or her room,  
34 the facility offers to move either resident to another shared room that is available at the time  
35 of the request. If a resident chooses to reside in a private room in order to accommodate the  
36 use of an electronic monitoring device, the resident must pay the private room rate. If a  
37 facility is unable to accommodate a resident due to lack of space, the facility must reevaluate  
38 the request every 2 weeks until the request is fulfilled.

39  
40 Section 5. *[Notice to the facility.]*

41 (a) Authorized electronic monitoring may begin only after a notification and consent form  
42 prescribed by the Department has been completed and submitted to the facility.

43 (b) A resident shall notify the facility in writing of his or her intent to install an electronic  
44 monitoring device by providing a completed notification and consent form prescribed by the  
45 Department that must include, at minimum, the following information:

- 1 (1) the resident's signed consent to electronic monitoring or the signature of the person  
2 consenting on behalf of the resident in accordance with Section 4 of this Act; if a person  
3 other than the resident signs the consent form, the form must document the following:  
4 (A) the date the resident was asked if he or she wants authorized electronic monitoring to  
5 be conducted in accordance with subsection (a-5) of Section 4;  
6 (B) who was present when the resident was asked; and  
7 (C) an acknowledgement that the resident did not affirmatively object; and  
8 (2) the resident's roommate's signed consent or the signature of the person consenting on  
9 behalf of the resident in accordance with Section 4 of this Act, if applicable, and any  
10 conditions placed on the roommate's consent; if a person other than the roommate signs  
11 the consent form, the form must document the following:  
12 (A) the date the roommate was asked if he or she wants authorized electronic monitoring  
13 to be conducted in accordance with subsection (a-5) of Section 4;  
14 (B) who was present when the roommate was asked; and  
15 (C) an acknowledgement that the roommate did not affirmatively object; and  
16 (3) the type of electronic monitoring device to be used;  
17 (4) any installation needs, such as mounting of a device to a wall or ceiling;  
18 (5) the proposed date of installation for scheduling purposes;  
19 (6) a copy of any contract for maintenance of the electronic monitoring device by a  
20 commercial entity;  
21 (7) a list of standard conditions or restrictions that the resident or a roommate may elect to  
22 place on use of the electronic monitoring device, including, but not limited to:  
23 (A) prohibiting audio recording;  
24 (B) prohibiting broadcasting of audio or video;  
25 (C) turning off the electronic monitoring device or blocking the visual recording  
26 component of the electronic monitoring device for the duration of an exam or  
27 procedure by a health care professional;  
28 (D) turning off the electronic monitoring device or blocking the visual recording  
29 component of the electronic monitoring device while dressing or bathing is  
30 performed; and  
31 (E) turning the electronic monitoring device off for the duration of a visit with a spiritual  
32 advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor;  
33 and  
34 (8) any other condition or restriction elected by the resident or roommate on the use of an  
35 electronic monitoring device.  
36 (c) A copy of the completed notification and consent form shall be placed in the resident's and  
37 any roommate's clinical record and a copy shall be provided to the resident and his or her  
38 roommate, if applicable.  
39 (d) The Department shall prescribe the notification and consent form required in this Section no  
40 later than 60 days after the effective date of this Act. If the Department has not prescribed  
41 such a form by that date, the Office of the Attorney General shall post a notification and  
42 consent form on its website for resident use until the Department has prescribed the form.

1 Section 6. [*Cost and installation.*]

- 2 (a) A resident choosing to conduct authorized electronic monitoring must do so at his or her own  
3 expense, including paying purchase, installation, maintenance, and removal costs.  
4 (b) If a resident chooses to install an electronic monitoring device that uses Internet technology  
5 for visual or audio monitoring, that resident is responsible for contracting with an Internet  
6 service provider.  
7 (c) The facility shall make a reasonable attempt to accommodate the resident's installation needs,  
8 including, but not limited to, allowing access to the facility's telecommunications or  
9 equipment room. A facility has the burden of proving that a requested accommodation is not  
10 reasonable.  
11 (d) The electronic monitoring device must be placed in a conspicuously visible location in the  
12 room.  
13 (e) A facility may not charge the resident a fee for the cost of electricity used by an electronic  
14 monitoring device.  
15 (f) All electronic monitoring device installations and supporting services shall comply with the  
16 requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code  
17 (2000 edition).  
18

19 Section 7. [*Assistance program.*]

- 20 (a) Subject to appropriation, the Department shall establish a program to assist residents  
21 receiving medical assistance under [Insert citation – public aid] in accessing authorized  
22 electronic monitoring.  
23 (b) The Department shall distribute up to [\$50,000] in funds on an annual basis to residents  
24 receiving medical assistance under [Insert citation – public aid.] for the purchase and  
25 installation of authorized electronic monitoring devices.  
26 (c) Applications for funds and disbursement of funds must be made in a manner prescribed by  
27 the Department.  
28

29 Section 8. [*Notice to visitors.*]

- 30 (a) If a resident of a facility conducts authorized electronic monitoring, a sign shall be clearly  
31 and conspicuously posted at all building entrances accessible to visitors. The notice must be  
32 entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of  
33 some residents may be monitored electronically by or on behalf of the residents."  
34 (b) A sign shall be clearly and conspicuously posted at the entrance to a resident's room where  
35 authorized electronic monitoring is being conducted. The notice must state, in large, easy-to-  
36 read type, "This room is electronically monitored."  
37 (c) The facility is responsible for installing and maintaining the signage required in this Section.  
38

39 Section 9. [*Obstruction of electronic monitoring devices.*]

- 40 (a) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or  
41 destroying an electronic monitoring device installed in a resident's room without the  
42 permission of the resident or the individual who consented on behalf of the resident in  
43 accordance with Section 4 of this Act.  
44 (b) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or  
45 destroying a video or audio recording obtained in accordance with this Act without the

1 permission of the resident or the individual who consented on behalf of the resident in  
2 accordance with Section 4 of this Act.

3 (c) A person or entity that violates this Section is guilty of a Class B misdemeanor. A person or  
4 entity that violates this Section in the commission of or to conceal a misdemeanor offense is  
5 guilty of a Class A misdemeanor. A person or entity that violates this Section in the  
6 commission of or to conceal a felony offense is guilty of a Class 4 felony.

7 (d) It is not a violation of this Section if a person or facility turns off the electronic monitoring  
8 device or blocks the visual recording component of the electronic monitoring device at the  
9 direction of the resident or the person who consented on behalf of the resident in accordance  
10 with Section 4 of this Act.

11  
12 Section 10. [*Dissemination of recordings.*]

13 (a) A facility may not access any video or audio recording created through authorized electronic  
14 monitoring without the written consent of the resident or the person who consented on behalf  
15 of the resident in accordance with Section 4 of this Act.

16 (b) Except as required under the Freedom of Information Act, a recording or copy of a recording  
17 made pursuant to this Act may only be disseminated for the purpose of addressing concerns  
18 relating to the health, safety, or welfare of a resident or residents.

19 (c) The resident or person who consented on behalf of the resident in accordance with Section 4  
20 of this Act shall provide a copy of any video or audio recording to parties involved in a civil,  
21 criminal, or administrative proceeding, upon a party's request, if the video or audio recording  
22 was made during the time period that the conduct at issue in the proceeding allegedly  
23 occurred.

24  
25 Section 11. [*Admissibility of evidence.*]

26 Subject to applicable rules of evidence and procedure, any video or audio recording created  
27 through authorized electronic monitoring in accordance with this Act may be admitted into  
28 evidence in a civil, criminal, or administrative proceeding if the contents of the recording have  
29 not been edited or artificially enhanced and the video recording includes the date and time the  
30 events occurred.

31  
32 Section 12. [*Report.*]

33 Each facility shall report to the Department, in a manner prescribed by the Department, the  
34 number of authorized electronic monitoring notification and consent forms received annually.  
35 The Department shall report the total number of authorized electronic monitoring notification  
36 and consent forms received by facilities to the Office of the Attorney General annually.

37  
38 Section 13. [*Liability.*]

39 (a) A facility is not civilly or criminally liable for the inadvertent or intentional disclosure of a  
40 recording by a resident or a person who consents on behalf of the resident for any purpose  
41 not authorized by this Act.

42 (b) A facility is not civilly or criminally liable for a violation of a resident's right to privacy  
43 arising out of any electronic monitoring conducted pursuant to this Act.

44  
45 Section 14. [*Rules.*]

46 The Department shall adopt rules necessary to implement this Act.

# Community Paramedicine and Community Integrated Health Care (Note)

*By Debra Miller, Director of health policy*

States are increasingly turning to community paramedicine to help fill the gap in the health care workforce. Expanding the role of licensed or certified emergency medical technicians—or EMTs—and paramedics to provide non-emergency preventive health care services directly to patients in their communities can be cost-effective and make up for health care work force shortages.

Starting with Minnesota in 2011, 15 states have passed laws on community paramedicine. Some states establish a separate licensing category for community paramedicine and others simply define the services. Generally, services are part of the care plan ordered by the patient’s primary care provider and may include evaluation and health assessments; chronic disease prevention, monitoring and education; medication compliance; and immunizations.

In addition, a number of emergency medical services offices interpret their states law as *not prohibiting* community paramedicine practice. In a survey last year completed between fall 2014 and spring 2015 by the [National Association of State EMS Officials](#), 27 state offices interpreted their laws as enabling or as not prohibiting community paramedicine practices. The vast majority of state offices (44) reported some activity planning or providing community paramedicine services.

In some communities and states, community paramedicine is part of a larger reform called community integrated health care. Mobile integrated health care includes services such as providing telephone advice to 911 callers instead of ambulance dispatch; providing community paramedicine care, chronic disease management, preventive care or post-discharge follow-up visits; and transport or referral to an array of health care settings beyond hospital emergency departments.

Two states (Minnesota and North Dakota) enacted legislation calling for Medicaid reimbursement of community paramedicine services. Texas also allows Medicaid reimbursement under a Section 1115 Medicaid waiver. In 2016, Maine passed legislation to develop a reimbursement rate. Colorado appropriated implementation funds and in 2015 North Carolina appropriated funds for a pilot fund.

State	Link to Bill	Date signed by	Creates licensure of	Defines allowable	Addresses evaluation	Creates broader	Addresses funding
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		<b>Gov. or Veto Override</b>	<b>community paramedics</b>	<b>services for comm. paramedics</b>		<b>community integrated health care services</b>	
Arkansas	<a href="#">House Bill 1133</a>	March 24, 2015	yes	yes	yes	no	no
Colorado	<a href="#">Senate Bill 69</a>	June 8, 2015	yes	yes	no	yes	Appropriates \$74K FY 2016-2017 to implement
Idaho	<a href="#">2015 House Bill 153</a>	March 26, 2015	yes	no	no	no	no
Maine	<a href="#">2012 House Paper 1359</a>	March 29, 2012	no	Yes—up to 12 pilot projects	yes	no	no
Maine	<a href="#">2016 House Paper 1006</a>	Veto Override April 29, 2016					Requires developing a reimbursement rate; report to legislature
Massachusetts	<a href="#">2015 House Bill 3650</a>	July 17, 2015	no	yes	yes	yes	no
Minnesota	<a href="#">2011 Senate File 0119</a>	April 6, 2011	yes	yes	no	no	no
Minnesota	<a href="#">2012 Senate File 1543</a>	April 9, 2012			yes	yes	Authorizes Medicaid payment
Missouri	<a href="#">Missouri Revised Statutes Chapter 190 = Emergency Services</a>	June 27, 2013	yes	no	no	no	no
Nevada	<a href="#">2015 Assembly Bill 305</a>	May 25, 2015	yes	no	yes	no	no
North Carolina	<a href="#">2015 House Bill 97</a>	Sept. 18, 2015	yes	no	Yes—evaluation of pilot project	no	Yes--\$350K for pilot program
North Dakota	<a href="#">2015 Senate Bill 2043</a>	April 13, 2015	yes	yes	no	yes	Yes--Medicaid
Ohio	<a href="#">2015 House Bill 64</a>	June 30, 2015	no	yes	no	no	no
Oklahoma	<a href="#">2016 House Bill 2742</a>	May 5, 2016	yes	yes	no	yes	no
Tennessee	<a href="#">2014 Senate Bill 2029</a>	April 16, 2014	no	yes	no	no	no
Washington	<a href="#">2015 Senate Bill 5591</a>	April 24, 2015	no	yes	no	yes	no
West Virginia	<a href="#">2016 Senate Bill 195</a>	March 30, 2016	no	yes	Yes—six demonstration projects	no	no

# Emergency Care for Strokes

This Act requires that local emergency services have access to a list of stroke-ready hospitals, comprehensive stroke centers and primary stroke centers in the state. Emergency medical providers will set their own protocols for assessment, treatment and transport of stroke patients.

Submitted as:

Kentucky

[SB 10](#)

Status: Signed into law on March 19, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Stroke ready hospitals and stroke centers.*]

2 (1) Except as otherwise provided, for purposes of this section:

3 (a) “Acute care hospital” means a licensed facility providing inpatient and outpatient medical  
4 or surgical services to an individual that seeks care and treatment, regardless of the  
5 individual's ability to pay for services, on an immediate and emergent basis through an  
6 established emergency department and a continuous treatment basis on its premises for  
7 more than twenty-four (24) hours; and

8 (b) “Primary stroke center certification,” “acute stroke ready hospital certification” and  
9 “comprehensive stroke center certification” mean certification for acute care hospitals  
10 issued by the Joint Commission, the American Heart Association or another cabinet-  
11 approved nationally recognized organization that provides disease-specific certification  
12 for stroke care, that:

- 13 1. Complies with census-based national standards and safety goals;  
14 2. Effectively uses evidence-based clinical practice guidelines to manage and optimize  
15 care; and  
16 3. Uses an organized approach to measure performance.

17 (2) The secretary of the [Cabinet for Health and Family Services] shall designate as a primary  
18 stroke center any acute care hospital which has received an acute stroke ready hospital  
19 certification, a comprehensive stroke center certification, or a primary stroke center  
20 certification.

21 (3) The secretary shall suspend or revoke an acute care hospital's designation as an acute stroke  
22 ready hospital, a comprehensive stroke center, or a primary stroke center if certification is  
23 withdrawn by the Joint Commission, the American Heart Association, or another cabinet-  
24 approved certifying organization.

25 (4)

26 (a) The cabinet shall maintain a list of certified acute stroke ready hospitals, comprehensive  
27 stroke centers, and primary stroke centers and post the list on its Web site. The cabinet  
28 shall provide the list and periodic updates to the Kentucky Board of Emergency Medical  
29 Services.

- 1 (b) The Kentucky Board of Emergency Medical Services shall share the list with each local  
2 emergency medical services provider at least annually, and as new centers and hospitals  
3 are designated and certified.  
4

5 Section 2. [*Submission of emergency medical protocols.*]

- 6 (1) Each emergency medical services medical director for an ambulance service, or other  
7 emergency medical services provider, shall submit:  
8 (a) His or her protocols, including the pre-hospital care protocols related to the assessment,  
9 treatment, and transport of stroke patients;  
10 (b) His or her standing orders; and  
11 (c) Similar medical control documents to the board for approval prior to placing the  
12 document in use.  
13 (2) The medical advisor for the board shall review each document submitted to ascertain if it is  
14 in accordance with accepted standards of medical care and in accordance with the provisions  
15 of this chapter and administrative regulations promulgated thereunder. If the protocol,  
16 standing order, or other medical control document clearly violates the accepted standards of  
17 medical care, this chapter, or an administrative regulation, the medical advisor shall notify  
18 the emergency medical services medical director of the exact violation and recommend a  
19 correction thereof.  
20 (3) Following review of protocol, standing order, and medical control documents and giving the  
21 emergency medical services medical director who submitted the documents an opportunity to  
22 review the medical advisor's comments, the medical advisor shall submit the documents  
23 together with his or her comments to the board for approval or disapproval.  
24 (4) The board shall approve, disapprove, or approve with modifications protocol, standing order,  
25 and medical control documents submitted by the emergency medical services medical  
26 director at its next regular or special meeting following the submission of the documents.  
27 (5) If a protocol, standing order, or other medical control document is disapproved by the board,  
28 the emergency medical services medical director who submitted it may appeal the decision to  
29 the [Franklin Circuit Court.] If the decision of the board is appealed to the [Franklin Circuit  
30 Court], the board shall bear the burden of proving that the protocol, standing order, or other  
31 medical control document violates the accepted standards of medical care, or an  
32 administrative regulation.  
33 (6) The board shall, by administrative regulation, specify a schedule for submission and prompt  
34 review and decision making with regard to protocols, standing orders, and medical control  
35 documents submitted to the board.

# Monitoring Equipment in a Care Facility

The Act adds provisions to the Health Care Facility Licensing and Inspection Act related to monitoring devices installed in assisted living facilities. This Act 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.

Submitted as:

Utah

[HB 124](#)

Status: Signed into law on March 22, 2016.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Title.*]

2 This part is known as the “Assisted Living Facility Surveillance Act.”

4 Section 2. [*Definitions.*]

5 As used in this part:

6 (1) “Facility” means an assisted living facility.

7 (2) “Legal representative” means an individual who is legally authorized to make health care  
8 decisions on behalf of another individual.

9 (3)

10 (a) “Monitoring device” means:

11 (i) a video surveillance camera; or

12 (ii) a microphone or other device that captures audio.

13 (b) “Monitoring device” does not include:

14 (i) a device that is specifically intended to intercept wire, electronic, or oral  
15 communication without notice to or the consent of a party to the communication;  
16 or

17 (ii) a device that is connected to the Internet or that is set up to transmit data via an  
18 electronic communication.

19 (4) “Resident” means an individual who receives health care from a facility.

20 (5) “Room” means a resident's private or shared primary living space.

(6) “Roommate” means an individual sharing a room with a resident.

1 Section 3. [*Monitoring device -- Installation, notice, and consent -- Liability.*]

- 2 (1) A resident or the resident's legal representative may operate or install a monitoring  
3 device in the resident's room if the resident and the resident's legal representative, if any,  
4 unless the resident is incapable of informed consent:
- 5 (a) notifies the resident's facility in writing that the resident or the resident's legal  
6 representative, if any:
    - 7 (i) intends to operate or install a monitoring device in the resident's room; and
    - 8 (ii) consents to a waiver agreement, if required by a facility;
  - 9 (b) obtains written consent from each of the resident's roommates, and their legal  
10 representative, if any, that specifically states the hours when each roommate consents to  
11 the resident or the resident's legal representative operating the monitoring device; and
  - 12 (c) assumes all responsibility for any cost related to installing or operating the monitoring  
13 device.
- 14 (2) A facility shall not be civilly or criminally liable to:
- 15 (a) a resident or resident's roommate for the operation of a monitoring device consistent with  
16 this part; and
  - 17 (b) any person other than the resident or resident's roommate for any claims related to the use  
18 or operation of a monitoring device consistent with this part, unless the claim is caused  
19 by the acts or omissions of an employee or agent of the facility.
- 20 (3) Notwithstanding any other provision of this part, an individual may not, under this part,  
21 operate a monitoring device in a facility without a court order:
- 22 (a) in secret; or
  - 23 (b) with an intent to intercept a wire, electronic, or oral communication without notice to or  
24 the consent of a party to the communication.
- 25

26 Section 4. [*Monitoring device -- Facility admission, patient discharge, and posted notice.*]

- 27 (1) A facility may not deny an individual admission to the facility for the sole reason that the  
28 individual or the individual's legal representative requests to install or operate a  
29 monitoring device in the individual's room.
- 30 (2) A facility may not discharge a resident for the sole reason that the resident or the  
31 resident's legal representative requests to install or operate a monitoring device in the  
32 individual's room.
- 33 (3) A facility may require the resident or the resident's legal representative to place a sign  
34 near the entrance of the resident's room that states that the room contains a monitoring  
35 device.

# Opioid Prescriptions for Minors

This Act establishes an explicit informed consent requirement for prescribers who, in the absence of a medical emergency or other specified circumstances, intend to prescribe to minors controlled substances containing opioids. It specifies that the informed consent requirement has three components: assessing the minor's mental health and substance abuse history, discussing with the minor and the minor's parent, guardian, or another authorized adult certain risks and dangers associated with taking controlled substances containing opioids, and obtaining the signature of the parent, guardian, or authorized adult on a consent form.

The Act limits to not more than a 72-hour supply the quantity of a controlled substance containing an opioid that a prescriber may prescribe to a minor when another adult authorized by the minor's parent or guardian gives the required consent. It requires that the signed consent form, known as the "Start Talking!" consent form, be maintained in the minor's medical record. The Act also authorizes regulatory boards to impose sanctions on prescribers who fail to comply with the act's informed consent requirement that are the same as those generally imposed for other disciplinary violations and makes conforming changes to provisions specifying conditions that apply when an advanced practice registered nurse or physician assistant with prescriptive authority issues a prescription.

Submitted as:

Ohio

[HB 314](#)

Status: Signed into law on June 17, 2014.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Opioid prescriptions issued to minors.*]

2 (A)

3 (1)

4 (a) "Another adult authorized to consent to the minor's medical treatment" means an  
5 adult to whom a minor's parent or guardian has given written authorization to consent  
6 to the minor's medical treatment.

7 (b) "Medical emergency" means a situation that in a prescriber's good faith medical  
8 judgment creates an immediate threat of serious risk to the life or physical health of a  
9 minor.

10 (c) "Minor" means an individual under eighteen years of age who is not emancipated.

11 (2) For purposes of this section, an individual under eighteen years of age is emancipated  
12 only if the individual has married, entered the armed services of the United States,  
13 became employed and self-sustaining, or has otherwise become independent from the  
14 care and control of the individual's parent, guardian, or custodian.

15 (B) Except as provided in division (C) of this section, before issuing for a minor the first  
16 prescription in a single course of treatment for a particular compound that is a controlled

1 substance containing an opioid, regardless of whether the dosage is modified during that  
2 course of treatment, a prescriber shall do all of the following:

- 3 (1) As part of the prescriber's examination of the minor, assess whether the minor has ever  
4 suffered, or is currently suffering, from mental health or substance abuse disorders and  
5 whether the minor has taken or is currently taking prescription drugs for treatment of  
6 those disorders;
- 7 (2) Discuss with the minor and the minor's parent, guardian, or another adult authorized to  
8 consent to the minor's medical treatment all of the following:
  - 9 (a) The risks of addiction and overdose associated with the compound;
  - 10 (b) The increased risk of addiction to controlled substances of individuals suffering from  
11 both mental and substance abuse disorders;
  - 12 (c) The dangers of taking controlled substances containing opioids with benzodiazepines,  
13 alcohol, or other central nervous system depressants;
  - 14 (d) Any other information in the patient counseling information section of the labeling  
15 for the compound required under 21 C.F.R. 201.57(c)(18).
- 16 (3) Obtain written consent for the prescription from the minor's parent, guardian, or, subject  
17 to division (E) of this section, another adult authorized to consent to the minor's medical  
18 treatment. The prescriber shall record the consent on a form, which shall be known as the  
19 "Start Talking!" consent form. The form shall be separate from any other document the  
20 prescriber uses to obtain informed consent for other treatment provided to the minor. The  
21 form shall contain all of the following:
  - 22 (a) The name and quantity of the compound being prescribed and the amount of the  
23 initial dose;
  - 24 (b) A statement indicating that a controlled substance is a drug or other substance that the  
25 United States drug enforcement administration has identified as having a potential for  
26 abuse;
  - 27 (c) A statement certifying that the prescriber discussed with the minor and the minor's  
28 parent, guardian, or another adult authorized to consent to the minor's medical  
29 treatment the matters described in division (B)(2) of this section;
  - 30 (d) The number of refills, if any, authorized by the prescription;
  - 31 (e) The signature of the minor's parent, guardian, or another adult authorized to consent  
32 to the minor's medical treatment and the date of signing.

33 (C)

- 34 (1) The requirements in division (B) of this section do not apply if the minor's treatment with  
35 a compound that is a controlled substance containing an opioid meets any of the  
36 following criteria:
  - 37 (a) The treatment is associated with or incident to a medical emergency.
  - 38 (b) The treatment is associated with or incident to surgery, regardless of whether the  
39 surgery is performed on an inpatient or outpatient basis.
  - 40 (c) In the prescriber's professional judgment, fulfilling the requirements of division (B)  
41 of this section with respect to the minor's treatment would be a detriment to the  
42 minor's health or safety.
  - 43 (d) Except as provided in division (D) of this section, the treatment is rendered in a  
44 hospital, ambulatory surgical facility, nursing home, pediatric respite care program,  
45 residential care facility, freestanding rehabilitation facility, or similar institutional  
46 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.

Section 2. [*Dental board.*]

- (A) An applicant for or holder of a certificate or license issued under this chapter is subject to disciplinary action by the state dental board for any of the following reasons:
- (1) Failure to comply with the requirements in [Section 1] before issuing to a minor a prescription for a controlled substance containing an opioid.

Section 3. [*Board of Nursing.*]

- (A) The board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:
- (1) Failure to comply with the requirements in [Section 1] before issuing to a minor a prescription for a controlled substance containing an opioid.

Section 4. [*Clinical nurse specialists, certified nurse-midwife, certified nurse practitioners.*]

- (A) This section establishes standards and conditions regarding the authority of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner to prescribe drugs and therapeutic devices under a certificate to prescribe issued under [Insert citation.]
- (B) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner shall comply with [Section 1] if the nurse prescribes for a minor, as defined in that section, a compound that is a controlled substance containing an opioid.

Section 6. [*Physician assistant.*]

- (A) The state medical board, by an affirmative vote of not fewer than six members, may revoke or may refuse to grant a certificate to practice as a physician assistant or a certificate to prescribe to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing the certificate. (
- (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice as a physician assistant or certificate to prescribe, refuse to issue a certificate to an applicant,

1 refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate  
2 for any of the following reasons:

- 3 (1) Failing to comply with the requirements in [Section 1] before issuing to a minor a  
4 prescription for a controlled substance containing an opioid.

5  
6 Section 7. [*Physician assistant – prescribing authority.*]

7 (A) A certificate to prescribe issued under this chapter authorizes a physician assistant to  
8 prescribe and personally furnish drugs and therapeutic devices in the exercise of physician-  
9 delegated prescriptive authority.

10 (B) In exercising physician-delegated prescriptive authority, a physician assistant is subject to all  
11 of the following:

- 12 (1) If the physician assistant possesses physician-delegated prescriptive authority to prescribe  
13 for a minor, as defined in [Insert citation], a compound that is a controlled substance  
14 containing an opioid, the physician assistant shall comply with [Section 1.]

15  
16 Section 8. [*State medical board – doctors.*]

17 (A) The state medical board, by an affirmative vote of not fewer than six of its members, may  
18 limit, revoke, or suspend an individual's certificate to practice, refuse to grant a certificate to  
19 an individual, refuse to register an individual, refuse to reinstate a certificate, or reprimand or  
20 place on probation the holder of a certificate if the individual or certificate holder is found by  
21 the board to have committed fraud during the administration of the examination for a  
22 certificate to practice or to have committed fraud, misrepresentation, or deception in  
23 applying for or securing any certificate to practice or certificate of registration issued by the  
24 board.

25 (B) The board, by an affirmative vote of not fewer than six members, shall, to the extent  
26 permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to  
27 register an individual, refuse to reinstate a certificate, or reprimand or place on probation the  
28 holder of a certificate for one or more of the following reasons:

- 29 (1) Failure to comply with the requirements in [Section 1] of the Revised Code before  
30 issuing to a minor a prescription for a controlled substance containing an opioid.

# Treatment of Eating Disorders

This Act requires health benefit plans delivered, issued for delivery, continued or renewed on or after January 1, 2017, in accordance with current law requirements for coverage of mental health disorders, to provide coverage for the diagnosis and treatment of eating disorders. The Act further requires that the provided coverage include a broad array of specialist services as proscribed as necessary by the patient's treatment team. Coverage under this Act is limited to medically necessary treatment and the treatment plan must include all elements necessary for a health benefit plan to pay claims. Under the Act medical necessity determinations and care management for the treatment of eating disorders shall consider the overall medical and mental health needs of the individual with the eating disorder and shall not be based solely on weight. Coverage may be subject to other general exclusions and limitations of the contract or benefit plan not in conflict with the Act.

Submitted as:

Missouri

[SB 145](#)

Status: Signed into law on June 19, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. [*Treatment of eating disorders.*]

#### 2 1. For the purposes of this section the following terms shall mean:

- 3 (1) "Eating disorder", Pica, Rumination Disorder, Avoidant/Restrictive Food Intake  
4 Disorder, Anorexia Nervosa, Bulimia Nervosa, Binge Eating Disorder, Other Specified  
5 Feeding or Eating Disorder, and any other eating disorder contained in the most recent  
6 version of the Diagnostic and Statistical Manual of Mental Disorders published by the  
7 American Psychiatric Association where diagnosed by a licensed physician, psychiatrist,  
8 psychologist, clinical social worker, licensed marital and family therapist, or professional  
9 counselor duly licensed in the state where he or she practices and acting within their  
10 applicable scope of practice in the state where he or she practices;
- 11 (2) "Health benefit plan", a policy, contract, certificate or agreement entered into, offered or  
12 issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the  
13 costs of health care services; except that, health benefit plan shall not include any  
14 coverage pursuant to liability insurance policy, workers' compensation insurance policy,  
15 or medical payments insurance issued as a supplement to a liability policy; however, for  
16 purposes of this section "health benefit plan" does not include a supplemental insurance  
17 policy, including a life care contract, accident-only policy, specified disease policy,  
18 hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-  
19 term care policy, short-term major medical policy of six months or less duration, or any  
20 other supplemental policy;

- (3) “Health carrier”, an entity subject to the insurance laws and regulations of this state that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services; except that such plan shall not include any coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;
  - (4) “Medical care”, health care services needed to diagnose, prevent, treat, cure, or relieve physical manifestations of an eating disorder, and shall include inpatient hospitalization, partial hospitalization, residential care, intensive outpatient treatment, follow up outpatient care, and counseling;
  - (5) “Pharmacy care”, medications prescribed by a licensed physician for an eating disorder and includes any health-related services deemed medically necessary to determine the need or effectiveness of the medications, but only to the extent that such medications are included in the insured's health benefit plan;
  - (6) “Psychiatric care” and “psychological care”, direct or consultative services provided during inpatient hospitalization, partial hospitalization, residential care, intensive outpatient treatment, follow- up outpatient care, and counseling provided by a psychiatrist or psychologist licensed in the state of practice;
  - (7) “Therapy”, medical care and behavioral interventions provided by a duly licensed physician, psychiatrist, psychologist, professional counselor, licensed clinical social worker, or family marriage therapist where said person is licensed or registered in the states where he or she practices;
  - (8) “Treatment of eating disorders”, therapy provided by a licensed treating physician, psychiatrist, psychologist, professional counselor, clinical social worker, or licensed marital and family therapist pursuant to the powers granted under such licensed physician's, psychiatrist's, psychologist's, professional counselor's, clinical social worker's, or licensed marital and family therapist's license in the state where he or she practices for an individual diagnosed with an eating disorder.
2. In accordance with the provisions of [Insert citation – mental health coverage, requirements—definitions—exclusions.], all health benefit plans that are delivered, issued for delivery, continued or renewed on or after [Insert effective date.], if written inside the state of [Missouri], or written outside the state of [Missouri] but covering [Missouri] residents, shall provide coverage for the diagnosis and treatment of eating disorders as required in section [Insert citation – mental health coverage, requirements—definitions—exclusions.]
3. Coverage provided under this section is limited to medically necessary treatment that is provided by a licensed treating physician, psychiatrist, psychologist, professional counselor, clinical social worker, or licensed marital and family therapist pursuant to the powers granted under such licensed physician's, psychiatrist's, psychologist's, professional counselor's, clinical social worker's, or licensed marital and family therapist's license and acting within their applicable scope of coverage, in accordance with a treatment plan.
4. The treatment plan, upon request by the health benefit plan or health carrier, shall include all elements necessary for the health benefit plan or health carrier to pay claims. Such elements include, but are not limited to, a diagnosis, proposed treatment by type, frequency and duration of treatment, and goals.

1 5. Coverage of the treatment of eating disorders may be subject to other general exclusions and  
2 limitations of the contract or benefit plan not in conflict with the provisions of this section,  
3 such as coordination of benefits, and utilization review of health care services, which  
4 includes reviews of medical necessity and care management. Medical necessity  
5 determinations and care management for the treatment of eating disorders shall consider the  
6 overall medical and mental health needs of the individual with an eating disorder, shall not be  
7 based solely on weight, and shall take into consideration the most recent Practice Guideline  
8 for the Treatment of Patients with Eating Disorders adopted by the American Psychiatric  
9 Association in addition to current standards based upon the medical literature generally  
10 recognized as authoritative in the medical community.

# Public Access to Law Enforcement Body Camera Footage

*By Nathan Smith, CSG graduate fellow and Jennifer Horne, associate director of policy and special libraries*

Body-worn cameras (BWCs) are small, portable devices that can be worn anywhere on the body to record video and audio. After a string of highly-publicized incidents involving police officers and use of deadly force, American law enforcement agencies are increasingly equipping officers with BWCs to record interactions with the community while officers are on duty.

At least 19 states have passed legislation governing public access to police body camera footage, in some instances amending existing public records law in an attempt to balance privacy and transparency.

While Americans largely agree that police officers should wear BWCs, divisions emerge on the issue of whether or not body camera data should be considered part of the public record. Some see police BWC footage as a vital part of the criminal investigatory process, and therefore should be shielded like other types of evidence. Others see unrestricted BWC data as a key step towards full transparency in policing. Law enforcement officers and their unions express concerns that release of certain BWC footage, especially in cases with the use of lethal force, will jeopardize the safety of officers.

No two states have the same protocols for release of BWC recordings, but there are some common instances in which BWC data is often barred from release to the public. One such instance is BWC footage that is recorded in a place where one could reasonably expect privacy, which often means houses, apartments, senior living facilities, hospitals, mental care facilities, and other similar places. Some states exempt BWC recordings if the subject(s) of the video are under a certain age; usually 16 or 18. Other states prohibit the release of recordings that depict domestic violence or sexual abuse. Another common exemption to release is if the BWC data depicts death or serious bodily injury to those captured on video.

**Connecticut** ([HB 7103](#)), signed July 6, 2015.

The bill requires State Police, public university police and municipal police departments that receive certain state grants to wear body cameras.

It specifies that the following recordings that capture any of the following are not public records for purposes of disclosure under the Freedom of Information Act (FOIA):

1. A communication with other law enforcement agency personnel, except that which may be recorded as the officer performs his or her duties,
2. An encounter with an undercover officer or informant,
3. When an officer is on break or is otherwise engaged in a personal activity,
4. A person undergoing a medical or psychological evaluation, procedure, or treatment,
5. Any person other than a suspect to a crime if an officer is wearing such equipment in a hospital or other medical facility setting, or

6. In a mental health facility, unless responding to a call involving a suspect to a crime who is thought to be present in the facility.

In addition, the following recordings are subject to disclosure under FOIA except to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy:

1. The scene of an incident involving a domestic or sexual abuse victim or
2. A homicide, suicide, or deceased accident victim.

**Florida** ([SB 248](#)), signed May 21, 2015.

The bill creates a new, retroactive public record exemption that makes a body camera recording, or a portion thereof, confidential and exempt from public record disclosure, if the recording is taken within the interior of a private residence; within the interior of a facility that offers health care, mental health care, or social services; or in a place that a reasonable person would expect to be private. The bill provides specific circumstances in which a law enforcement agency may disclose a confidential and exempt body camera recording, and additional circumstances in which a law enforcement agency must disclose such a recording. Recordings can be released to a person recorded by a body camera or to his/her representative, to a person not depicted in the recording if it depicts a place in which the person lived at the time of the recording; or pursuant to a court order.

In considering whether to order a recording be disclosed, the court shall consider whether:

- Disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive nature;
- Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.

**Georgia** ([SB 94](#)), signed May 6, 2015.

The law provides an exception to release for audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation, except to the following:

- A duly appointed representative of a deceased's estate when the decedent was depicted or heard on such recording;
- A parent or legal guardian of a minor depicted or heard on such recording;
- An accused in a criminal case when, in good faith belief of the accused, such recording is relevant to his or her criminal proceeding;

- A party to a civil action when, in the good faith belief of such party, such recording is relevant to the civil action;
- An attorney for any of the persons identified in subparagraphs A through D of this paragraph; or
- An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, such recording is relevant to the potential civil action”

**Indiana** ([HB 1019](#)), signed March 21, 2016.

The law sets guidelines for footage, including retention limits and how and when the footage should be publicly released. It leaves the decision to release video up to the individual law enforcement agency, based on the following criteria:

Any person may inspect or copy a law enforcement recording unless the release of the recording would:

1. Would create a significant risk of substantial harm to any person or to the general public;
2. 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;
3. May affect an ongoing investigation, if the recording is an investigatory record of a law enforcement agency;
4. Would not serve the public interest.

If denied access to footage, the requestor may petition the circuit or superior court of the county in which the law enforcement recording was made. The police department would then have to justify why the video should be kept private based on the exceptions outlined above.

**Illinois** ([SB 1304](#)), signed August 12, 2015.

The law does not require police departments to use cameras, but establishes training, use and reporting requirements for those that participate.

Recordings made with the use of an officer-worn body camera are not subject to disclosure under FOIA. However, all recordings will be disclosed, upon request, to any victim or witness who appears in the captured video. The recording shall be disclosed to the person recorded or his or her legal representative. Recordings flagged, due to the filing of a complaint, discharge of firearm, use of force, arrest or detention, or resulting death or bodily harm, will be disclosed under the Freedom of Information Act upon a written request. Any recording disclosed shall be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter.

**Kansas** ([Substitute SB 22](#)), signed May 1, 2016.

The law classifies audio and video from police body and dashboard cameras as "criminal investigation documents" and thus exempt them from mandatory disclosure under the Kansas Open Records Act. Under the law, individuals who are involved in an incident captured on such video, their parents, guardians and attorneys, would be entitled to access the audio or video, although agencies would be allowed to charge a reasonable fee for such access.

**Louisiana** ([SB 398](#)), signed June 13, 2016.

The bill outlines public access to footage from body cameras worn by police. Under the measure, anyone seeking access to body camera recordings that are public records would have to submit detailed requests, be incident specific and include reasonable specificity as to the time, date, location, or persons involved, and pay for the copying of the footage in advance. In addition, recordings that violate a “reasonable expectation of privacy” will not be released without a court order and evidence related to ongoing investigations can be withheld.

**Minnesota** ([SF 498](#)), signed May 31, 2016.

The law provides guidance to law enforcement on using body cameras. It provides that data collected by a portable recording system are private, with the following exceptions:

1. Recordings that document the discharge of a firearm by a peace officer in the course of duty, or the use of a force by a peace officer that results in substantial bodily harm, are public.
2. A recording may be made public if the person on camera requests it be made accessible to the public, as long as others who were filmed but do not consent to its release are blurred from the copy.
3. A law enforcement agency may redact or withhold access to portions of data that are public under this subdivision if those portions of data are clearly offensive to common sensibilities.

**Missouri** ([HB 1936](#)), signed July 8, 2016.

The law limits access to some footage from police body cameras. It bars public access to body camera and vehicle camera footage during ongoing investigations. It also prohibits the release of video if it was taken in “nonpublic” locations, such as homes, schools and medical facilities. In those cases, people in the videos (or their family members or lawyers), could access the footage, but others would need a court order.

The bill directs courts to weigh the possible public benefit of releasing the footage against any damage it could do to an investigation, privacy concerns and whether it is “reasonably likely to bring shame or humiliation to a person of ordinary sensibilities.” If a person wins a court approval to access footage recorded in a nonpublic location, he/she would be prohibited from publishing or describing it before giving ten days’ notice to everyone in the video, who could then seek a court order to block the recording’s distribution. That provision would not apply to police who appear in a video.

**Nevada** ([SB 111](#)), signed June 8, 2015.

The bill requires Nevada Highway Patrol troopers to wear body cameras and to adopt policies governing their use. This policy must protect the privacy of persons in private residences or those seeking to report a crime or provide information regarding a crime or investigation anonymously.

Under the law, any record made by a portable recording device is a public record which may only be:

- (a) Requested on a per incident basis; and
- (b) Available for inspection at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

([AB 162](#)), signed May 25, 2015.

The bill authorizes local law enforcement agencies to require officers to use portable recording devices. Agency policies must protect the privacy of persons in a private residence or people who are seeking to report a crime or provide information on a crime or investigation anonymously.

Under the law, any record made by a portable recording device is a public record which may only be:

- (a) Requested on a per incident basis; and
- (b) Available for inspection at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

**New Hampshire** ([HB 1584](#)), signed June 24, 2016.

Under the law, body camera recordings are exempted from public record release, except where such recordings depict any of the following:

- (a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
- (c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

**North Carolina** ([HB 972](#)), signed July 11, 2016.

Under the law, recordings are not public record. A person whose image or voice is captured in the recording may request its disclosure in writing from the law enforcement agency. When determining whether to disclose a recording, the department may consider the following factors:

- If the disclosure would reveal information regarding a person of a "highly sensitive personal nature";
- If the disclosure "may harm the reputation or jeopardize the safety of a person";
- If disclosure would create "a serious threat to the fair, impartial, and orderly administration of justice"; and
- If withholding release is necessary to protect an active or inactive investigation, criminal or internal.

If the request is granted, only a look at the recording is possible; if someone wants to copy or record the footage, that person has to petition a judge for a court order for its release. If the person is deceased, incapacitated or a minor, a relative or representative can make the request on their behalf.

There is an appeals process to a higher court judge if a request to release the footage is denied. However, the court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure.

In addition to those involved in a particular incident, members of the public or reporters could also petition the court for access to the video. To release a copy of the video, the court must consider eight factors, including whether its release will advance a compelling public interest, if it contains sensitive material and whether release would harm the reputation or jeopardize the safety of an individual. The court also may place conditions on the release of the video, including that it may not be shared with others.

**North Dakota** ([HB 1264](#)), signed April 15, 2015.

The law exempts from public release any image taken by a law enforcement officer or a firefighter with a body camera in a private place.

**Oklahoma** ([HB 1037](#)), signed May 22, 2015.

The bill provides that law enforcement make audio recordings from dash cameras and recordings from body cameras available to the public, but allows them to redact or obscure those recordings if they depict nudity, minors, great bodily injury or death unless effected by law enforcement, personal medical information, or anything that violates a confidentiality or privilege protected in statute. Law enforcement could additionally redact recordings from body cameras if the information would compromise an ongoing investigation or prosecution, under certain conditions. Finally, a waiting period for disclosure of a recording that includes material relating to an ongoing investigation or prosecution is extended from one day to ten days. Extensions could be granted, in one-month increments, up to 18 months.

**Oregon** ([HB 2571](#)), signed June 25, 2015.

The bill requires law enforcement agencies to establish policies and procedures for retaining recordings from body cameras worn upon a police officer's person to record their interactions with members of the public while on duty. It also outlines public records law exemptions and exceptions to exemptions, mandates that all faces must be blurred to render them unidentifiable before disclosure, and clarifies evidence and discovery rules as they pertain to body cameras.

While most police video would be shielded from disclosure, there is an exception if a judge rules the public interest in disclosure outweighs the need to withhold. Requests must be "reasonably tailored" to the approximate time and date of an incident, and the video must be edited to make all faces unrecognizable.

**South Carolina** ([SB 47](#)), signed June 10, 2015.

The law requires all state and local law enforcement officers to implement the use of body-worn cameras pursuant to guidelines established by the Law Enforcement Training Council. The law provides that data recorded by such cameras is not subject to disclosure under the Freedom of Information Act. The law allows a law enforcement agency to release body camera footage at its discretion. In addition, certain people are allowed to request and receive the recording data, including a person who is the subject of the recording; a criminal defendant if the recording is relevant to a pending criminal action; a civil litigant if the recording is relevant to a pending civil action, a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related; or their parents, guardians, or attorneys.

**Texas** ([SB 158](#)), signed June 19, 2015.

The bill sets statewide policy and guidelines for the use of body cameras. A member of the public may request recordings by submitting the date and approximate time of the recording, the specific location where the recording occurred; and the name of one or more persons known to be a subject of the recording. It prohibits a law enforcement agency from releasing any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

In cases documenting an incident that involves the use of deadly force by a peace officer, the video may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded. However, a law enforcement agency could release such a recording if the agency determines the release furthers a law enforcement purpose.

**Utah** ([HB 300](#)), signed March 30, 2016.

Under the law, most body camera videos are considered open records that must be released to the public. Generally, footage recorded in public places is considered public record, while footage recorded in places with a reasonable expectation of privacy are considered private, with the following exceptions:

- Depictions of an alleged crime;
- Recordings of any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon.
- Recording of an encounter that is subject of a complaint or a legal proceeding against a law enforcement agency.
- Contain an officer involved critical incident.

**Washington** ([HB 2362](#)), signed April 1, 2016.

The measure sets rules on what body-camera footage is presumed to be private under the Public Records Act, sets up a task force to examine best practices for their use and it encourages police agencies that plan to use the cameras to adopt policies related to their use.

Under the bill, certain videos would be presumptively private, including footage that is presumed to be highly offensive to a reasonable person, depicts any areas of a medical facility, is filmed in the interior of a residence where a person has a reasonable expectation of privacy, displays a minor, a body of a deceased person, or the identity of or communications from a victim or witness of an incident involving domestic violence or sexual assault.

# Law Enforcement Training on Sexual Assault

The Act requires on-going sexual assault training for police officers and Deputy Attorney Generals in the Criminal and Family Divisions.

Submitted as:

Delaware

Bill/Act: [HB 2](#)

Status: Signed into law on June 30, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Council on Police Training – powers and duties.*]

(a) The Council may:

- (1) Establish minimum qualifications for applicants as police officers;
- (2) Establish minimum educational and training qualifications requisite to permanent appointment as a police officer;
- (3) Issue certification of completion of police officer training prescribed under this chapter;
- (4) Suspend or revoke certification in the event that an individual:
  - a. Obtained a certificate by fraud or deceit;
  - b. Has failed to successfully complete any in-service or advanced training required by the Council;
  - c. Has been convicted of a felony, or of a misdemeanor involving moral turpitude, or of any local, state or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug law;
  - d. Has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer;
  - e. Has received a hearing pursuant to the Police Officer's Bill of Rights, or who has knowingly and voluntarily waived that individual's right to such a hearing and:
    1. Has been discharged from employment with a law-enforcement agency for a breach of internal discipline; or
    2. Has retired or resigned prior to the entry of findings of fact concerning an alleged breach of internal discipline for which the individual could have been legitimately discharged had the individual not retired from or resigned that individual's position prior to the imposition of discipline by the employing agency.
- (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 2-year period;
- (6) Establish minimum educational and training qualifications for seasonal employment as a police officer;

- (7) Establish certification and recertification requirements for police officer applicants who have previously been employed with permanent appointment as a police officer but have not been so employed within the 12 months prior to application;
  - (8) Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools;
  - (9) Establish minimum training requirements, attendance requirements and standards of operations for police training schools;
  - (10) Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study;
  - (11) Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools;
  - (12) Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training and standard program and to contract with such agencies as it deems necessary to the performance of its powers and duties;
  - (13) Accept or receive grants or donations from any source, public or private, for the purposes of this chapter;
  - (14) Make such rules and regulations as may be necessary to carry out the purposes and objectives of this chapter;
  - (15) Provide a modification from the application of any provision of this chapter or the rules and regulations promulgated thereunder, for any police officer of a municipality if:
    - a. Police officer is employed on a seasonal basis; and
    - b. The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted;
  - (16) Establish an approved training program for seasonal police officers which shall be required prior to active police duty, and in addition, if the officer is to be armed, that the police officer be certified in the use of firearms at an approved police training school;
  - (17) Authorize articulation agreements between an approved school and an accredited institution of higher education located in the State for the provision of police officer training prescribed under this chapter;
  - (18) Establish the criteria to afford reciprocity to police officers certified in other states by an agency like the Council or by the federal government by waiving some or all of the minimum education and training qualifications for police officers under this chapter if they have satisfied substantially equivalent education and training;
  - (19) Mandate training for all persons seeking permanent or seasonal appointment as a police officer in the detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware law and federal law in the prompt reporting thereof. Such training shall be coordinated under [Insert citation] to ensure consistent trainings across disciplines.
- (b) The Director of the Delaware State Police Training Division shall be responsible for administering the mandatory training and education for police officers program with responsibility and authority to obtain professional assistance from other police and professional organizations to accomplish the purposes and objectives of the program.

1 Section 2. [*Mandatory training; exceptions.*]

- 2 (a) Except as provided in subsection (d) of this section, every municipality or other  
3 governmental unit of this State employing or intending to employ police officers shall require  
4 their attendance at an approved school. Every such municipality, other governmental unit or  
5 the [University of Delaware] or [Delaware State University] shall require that no person be  
6 given or accept an appointment as a police officer unless such person has successfully  
7 completed the required police training and education course at an approved school.  
8 (b) Police officers already serving under permanent appointment on [July 11, 1969], shall not be  
9 compelled to meet this requirement as a condition of:  
10 (1) Tenure;  
11 (2) Continuing employment;  
12 (3) Reemployment; or  
13 (4) Employment by another police agency, provided that the period of suspended services  
14 under paragraph (b)(3) or (4) of this section does not exceed 12 months.  
15

16 Failure of any such police officer to fulfill such requirements as the Council may hereafter  
17 establish by regulation shall not make the officer ineligible for promotion to which the officer  
18 might otherwise be eligible. The exemptions granted under this subsection shall not be construed  
19 to include in-service or continued training requirements which may be established by Council.  
20

- 21 (c) All police officers and all persons seeking permanent appointment as a police officer shall  
22 undergo training to assist them in identifying symptoms of mental illness, mental disability,  
23 and/or physical disability and in responding appropriately to situations involving persons  
24 having a mental illness, mental disability, and/or physical disability. The training must  
25 include instruction concerning the interaction between police officers and minors that have a  
26 mental illness, mental disability and/or physical disability. Additionally, all police officers  
27 serving under permanent appointment as of [January 1, 2007], must undertake this training  
28 by [January 1, 2008].  
29 (d) A component of training for all persons enrolled in an approved school shall be a course in  
30 the detection, prosecution and prevention of sexual assault. Such evidence-based training  
31 shall be victim-centered, and trauma-informed.  
32 (e) Nothing contained in this chapter shall limit the authority, power or duties of the [Secretary  
33 of Public Safety] as set forth in [Insert citation.]  
34

35 Section 3. [*Chief Deputy, State Solicitor, State Prosecutor, assistants, special assistants and law*  
36 *clerks.*]

- 37 (a) The Attorney General may appoint, from the practicing members of the Bar of this State, a  
38 lawyer resident in this State who shall be the Chief Deputy Attorney General and who shall  
39 have such powers, duties and responsibilities as designated by the Attorney General and shall  
40 serve on a full-time basis. In the event that the office of Attorney General becomes vacant, or  
41 should the Attorney General be unable to discharge the powers and duties of the office due to  
42 illness or incapacitation, the Chief Deputy Attorney General shall discharge the powers and  
43 duties of the Attorney General for a period not to exceed 90 days or until the Governor  
44 appoints a successor, whichever occurs first.  
45 (b) The Attorney General may appoint, from the practicing members of the Bar of this State, a  
46 lawyer resident in this State who shall be designated as the State Solicitor, who shall serve on

- 1 a full-time basis under the direct control of the Attorney General. The State Solicitor shall be  
2 responsible for all civil actions and matters wherein the State or its agencies or subdivisions  
3 are involved and shall have such powers and duties as the Attorney General shall designate.
- 4 (c) The Attorney General may appoint, from the practicing members of the Bar of this State, a  
5 lawyer resident in this State who shall be designated as the State Prosecutor and who shall  
6 serve on a full-time basis under the direct control of the Attorney General. The State  
7 Prosecutor shall be responsible for the prosecution of all criminal matters and shall have such  
8 powers and duties as the Attorney General shall designate.
- 9 (d) The Attorney General may appoint, within the limits of the appropriations made to the State  
10 Department of Justice, persons, authorized by rule of the State Supreme Court to practice law  
11 in the courts of this State, to be assistants or special assistants, who shall have such powers,  
12 duties and responsibilities as designated by the Attorney General.
- 13 (e) The Attorney General may appoint, within the limits of the appropriations made to the State  
14 Department of Justice, law clerks, who shall have such powers, duties and responsibilities as  
15 the Attorney General shall designate.
- 16 (f) The Attorney General may assign an assistant or special assistant to serve in any legal  
17 capacity in or for any office, department, board, agency, commission or instrumentality of  
18 the state government on a part-time or full-time basis whenever, in the judgment of the  
19 Attorney General, such assignment will contribute to the efficiency of the operation of such  
20 office, department, board, agency, commission or instrumentality; but such assistant shall  
21 remain under the supervision and control of the Attorney General while so serving.
- 22 (g) The powers of all assistants shall be statewide.
- 23 (h) The Attorney General shall devote full time to the office and shall not practice law for the  
24 term to which the Attorney General is elected. The Attorney General shall determine whether  
25 any assistants other than those designated as full time in this section shall be excluded from  
26 the practice of law. The salaries of the Chief Deputy and assistants shall be as fixed by the  
27 Attorney General within the appropriations made to the State Department of Justice and the  
28 limitations of [Insert citation.] of this title.
- 29 (i) The Attorney General may appoint persons authorized by rule of the State Supreme Court to  
30 practice law in this State, in addition to those authorized by appropriations to the Department  
31 to be assistants and special assistants, to be compensated from federal funds and funds other  
32 than those funds appropriated to the State Department of Justice, to have such powers, duties  
33 and responsibilities as designated by the Attorney General. The tenure provisions of [Insert  
34 citation.] of this title, however, shall not apply to such assistants and special assistants and  
35 the State shall not be obligated to continue their employment when or in the event such  
36 federal funds or such other funds are no longer available to pay their salaries.
- 37 (j) The Attorney General may appoint, from the practicing members of the Bar of this State, a  
38 lawyer resident in this State who shall be designated as the head or assistant head of any  
39 Division of the State Department of Justice, or the Chief Prosecutor of a particular county  
40 and who shall serve on a full-time basis under the direct control of the Attorney General.  
41 Such persons shall have such responsibilities, powers and duties as the Attorney General  
42 shall designate.
- 43 (k) The Attorney General shall ensure that any assistant or special assistant regularly assigned to  
44 the prosecution of criminal or delinquency cases alleging a sexual offense as that term is  
45 defined in [Insert citation.], including all lawyers assigned to the Sex Crimes Unit, shall  
46 receive at least 4 hours every 3 years of specialized training in the prosecution of sexual

1 assault. Such evidence-based training shall be victim-centered and trauma-informed, and  
2 shall include education on mandatory reporting requirements under state and federal law, and  
3 shall be provided by the National College of District Attorneys or any other appropriate  
4 organization approved by the Attorney General.

# Rape Kit Testing Process Reforms (Note)

*By Sean Slone, CSG Director of Transportation & Infrastructure Policy*

More than 25 states have enacted reforms to address inconsistencies in how rape kits are handled by law enforcement agencies. The reforms seek to address backlogs of unanalyzed sexual assault forensic exam evidence that was either never sent to a crime lab or that arrived at a crime lab, but was never tested. These backlogs of DNA evidence have provided significant obstacles in the identification, prosecution and conviction of perpetrators of sexual violence.

[A USA Today investigation in 2015](#) found that while some police departments and sheriff's offices submit every kit from a reported sexual assault for lab testing, other agencies test as few as 2 in 10 due to inconsistent state and local policies and a lack of national guidance. The investigation identified more than 70,000 untested sexual assault kits in the custody of 1,000 law enforcement agencies around the country, which points to an even larger accumulation of untested kits likely reaching into the hundreds of thousands across the nation's 18,000 law enforcement agencies.

Recent legislation to combat the problem has taken several forms, including:

- Bills to require rape kit inventories or audits and fact finding to determine the best course for reform efforts.
- Measures to establish time limits for submission of the kits to crime labs and completion of testing.
- Measures to address existing backlogs of untested rape kits (counting kits in law enforcement evidence facilities, testing kits in storage for years, and developing guidelines so future backlogs won't occur).
- Measures revamping procedures for the handling of rape kits.

## Audits & Fact Finding

Delaware's 2015 legislation ([SJR 1](#)) required every law enforcement agency, law department, hospital, testing facility and prosecutorial agency to report to the Attorney General's office the number of unexamined kits and their date of collection, which were compiled into a January 2016 aggregated report from the Criminal Justice Council. The Council was then tasked with developing strategies to improve the response from the medical and criminal justice communities to reports of sexual assault.

Iowa's 2016 legislation ([HF 2420](#)) requires a statewide audit of untested rape kits in the state.

## Time Limits

Florida's legislation ([SB 636](#)), approved in 2016, requires that rape kits be submitted within 30 days for lab testing and that the testing be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system. The bill also included guidelines and procedures for the storage and packaging of evidence for submission to the laboratories for testing.

South Dakota's 2016 legislation ([HB 1132](#)) requires a health care facility that collects a rape kit that is connected to a reported crime to notify law enforcement about the kit within 24 hours.

Law enforcement then has 14 days to send the kits to the lab for analysis. Labs are required to complete testing within 90 days. In addition it requires health care facilities to inform survivors who have evidence collected but do not wish to report the crime about the period of time for which the evidence will be stored before it is destroyed and how to release the rape kit for later testing.

Georgia's 2016 legislation ([SB 304](#)) requires an individual performing a forensic medical examination upon request of a victim to notify the appropriate law enforcement agency of the collection of such evidence and provide a summary of all rights guaranteed to the victim. It requires law enforcement officials to take possession of the evidence no later than 96 hours after being notified and requires them to submit such evidence to the Division of Forensic Sciences of the Georgia Bureau of Investigation within 30 days of it being collected.

### **Procedural Changes**

Oregon's legislation ([SB 1571](#)), approved in 2016, requires testing of all rape kits except for "anonymous" or "Jane Doe" kits. It requires law enforcement agencies to obtain kits from hospitals within seven days after they are notified and send the kits to the Oregon Department of State Police forensic laboratory fourteen days after that. In addition, it requires state and local law enforcement agencies to adopt written policies and procedures regarding the handling of kits, and ensure that results are uploaded to the Combined DNA Index System. Law enforcement agencies are required to retain all kits for a minimum of 60 years before destroying them.

Virginia's 2016 legislation ([SB 291](#)) establishes a comprehensive procedure for the collection and analysis of physical evidence recovery kits for victims of sexual assault, including those who elect at the time of the exam not to report a sexual assault to a law-enforcement agency. Kits from victims who elect not to report will be stored at the Division of Consolidated Laboratory Services for two years, although the Division, the victim, or the law-enforcement agency may elect for the kits to be retained for a longer period of time. If the victim later elects to report the sexual assault, the victim's kit will be released to law enforcement. Health care providers are required to explain these procedures and time frames to victims. Where the victim elects to report the offense to law enforcement at the time of the exam, law enforcement is required to take possession of the victim's kit upon notification from the health care provider that the kit has been collected and, with limited exceptions, to submit the kit to the Department of Forensic Science for analysis within 60 days.

Washington state passed legislation in 2015 ([HB 1068](#)) that requires law enforcement agencies to submit rape kits for testing within 30 days of receipt and established a task force to develop a response plan to address the state's rape kit backlog. The state's 2016 legislation ([HB 2530](#)) establishes a statewide rape kit tracking system with mandatory participation and creates a training grant for law enforcement investigators and Sexual Assault Nurse Examiners (SANEs). The legislation includes \$2.5M for the state patrol to address the sexual assault kit backlog.

2016 legislation in Illinois ([SB 3096](#)) grants survivors the right to know the status of their kits and extends the time period under which survivors can consent to the release of their rape kits for testing to five years.

## Twenty-Four / Seven Sobriety Program (Statement)

In 2003, the North Dakota Legislature enacted a sobriety program pilot program (SB 2003) in one or more judicial districts of the state.

In 2009, [HB 1306](#) authorized the Attorney General to expand the twenty-four seven (“24/7”) sobriety program to all judicial districts in the state. The 24/7 sobriety program implements alternatives to incarceration for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or other offenses in which alcohol or controlled substances are involved. The 24/7 sobriety program includes twice-per-day breath alcohol testing, remote electronic alcohol monitoring, and drug testing. The courts were given the discretion to order an offender to participate in the 24/7 sobriety program as a condition of bond or pre-trial release and may also order an offender to participate in the program as a condition of sentence or probation. The North Dakota Parole Board was also authorized to order a parolee to participate in the program as an intermediate sanction or condition of parole.

In 2013, the Legislature passed [HB 1302](#), which authorized the 24/7 sobriety program to be used as a condition for temporary restricted driver’s licenses, and also directed that the 24/7 sobriety program be used by the Juvenile Court for alcohol-related driving violations under the Juvenile Court Act, and as a mandatory condition of probation for a violation of driving under the influence offenses.

### **Summary of HB 1302:**

#### **Driving While Under the Influence:**

The Act increases the lookback provision for multiple offenses from five years to seven years. The Act allows a temporary restricted license after 14 days on a first offense if the offender is in the 24/7 sobriety program instead of 30 days and requires attendance in the 24/7 program for a temporary restricted license for a second or subsequent offense. The Act requires the 24/7 sobriety program to require breath tests two times a day or electronic monitoring, urine testing, or drug patch testing for which the offender must pay. The Act requires an exhaustion of administrative remedies before an offender may obtain a temporary restricted license.

The Act makes the failure to submit for testing an offense of driving while under the influence. The Act creates a felony for the fourth or subsequent offense, instead of the fifth or subsequent offense in seven years as previously provided by law.

The Act increases the sentence for a first offense by increasing the fine from \$250 to \$500 and creating an aggravated first offense for having a blood alcohol content of at least .16 of one percent by weight which has a fine of \$750 and requires at least two days imprisonment. The Act increases the penalties for a second offense by increasing the fine from \$500 to \$1,000 and requiring at least 12 months’ probation and participation in the 24/7 sobriety program as part of the supervised probation. The Act increases the penalties for a third offense by increasing the days of imprisonment from at least 60 days to 180 days, increasing the fine from \$1,000 to \$2,000, and requiring at least one year supervised probation and participation in the 24/7 sobriety

program as part of probation. The Act increases penalties for a fourth or subsequent offense by increasing the number of days of imprisonment from at least 180 days to 1 year and 1 day, increasing the fine from \$1,000 to \$2,000, and requiring two years of supervised probation and participation in the 24/7 sobriety program as part of probation.

The Act prohibits a suspended sentence for a first or second offense but allows for converting days of imprisonment to 10 hours of community service for each day for an aggravated first offense. The Act prohibits a suspended sentence for a third offense except for 60 days of imprisonment upon treatment, evaluation, and participation in the 24/7 sobriety program. The Act prohibits a suspended sentence for a fourth or subsequent offense except for one years imprisonment upon treatment, evaluation, and participation in the 24/7 sobriety program.

The Act creates criminal vehicular homicide for driving under the influence that results in death. The penalty is a Class A felony with 3 years imprisonment as a minimum mandatory and 10 years imprisonment for a second offense as a minimum mandatory. The Act creates criminal vehicular injury or driving under the influence that results in substantial bodily injury or serious bodily injury. The penalty is a Class C felony with one year's imprisonment as a minimum mandatory and if a second offense there is two years minimum mandatory imprisonment. The Act creates a Class C felony for a second conviction for driving while under the influence with a minor in the motor vehicle.

The Act requires a law enforcement officer to request a search warrant to force a blood, breath, or urine test unless there are exigent circumstances.

The Act reduces the revocation for failure to submit to testing from one year to 180 days for a first offense, from three years to two years for a second offense, and from four years to three years for a third or subsequent offense. The Act allows curing the revocation for failure to submit to testing by pleading guilty for any offense, not just the first offense as was previously provided by law.

#### **Juveniles:**

The Act requires the juvenile court to order a child to participate in the 24-7 sobriety program if the child is adjudicated delinquent or is subject to informal adjustment for having an alcohol concentration of at least .02 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.

#### **Judicial Procedure:**

The Act authorizes law enforcement to immediately take into custody without a warrant an individual who violates a court order to participate in the 24-7 sobriety program.

Submitted as:

North Dakota

Bill/Act: [HB 1302](#)

Status: Signed into law on April 29, 2013.

# Unauthorized Use of Personal Identifying Information

The Act expands the circumstances under which a person may commit the crime of unauthorized use of personal identifying information to include using the information 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 the state, regardless of whether there is any actual economic loss to the individual. The Act also provides that a first offense is a Class A misdemeanor and a second or subsequent offense is a Class C felony.

Submitted as:

North Dakota

Bill/Act: [HB 1280](#)

Status: Signed into law on March 27, 2013.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Unauthorized use of personal identifying information - Penalty.*]

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 [Insert citation.];
- 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

1 under this subsection is a class A misdemeanor. A second or subsequent offense under this  
2 subsection is a class C felony.

- 3 4. A violation of this section, of a law of another state, or of federal law that is equivalent to this  
4 section and which resulted in a plea or finding of guilt must be considered a prior offense.  
5 The prior offense must be alleged in the complaint, information, or indictment. The plea or  
6 finding of guilt for the prior offense must have occurred before the date of the commission of  
7 the offense or offenses charged in the complaint, information, or indictment.
- 8 5. A prosecution for a violation of this section must be commenced within six years after  
9 discovery by the victim of the offense of the facts constituting the violation.
- 10 6. When a person commits violations of this section in more than one county involving either  
11 one or more victims or the commission of acts constituting an element of the offense, the  
12 multiple offenses may be consolidated for commencement of prosecution in any county  
13 where one of the offenses was committed.

# Uniform Electronic Recordation of Custodial Interrogations Act

The Vermont Act requires a custodial interrogation that occurs in a place of detention concerning the investigation of a homicide or sexual assault to be electronically recorded in its entirety.

The Uniform Electronic Recordation of Custodial Interrogations Act requires that law enforcement electronically record the entirety of a custodial interrogation. The Act leaves it to the individual states to decide where and for what types of crimes this mandate applies, as well as the means by which recording must be done. The Act also includes a number of exceptions that excuse non-recording.

Submitted as:

Vermont

Bill/Act: [SB 184](#) (Subchapter 3) / [Uniform Act Text](#)

Status: Signed into law on July 17, 2014.

## Shared State Legislation

(Title, enacting clause, etc.)

Section 1. [*Electronic Recording of a Custodial Interrogation.*]

(a) As used in this section:

(1) “Custodial interrogation” means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and

(B) in which a reasonable person in the subject’s position would consider himself or herself to be in custody, starting from the moment a person should have been advised of his or her Miranda rights and ending when the questioning has concluded.

(2) “Electronic recording” or “electronically recorded” means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation, or if law enforcement does not have the current capacity to create a visual recording, an audio recording of the interrogation.

(3) “Place of detention” means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

(4) “Statement” means an oral, written, sign language, or nonverbal communication.

(b)

(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony violation of [Insert citation – homicide or sexual assault.] shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

1 (c)

- 2 (1) The following are exceptions to the recording requirement in subsection (b) of this  
3 section:  
4 (A) exigent circumstances;  
5 (B) a person's refusal to be electronically recorded;  
6 (C) interrogations conducted by other jurisdictions;  
7 (D) a reasonable belief that the person being interrogated did not commit a felony  
8 violation of [Insert citation – homicide or sexual assault.] and, therefore, an electronic  
9 recording of the interrogation was not required;  
10 (E) the safety of a person or protection of his or her identity; and  
11 (F) equipment malfunction.  
12 (2) If law enforcement does not make an electronic recording of a custodial interrogation as  
13 required by this section, the prosecution shall prove by a preponderance of the evidence  
14 that one of the exceptions identified in subdivision (1) of this subsection applies. If the  
15 prosecution does not meet the burden of proof, the evidence is still admissible, but the  
16 Court shall provide cautionary instructions to the jury regarding the failure to record the  
17 interrogation.  
18

19 Section 2. [*Law Enforcement Advisory Board.*]

- 20 (a) The Law Enforcement Advisory Board (LEAB) shall develop a plan for the  
21 implementation of section 1 (electronic recording of a custodial interrogation).  
22 (b) The LEAB, in consultation with practitioners and experts in recording interrogations,  
23 including the Innocence Project, shall:  
24 (1) assess the scope and location of the current inventory of recording equipment in  
25 Vermont;  
26 (2) develop recommendations, including funding options, regarding how to equip  
27 adequately law enforcement with the recording devices necessary to carry out section  
28 1 of this act; and  
29 (3) develop recommendations for expansion of recordings to questioning by a law  
30 enforcement officer that is reasonably likely to elicit an incriminating response from  
31 the subject regarding any felony offense.

# White Collar Crime Registry

This Act modifies the Code of Criminal Procedure to include a registry for persons who commit specified white collar crimes.

Submitted as:

Utah

[HB 378](#)

Status: Signed into law on March 24, 2015.

## Shared State Legislation

(Title, enacting clause, etc.)

### 1 Section 1. *[Definitions.]*

2 As used in this chapter:

- 3 (1) “Attorney general” means the [Utah] attorney general or a deputy attorney general.
- 4 (2) “Bureau” means the [Bureau of Criminal Identification of the Department of Public Safety].
- 5 (3) “Business day” means a day on which state offices are open for regular business.
- 6 (4) “Certificate of eligibility” means a document issued by the [Bureau of Criminal
- 7 Identification] stating that the offender has met the requirements of section 7.
- 8 (5) “Offender” means an individual required to register as provided in section 4.
- 9 (6) “Register” means to comply with the requirements of this chapter and rules of the Office of
- 10 the Attorney General made under this chapter.

### 11 Section 2. *[Duties of the attorney general.]*

12 (1) The attorney general shall:

- 13 (a) develop and operate a system to collect, analyze, maintain, and disseminate information
- 14 on offenders; and
- 15 (b) make information listed in section 3 available to the public.

16 (2) Any attorney general, county attorney, or district attorney shall, in the manner prescribed by

17 the attorney general, inform the attorney general of a person who is convicted of any of the

18 offenses listed in section 4 within 45 business days.

19 (3) The attorney general shall:

- 20 (a) provide the following additional information when available:
- 21 (i) the crimes for which the offender has been convicted, noting cases in which the
- 22 offender is still awaiting sentencing or has appealed the conviction;
- 23 (ii) a description of the offender's targets; and
- 24 (iii) any other relevant identifying information as determined by the attorney general;
- 25 (b) maintain the [Utah] White Collar Crime Offender Registry website; and
- 26 (c) ensure that information is entered into the offender registry in a timely manner.
- 27

1 Section 3. [*White collar crime offender registry – Attorney general to maintain.*]

- 2 (1) The attorney general shall maintain the [Utah] White Collar Crime Offender Registry  
3 website on the Internet, which shall contain a disclaimer informing the public that:  
4 (a) the information contained on the website is obtained from public records and the attorney  
5 general does not guarantee the website's accuracy or completeness;  
6 (b) members of the public are not allowed to use the information to harass or threaten  
7 offenders or members of their families; and  
8 (c) harassment, stalking, or making threats against offenders or their families is prohibited  
9 and may violate [Utah] criminal laws.
- 10 (2) The [Utah] White Collar Crime Offender Registry website shall be indexed by the surname  
11 of the offender.
- 12 (3) The attorney general shall construct the [Utah] White Collar Crime Offender Registry  
13 website so that before accessing registry information, users must indicate that they have read  
14 and understand the disclaimer and agree to comply with the disclaimer's terms.
- 15 (4) Except as provided in subsection (6), the [Utah] White Collar Crime Offender Registry  
16 website shall include the following registry information:  
17 (a) all names and aliases by which the offender is or has been known, but not including  
18 any online or Internet identifiers;  
19 (b) a physical description, including the offender's date of birth, height, weight, and eye and  
20 hair color;  
21 (c) a recent photograph of the offender; and  
22 (d) the crimes listed in section 4 of which the offender has been convicted.
- 23 (5) The Office of the Attorney General and any individual or entity acting at the request or upon  
24 the direction of the attorney general are immune from civil liability for damages and will be  
25 presumed to have acted in good faith by reporting information.
- 26 (6) The attorney general shall redact the names, addresses, phone numbers, Social Security  
27 numbers, and other information that, if disclosed, specifically identifies individual victims.  
28

29 Section 4. [*Registerable offenses.*]

30 A person shall be required to register with the Office of the Attorney General for a conviction of  
31 any of the following offenses as a second degree felony:

- 32 (1) [Insert citation – securities fraud];  
33 (2) [Insert citation – theft by deception];  
34 (3) [Insert citation – unlawful dealing of property by fiduciary];  
35 (4) [Insert citation – fraudulent insurance];  
36 (5) [Insert citation – mortgage fraud];  
37 (6) [Insert citation – communications fraud]; and  
38 (7) [Insert citation – money laundering].  
39

40 Section 5. [*Registration of offenders – Utah White Collar Crime Offender Registry.*]

- 41 (1) An offender who has been convicted of any offense listed in section 4 shall be on the [Utah]  
42 White Collar Crime Offender Registry for:  
43 (a) a period of 10 years for a first offense;  
44 (b) a second period of 10 years for a second conviction under this section; and  
45 (c) a lifetime period if convicted a third time under this section.

- 1 (2) Except as provided in subsection (3), an offender who has been convicted of any offense  
2 listed in section 4 after [Insert effective date], shall register with the attorney general to be  
3 included in the [Utah] White Collar Crime Offender Registry.
- 4 (3) An offender is not required to register as provided in subsection (2) if the offender:  
5 (a) has complied with all court orders at the time of sentencing;  
6 (b) has paid in full all court-ordered amounts of restitution to victims; and  
7 (c) has not been convicted of any other offense for which registration would be required.  
8

9 Section 6. [*Department and agency requirements.*]

- 10 (1) In accordance with [Insert citation – rulemaking act.], the attorney general shall make rules  
11 necessary to implement this chapter, including:  
12 (a) the method for dissemination of registry information; and  
13 (b) instructions to the public regarding acceptable use of the information.
- 14 (2) Any information regarding the identity or location of a victim may be redacted by the  
15 attorney general from information provided under subsection 3(6).  
16

17 Section 7. [*Removal from the White Collar Crime Offender Registry.*]

- 18 (1) An offender may petition the court where the offender was convicted of the offense for  
19 which registration with the [Utah] White Collar Crime Offender Registry is required, for an  
20 order to remove the offender from the [Utah] White Collar Crime Offender Registry, if:  
21 (a) five years have passed since the completion of the offender's sentence;  
22 (b) the offender has successfully completed all treatment ordered by the court or the Board of  
23 Pardons and Parole relating to the conviction;  
24 (c)  
25 (i) the offender has not been convicted of any other crime, excluding traffic offenses,  
26 as evidenced by a certificate of eligibility issued by the bureau; and  
27 (ii) as used in this section, “traffic offense” does not include a violation of [Insert  
28 citation – driving under the influence and reckless driving.];  
29 (iii) the offender has paid all restitution ordered by the court;  
30 (d) notice has been delivered to the victims and the office that prosecuted the offender; and  
31 (e) the offender has not been found to be civilly liable in any case in which fraud,  
32 misrepresentation, deceit, breach of fiduciary duty, or the misuse or misappropriation of  
33 funds is an element.
- 34 (2)  
35 (a)  
36 (i) An offender seeking removal from the White Collar Crime Offender Registry  
37 shall apply for a certificate of eligibility from the bureau.  
38 (ii) An offender who intentionally or knowingly provides any false or misleading  
39 information to the bureau when applying for a certificate of eligibility is guilty of  
40 a class B misdemeanor and subject to prosecution under [Insert citation –  
41 providing false or misleading information.]  
42 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a  
43 certificate of eligibility to anyone providing false information on an application  
44 under this subsection (2).

- 1 (b)
- 2 (i) The bureau shall check the records of governmental agencies, including national
- 3 criminal databases, to determine whether an offender is eligible to receive a
- 4 certificate of eligibility under this section.
- 5 (ii) If the offender meets all of the criteria under subsections (1)(a) through (d), the
- 6 bureau shall issue a certificate of eligibility to the offender which shall be valid
- 7 for a period of 90 days from the date the certificate is issued.
- 8 (c)
- 9 (i) The bureau shall charge an application fee for the certificate of eligibility in
- 10 accordance with the process in [Insert citation – establishing and assessing fees.]
- 11 (ii) The fee shall be paid at the time the offender submits an application for a
- 12 certificate of eligibility to the bureau.
- 13 (iii) If the bureau determines that the issuance of a certificate of eligibility is
- 14 appropriate, the bureau shall issue to the offender a certificate of eligibility at no
- 15 additional charge.
- 16 (d) Funds generated under this subsection (2) shall be deposited in the General Fund as a
- 17 dedicated credit by the department to cover the costs incurred in determining eligibility.
- 18 (3) The offender shall:
- 19 (a) file with the court the following information:
- 20 (i) the petition;
- 21 (ii) the original information;
- 22 (iii) the court docket; and
- 23 (iv) an affidavit certifying that the offender is in compliance with the provisions of
- 24 subsection (1); and
- 25 (b) deliver a copy of the petition to the office of the prosecutor.
- 26 (4)
- 27 (a) Upon receipt of a petition for removal from the [Utah] White Collar Crime Offender
- 28 Registry, the office of the prosecutor shall provide notice of the petition by first-class
- 29 mail to the victims at the most recent addresses of record on file.
- 30 (b) The notice shall:
- 31 (i) include a copy of the petition for removal from the registry;
- 32 (ii) state that the victim has a right to object to the removal of the offender from the
- 33 registry; and
- 34 (iii) provide instructions for filing an objection with the court.
- 35 (5) The office of the prosecutor shall provide the following, if available, to the court within 30
- 36 days after receiving the petition:
- 37 (a) a presentence report;
- 38 (b) any evaluation done as part of sentencing; and
- 39 (c) any other information the office of the prosecutor feels the court should consider.
- 40 (6) The victim may respond to the petition by filing a recommendation or objection with the
- 41 court within 45 days after the mailing of the petition to the victim.
- 42 (7) The court shall:
- 43 (a) review the petition and all documents submitted with the petition; and
- 44 (b) hold a hearing if requested by the office of the prosecutor or the victim.
- 45 (8) When considering a petition for removal from the registry, the court shall consider whether
- 46 the offender has paid all restitution ordered by the court or the Board of Pardons and Parole.

- 1 (9) If the court determines that it is not contrary to the interests of the public to do so, the court  
2 may grant the petition and order removal of the offender from the registry.
- 3 (10) If the court grants the petition, the court shall forward a copy of the order directing  
4 removal of the offender from the registry to the attorney general and the office of the  
5 prosecutor.
- 6 (11) The office of the prosecutor shall notify the victims of the court's decision in the same  
7 manner as the notification required in subsection (3)(a).
- 8 (12) The attorney general shall remove an offender from the registry upon the offender  
9 providing satisfactory evidence to the attorney general that:
- 10 (a) each conviction listed in section 4 has either been expunged or reduced in degree below a  
11 second degree felony; and  
12 (b) the offender has paid all court-ordered restitution to victims.

# Revised Uniform Fiduciary Access to Digital Assets Act

The Act allows a fiduciary, such as a personal representative, trustee, or conservator, to access to certain digital content of a user while limiting undue access. The Act allows companies that hold electronic user data to offer users a choice on what they would like done with the data should the user become inactive or a request for the communications is received. This user choice trumps all other indicators or documents, such as instructions in a will. The Act lays out what a fiduciary must provide to a custodian in cases in which a user consents to disclosure or if a court orders disclosure. It also specifies the procedure for a fiduciary to request content of communications in cases in which a user has not made a choice or has chosen not to disclose. The Act allows the fiduciary to receive a catalogue of communications that the user had made, including to/from, email addresses, and date and time.

Submitted as:

Oregon

Bill/Act: Bill/Act: [SB 1554, Uniform Law Act](#)

Status: Signed into law on March 3, 2016.

## Shared State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short title.*]

2 This Act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

3  
4 Section 2. [*Definitions.*]

5 (1) “Account” means an arrangement under a terms-of-service agreement in which a custodian  
6 carries, maintains, processes, receives or stores a digital asset of the user or provides goods or  
7 services to the user.

8 (2) “Agent” means a person designated as an agent under a power of attorney in accordance with  
9 [Insert statute – power of attorney].

10 (3) “Carries” means engages in the transmission of an electronic communication.

11 (4) “Catalogue of electronic communications” means information that identifies each person  
12 with which a user has had an electronic communication, the time and date of the  
13 communication and the electronic address of the person.

14 (5) “Conservator” means a person appointed as a conservator under the provisions of [Insert  
15 statute – Protective proceedings.]

16 (6) “Content of an electronic communication” means information concerning the substance or  
17 meaning of the communication that:

18 (a) Has been sent or received by a user;

19 (b) Is in electronic storage by a custodian providing an electronic communication service to  
20 the public or is carried or maintained by a custodian providing a remote computing  
21 service to the public; and

22 (c) Is not readily accessible to the public.

- 1 (7) “Court” means a circuit court in this state.
- 2 (8) “Custodian” means a person that carries, maintains, processes, receives or stores a digital  
3 asset of a user.
- 4 (9) “Designated recipient” means a person chosen by a user using an online tool to administer  
5 digital assets of the user.
- 6 (10) “Digital asset” means an electronic record in which an individual has a right or interest.  
7 “Digital asset” does not include an underlying asset or liability unless the asset or liability is  
8 itself an electronic record.
- 9 (11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,  
10 optical, electromagnetic or similar capabilities.
- 11 (12) “Electronic communication” has the meaning set forth in 18 U.S.C. 2510(12).
- 12 (13) “Electronic communication service” means a custodian that provides to a user the ability  
13 to send or receive an electronic communication.
- 14 (14) “Fiduciary” means a person that is an original, additional or successor personal  
15 representative, conservator, agent or trustee.
- 16 (15) “Information” means data, text, images, videos, sounds, codes, computer programs,  
17 software, databases and similar intelligence of any nature.
- 18 (16) “Online tool” means an electronic service provided by a custodian that allows the user, in  
19 an agreement distinct from the terms-of-service agreement between the custodian and the  
20 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.
- 21 (17) “Person” means an individual, estate, business or nonprofit entity, public corporation,  
22 government or governmental subdivision, agency or instrumentality or other legal entity.
- 23 (18) “Personal representative” means an executor, administrator or special administrator, or a  
24 person legally authorized to perform substantially the same functions.
- 25 (19) “Power of attorney” means a record that grants an agent authority to act in the place of a  
26 principal.
- 27 (20) “Principal” means an individual who grants authority to an agent in a power of attorney.
- 28 (21) “Protected person” means an individual for whom a conservator has been appointed.  
29 “Protected person” includes an individual for whom an application for the appointment of a  
30 conservator is pending.
- 31 (22) “Record” means information that is inscribed on a tangible medium or that is stored in an  
32 electronic or other medium and is retrievable in perceivable form.
- 33 (23) “Remote computing service” means a custodian that provides to a user computer  
34 processing services or the storage of digital assets by means of an electronic communications  
35 system as defined in 18 U.S.C. 2510(14).
- 36 (24) “Terms-of-service agreement” means an agreement that controls the relationship between  
37 a user and a custodian.
- 38 (25) “Trustee” means a fiduciary with legal title to property under an agreement or declaration  
39 that creates a beneficial interest in another person. “Trustee” includes a successor trustee.
- 40 (26) “User” means a person that has an account with a custodian.
- 41 (27) “Will” includes a codicil, testamentary instrument that only appoints an executor and  
42 instrument that revokes or revises a testamentary instrument.

1 Section 3. *[Applicability.]*

2 (1) Sections 2 to 18 of this [Act] apply to:

- 3 (a) A fiduciary acting under a will or power of attorney executed before, on or after the  
4 effective date of this [Act];  
5 (b) A personal representative acting for a decedent who died before, on or after the effective  
6 date of this [Act];  
7 (c) A conservatorship proceeding commenced before, on or after the effective date of this  
8 [Act]; and  
9 (d) A trustee acting under a trust created before, on or after the effective date of this [Act]

10 (2) Sections 2 to 18 of this [Act] apply to a custodian if the user resides in this state or resided in  
11 this state at the time of the user's death.

12 (3) Sections 2 to 18 of this [Act] do not apply to a digital asset of an employer used by an  
13 employee in the ordinary course of the employer's business.  
14

15 Section 4. *[User direction for disclosure of digital assets.]*

16 (1) A user may use an online tool to direct the custodian to disclose to a designated recipient or  
17 not to disclose some or all of the user's digital assets, including the content of electronic  
18 communications. If the online tool allows the user to modify or delete a direction at all times,  
19 a direction regarding disclosure using an online tool overrides a contrary direction by the user  
20 in a will, trust, power of attorney or other record.

21 (2) If a user has not used an online tool to give direction under subsection (1) of this section, or if  
22 the custodian has not provided an online tool, the user may allow or prohibit in a will, trust,  
23 power of attorney or other record disclosure to a fiduciary of some or all of the user's digital  
24 assets, including the content of electronic communications sent or received by the user.

25 (3) A user's direction under subsection (1) or (2) of this section overrides a contrary provision in  
26 a terms-of-service agreement that does not require the user to act affirmatively and distinctly  
27 from the user's assent to the terms of service.

28 Section 5. *[Terms-of-service agreement.]*

29 (1) Sections 2 to 18 of this [Act] do not change or impair a right of a custodian or a user under a  
30 terms-of-service agreement to access and use digital assets of the user.

31 (2) Sections 2 to 18 of this [Act] do not give a fiduciary or a designated recipient any new or  
32 expanded rights other than those held by the user for whom, or for whose estate, the fiduciary  
33 or designated recipient acts or represents.

34 (3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated  
35 by a user, by federal law or by a terms-of-service agreement if the user has not provided  
36 direction under section 4 of this [Act].  
37

38 Section 6. *[Procedure for disclosing digital assets.]*

39 (1) When disclosing digital assets of a user under sections 2 to 18 of this [Act], the custodian  
40 may, in the custodian's sole discretion:

- 41 (a) Grant a fiduciary or designated recipient full access to the user's account;  
42 (b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to  
43 perform the tasks with which the fiduciary or designated recipient is charged; or  
44 (c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on  
45 the date the custodian received the request for disclosure, the user could have accessed if  
46 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 [Act].
- (3) A custodian need not disclose under sections 2 to 18 of this [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 [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. [*Disclosure of content of electronic communications of deceased user.*]

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. [*Disclosure of other digital assets of deceased user.*]

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;

- 1 (2) A certified copy of the death certificate of the user;
- 2 (3) A certified copy of the letter of appointment of the personal representative or a small estate
- 3 affidavit or court order; and
- 4 (4) If requested by the custodian:
  - 5 (a) A number, user name, address or other unique subscriber or account identifier assigned
  - 6 by the custodian to identify the user's account;
  - 7 (b) Evidence linking the account to the user;
  - 8 (c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for
  - 9 administration of the estate; or
  - 10 (d) A finding by the court that:
    - 11 (A) The user had a specific account with the custodian, identifiable by the information
    - 12 specified in paragraph (a) of this subsection; or
    - 13 (B) Disclosure of the user's digital assets is reasonably necessary for administration of the
    - 14 estate.
  - 15

16 Section 9. [*Disclosure of content of electronic communications of principal.*]

17 To the extent a power of attorney expressly grants an agent authority over the content of  
18 electronic communications sent or received by the principal and unless directed otherwise by the  
19 principal or the court, a custodian shall disclose to the agent the content if the agent gives the  
20 custodian:

- 21 (1) A written request for disclosure in physical or electronic form;
- 22 (2) An original or copy of the power of attorney expressly granting the agent authority over the
- 23 content of electronic communications of the principal;
- 24 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect;
- 25 and
- 26 (4) If requested by the custodian:
  - 27 (a) A number, user name, address or other unique subscriber or account identifier assigned
  - 28 by the custodian to identify the principal's account; or
  - 29 (b) Evidence linking the account to the principal.
- 30

31 Section 10. [*Disclosure of other digital assets of principal.*]

32 Unless otherwise ordered by the court, directed by the principal or provided in a power of  
33 attorney, a custodian shall disclose to an agent with specific authority over digital assets or  
34 general authority to act on behalf of a principal a catalogue of electronic communications sent or  
35 received by the principal and digital assets, other than the content of electronic communications,  
36 of the principal if the agent gives the custodian:

- 37 (1) A written request for disclosure in physical or electronic form;
- 38 (2) An original or a copy of the power of attorney that gives the agent specific authority over
- 39 digital assets or general authority to act on behalf of the principal;
- 40 (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect;
- 41 and
- 42 (4) If requested by the custodian:
  - 43 (a) A number, user name, address or other unique subscriber or account identifier assigned
  - 44 by the custodian to identify the principal's account; or
  - 45 (b) Evidence linking the account to the principal.
- 46

1 Section 11. [*Disclosure of digital assets held in trust when trustee is original user.*]

2 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a  
3 trustee that is an original user of an account any digital asset of the account held in trust,  
4 including a catalogue of electronic communications of the trustee and the content of electronic  
5 communications.

6  
7 Section 12. [*Disclosure of contents of electronic communications held in trust when trustee not*  
8 *original user.*]

9 Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian  
10 shall disclose to a trustee that is not an original user of an account the content of an electronic  
11 communication sent or received by an original or successor user and carried, maintained,  
12 processed, received or stored by the custodian in the account of the trust if the trustee gives the  
13 custodian:

14 (1) A written request for disclosure in physical or electronic form;

15 (2) A certified copy of the trust instrument or a certification of the trust under [Insert citation –  
16 Certification of trust.] that includes consent to disclosure of the content of electronic  
17 communications to the trustee;

18 (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a  
19 currently acting trustee of the trust; and

20 (4) If requested by the custodian:

21 (a) A number, user name, address or other unique subscriber or account identifier assigned  
22 by the custodian to identify the trust's account; or

23 (b) Evidence linking the account to the trust.  
24

25 Section 13. [*Disclosure of other digital assets held in trust when trustee not original user.*]

26 Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian  
27 shall disclose to a trustee that is not an original user of an account a catalogue of electronic  
28 communications sent or received by an original or successor user and stored, carried or  
29 maintained by the custodian in an account of the trust and any digital assets, other than the  
30 content of electronic communications, in which the trust has a right or interest if the trustee gives  
31 the custodian:

32 (1) A written request for disclosure in physical or electronic form;

33 (2) A certified copy of the trust instrument or a certification of the trust under [Insert citation –  
34 Certification of Trust.];

35 (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a  
36 currently acting trustee of the trust; and

37 (4) If requested by the custodian:

38 (a) A number, user name, address or other unique subscriber or account identifier assigned  
39 by the custodian to identify the trust's account; or

40 (b) Evidence linking the account to the trust.  
41

42 Section 14. [*Disclosure of digital assets to conservator of protected person.*]

43 (1) After an opportunity for a hearing, the court may grant a conservator access to the digital  
44 assets of a protected person.

45 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to  
46 the conservator the catalogue of electronic communications sent or received by a protected

1 person and any digital assets, other than the content of electronic communications, in which  
2 the protected person has a right or interest if the conservator gives the custodian:

3 (a) A written request for disclosure in physical or electronic form;

4 (b) A certified copy of the court order that gives the conservator authority over the digital  
5 assets of the protected person; and

6 (c) If requested by the custodian:

7 (A) A number, user name, address or other unique subscriber or account identifier  
8 assigned by the custodian to identify the account of the protected person; or

9 (B) Evidence linking the account to the protected person.

10 (3) A conservator with general authority to manage the assets of a protected person may request  
11 a custodian of the digital assets of the protected person to suspend or terminate the account of  
12 the protected person for good cause. A request made under this subsection must be  
13 accompanied by a certified copy of the court order giving the conservator authority over the  
14 protected person's property.

15  
16 Section 15. [*Fiduciary duty and authority.*]

17 (1) The legal duties imposed on a fiduciary charged with managing tangible property apply to  
18 the management of digital assets, including:

19 (a) The duty of care;

20 (b) The duty of loyalty; and

21 (c) The duty of confidentiality.

22 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

23 (a) Except as otherwise provided in section 4 of this [Act], is subject to the applicable terms  
24 of service;

25 (b) Is subject to other applicable law, including copyright law;

26 (c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

27 (d) May not be used to impersonate the user.

28 (3) A fiduciary with authority over the property of a decedent, protected person, principal or  
29 settlor has the right to access any digital asset in which the decedent, protected person,  
30 principal or settlor has a right or interest and that is not held by a custodian or subject to a  
31 terms-of-service agreement.

32 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the  
33 property of the decedent, protected person, principal or settlor for the purpose of applicable  
34 computer fraud and unauthorized computer access laws, including this state's laws on  
35 unauthorized computer access.

36 (5) A fiduciary with authority over the tangible, personal property of a decedent, protected  
37 person, principal or settlor:

38 (a) Has the right to access the property and any digital asset stored in the property; and

39 (b) Is an authorized user for the purpose of computer fraud and unauthorized computer  
40 access laws, including this state's laws on unauthorized computer access.

41 (6) A custodian may disclose information in an account to a fiduciary of the user when the  
42 information is required to terminate an account used to access digital assets licensed to the  
43 user.

44 (7) A fiduciary of a user may request a custodian to terminate the user's account. A request for  
45 termination must be in writing, in either physical or electronic form, and accompanied by:

46 (a) If the user is deceased, a certified copy of the death certificate of the user;

- 1 (b) A certified copy of the letter of appointment of the personal representative, a small estate  
2 affidavit or court order, a court order, a power of attorney or a trust giving the fiduciary  
3 authority over the account; and  
4 (c) If requested by the custodian:  
5 (A) A number, user name, address or other unique subscriber or account identifier  
6 assigned by the custodian to identify the user's account;  
7 (B) Evidence linking the account to the user; or  
8 (C) A finding by the court that the user had a specific account with the custodian,  
9 identifiable by the information specified in subparagraph (A) of this paragraph.  
10

11 Section 16. [*Custodian compliance and immunity.*]

- 12 (1) Not later than 60 days after receipt of the information required under sections 7 to 15 of this  
13 [Act], a custodian shall comply with a request from a fiduciary or designated recipient to  
14 disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary  
15 or designated recipient may apply to the court for an order directing compliance.  
16 (2) An order under subsection (1) of this section directing compliance must contain a finding that  
17 compliance is not in violation of 18 U.S.C. 2702.  
18 (3) A custodian may notify the user that a request for disclosure or to terminate an account was  
19 made under sections 2 to 18 of this [Act].  
20 (4) A custodian may deny a request under sections 2 to 18 of this [Act] from a fiduciary or  
21 designated recipient for disclosure of digital assets or to terminate an account if the custodian  
22 is aware of any lawful access to the account following the receipt of the fiduciary's request.  
23 (5) Sections 2 to 18 of this [Act] do not limit a custodian's ability to obtain or require a fiduciary  
24 or designated recipient requesting disclosure or termination to obtain a court order that:  
25 (a) Specifies that an account belongs to the protected person or principal;  
26 (b) Specifies that there is sufficient consent from the protected person or principal to support  
27 the requested disclosure; and  
28 (c) Contains a finding required by law other than under sections 2 to 18 of this [Act].  
29 (6) A custodian and the custodian's officers, employees and agents are immune from liability for  
30 an act or omission done in good faith in compliance with sections 2 to 18 of this [Act].  
31

32 Section 17. [*Uniformity of application and construction.*]

33 In applying and construing this uniform act, consideration must be given to the need to promote  
34 uniformity of the law with respect to its subject matter among the enacting states.  
35

36 Section 18. [*Relation to Electronic Signatures in Global and National Commerce Act.*]

37 Sections 2 to 18 of this [Act] modify, limit or supersede the Electronic Signatures in Global and  
38 National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede 15 U.S.C.  
39 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Section  
40 7003(b).