



**SUGGESTED
STATE
LEGISLATION
2010
Volume 69**

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky

Headquarters: (859) 244-8000
Fax: (859) 244-8001
E-mail: sales@csg.org
Internet: www.csg.org



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The Council of State Governments

2760 Research Park Drive
P.O. Box 11910
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The Council of State Governments
2760 Research Park Drive · P.O. Box 11910
Lexington, KY 40578-1910
(859) 244-8000
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1-800-800-1910
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The Council of State Governments is the premier multibranch organization forecasting policy trends for the community of states, commonwealths and territories on a national and regional basis.

CSG alerts state elected and appointed officials to emerging social, economic and political trends; offers innovative state policy responses to rapidly changing conditions; and advocates multistate problem-solving to maximize resources and competitiveness.

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Council Offices

Headquarters:

David Adkins, Executive Director

2760 Research Park Drive

P.O. Box 11910

Lexington, KY 40578-1910

Phone: (859) 244-8000

FAX: (859) 244-8001

E-mail: info@csg.org

Internet: www.csg.org

Eastern:

Wendell Hannaford, Director

100 Wall Street, 20th Floor

New York, NY 10005

Phone: (212) 482-2320

FAX: (212) 482-2344

E-mail: csge@csg.org

Midwestern:

Michael H. McCabe, Director

701 E. 22nd Street, Suite 110

Lombard, IL 60148

Phone: (630) 925-1922

FAX: (630) 925-1930

E-mail: csgm@csg.org

Southern

Colleen Cousineau, Director

P.O. Box 98129

Atlanta, GA 30359

Phone: (404) 633-1866

FAX: (404) 633-4896

E-mail: slc@csg.org

Western:

Kent Briggs, Director

1107 9th Street, Suite 650

Sacramento, CA 95814

Phone: (916) 553-4423

FAX: (916) 446-5760

E-mail: csgw@csg.org

Washington, D.C.:

Chris Whatley, Director

Hall of the States

444 N. Capitol Street, NW, Suite 401

Washington, D.C. 20001

Phone: (202) 624-5460

FAX: (202) 624-5452

E-mail: csg-dc@csg.org

Foreword

The Council of State Governments (CSG) is pleased to bring to you this **2010 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation from state statutes on topics of current interest and importance to the states. The draft legislation found in this book represents many hours of work by The Council's Committee on Suggested State Legislation, CSG Policy Task Forces, and CSG staff.

The entries in this book were selected from hundreds of submissions. Most are based on existing state statutes. Neither The Council nor the Committee seeks to influence the enactment of state legislation. Throughout the years, however, both have found that the experiences of one state may prove beneficial to others. It is in this spirit that these proposals are presented.

The Council of State Governments
Lexington, Kentucky

David Adkins
Executive Director

Staff Acknowledgments

William K. Voit, Senior Project Director
Nancy J. Vickers, National Program Administrator

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Introduction

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

That statement is a simple one, but it remains as true today as it did when it first appeared in the introduction to the 28th volume of *Suggested State Legislation*. For more than 60 years, The Council of State Governments’ Suggested State Legislation (SSL) program has informed state policy-makers about a broad range of legislative issues, and its national Committee on Suggested State Legislation has been an archetype of interstate dialogue, one successfully imitated in a variety of ways.

The Committee on Suggested State Legislation originated as a group of state and federal officials who first met in August of 1940 to review state laws relating to U.S. security. The result was *A Legislative Program for Defense*. That group reconvened following the nation’s entry into World War II in order to develop a volume of *Suggested State War Legislation*. That publication was succeeded by *Suggested State Legislation*, an annual volume of draft legislation about topics of major governmental interest. In keeping with CSG’s current mission, the SSL Committee now focuses more on issues arising from major trends impacting the states, such as an aging population. Today, SSL Committee members represent all regions of the country. They are generally legislators and legislative staff, and include the CSG policy task force chairs.

Traditionally, SSL volumes were the culmination of a yearlong process in which legislation was received and reviewed by members of the SSL Committee in a series of meetings. Traditionally, the volumes were produced at the end of the SSL Cycle. More recently, the SSL volumes were released concurrently online at CSG’s STARS database. However, even under this system, in some cases, the items that the committee voted to include in a volume had to be held for as long as 11 months before they could be distributed to the states.

Beginning with the 2003 SSL Cycle, the SSL Committee produces SSL volumes electronically in segments, one segment after every committee meeting. Each segment will be published on-line approximately two months after a meeting. The electronic parts will be combined into a book that CSG will continue to publish at the end of the SSL Cycle, at least for the immediate future.

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

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

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

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

Revisions in the headings and numbering and other modifications may be necessary in order to conform to local practices, and decisions must be made regarding optional sections and provisions. Thus, readers should note that ***Suggested State Legislation*** drafts typically do not duplicate actual state legislation.

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

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

Legislation and accompanying materials should be submitted to the Suggested State Legislation Program, The Council of State Governments, 2760 Research Park Drive, P.O. Box 11910, Lexington, Kentucky 40578-1910, (859) 244-8000 or fax (859) 244-8001.

Readers should keep in mind that neither The Council of State Governments nor the SSL Committee are in the position of advocating the enactment of items that are presented in SSL Volumes. Instead, the entries are offered as an aid to state officials interested in drafting legislation in a specific area, and can be looked upon as a guide to areas of broad current interest in the states.

Interested readers can find out more about the SSL program by visiting the SSL pages at CSG’s Internet Web site at www.csg.org.

SSL Process

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

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

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

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

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

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

SSL Criteria

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

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

Suggested State Legislation Style

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

Introductory Matter

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

Submitted As

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

Standardized Sections and Form

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

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

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

“Sample Act” Criminal Rehabilitation Research

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

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

Submitted as:

State:

Act/Bill Number

Status:

Suggested State Legislation

(Title, enacting clause, etc.)

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

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

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

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

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

9
10 Section 3. [*Rehabilitation Research Commission.*]

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

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

17
18 ***
19

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

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

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

Adult Criminal Sex Offender Group Homes

This Act attempts to balance the need for housing registered adult sex offenders with citizen concerns about housing such offenders in residential areas. The Act generally limits the number of registered sex offenders who can live together in residential housing at two. However, it grants exceptions to this rule and gives cities and counties the authority to exceed the limit if the cities and counties meet certain criteria when locating residential housing for registered sex offenders.

Submitted as:

Idaho

HB 417

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address the Number of
2 Adult Sex Offenders Who Can Reside Together.”

3
4 Section 2. [*Adult Criminal Sex Offenders -- Prohibited Group Dwelling -- Exceptions.*]

5 (A) For purposes of this section:

6 (1) “Reside” and “residing” mean occupying the residential dwelling unit as a
7 fixed place of abode or habitation for any period and to which place the person has the intention
8 of returning after a departure or absence therefrom regardless of the duration of absence.

9 (2) “Residential dwelling unit” includes, but is not limited to, single family
10 dwellings and units in multifamily dwellings including units in duplexes, apartment dwellings,
11 mobile homes, condominiums and townhouses in areas zoned as residential. For the purposes of
12 this section, a state or federally licensed health care or convalescent facility is not a residential
13 dwelling unit.

14 (B) Except as otherwise provided in this section, when a person is required to register
15 pursuant to [insert citation], that person may not reside in any residential dwelling unit with more
16 than [one (1)] other person who is also required to register pursuant to [insert citation]. If, on the
17 effective date of this section, any person required to register pursuant to [insert citation], is
18 legally residing in a residential dwelling unit with more than [one (1)] other person required to so
19 register, the person may continue to reside in that residential dwelling unit without violating the
20 provisions of this section, provided that no additional people so required to register shall move
21 into that residential dwelling unit if the person moving in would be in violation of this section.

22 (C) (1) A judge of the district court may, upon petition and after an appropriate
23 hearing, authorize a person required to register pursuant to [insert citation], to reside in a
24 residential dwelling unit with more than [one (1)] other person who is also required to register
25 pursuant to this Act, if the judge determines that:

26 (a) Upon clear and convincing evidence that not doing so would deprive
27 the petitioner of a constitutionally guaranteed right; and

28 (b) That such right is more compelling under the facts of the case than is
29 the interest of the state and local government in protecting neighboring citizens, including
30 minors, from risk of physical or psychological harm. Such risk of harm shall be presumed absent

clear and convincing evidence to the contrary given the applicant's status as a person required to register pursuant to [insert citation];

(2) Any exception allowed under this section shall be limited to alleviate only a deprivation of constitutional right which is more compelling than the interest of the state and local government in minimizing the risk of harm to the neighboring citizens;

(3) Any order of exception under this section shall be made a part of the registry maintained pursuant to [insert citation].

(D) Any city or county may establish standards for the establishment and operation of residential houses for registered sex offenders which exceed the number of registered sex offenders allowed to reside in a residential dwelling unit under subsection (B) of this section. Applicable standards shall include establishing procedures to allow comment of neighboring residents within a specified distance, and may include, but are not limited to:

(1) Designating permissible zones in which such houses may be located;

(2) Designating permissible distances between such houses;

(3) Designating the maximum number of registered sex offenders allowed to reside in such houses;

(4) Designating qualifications and standards for supervision and care of such houses and the residents;

(5) Designating requirements and procedures to qualify as the operator of such houses, including any requirement that the residents be engaged in treatment or support programs for sex offenders and related addiction treatment or support programs; and

(6) Designating any health and safety requirements which are different than those applicable to other residential dwelling units in the zone.

(E) No person or entity shall operate a residence house for registered sex offenders in violation of the limitations of subsection (B) of this section except as otherwise provided under subsection (D) of this section. If, on the effective date of this section, any individual or entity is operating an existing residence house for people required to register pursuant to this Act, and when such individual or entity also requires such people to be participants in a sex offender treatment or support program such individual or entity shall not be precluded from continuing to operate such residence house, provided that:

(1) The residence house shall not operate at a capacity exceeding [eight (8)] residents in the dwelling unit and [two (2)] residents per bedroom, or the existing number of residents, whichever is less;

(2) Once the governing city or county enacts an ordinance pursuant to subsection (D) of this section establishing standards for the operation of a residence house for sex offenders, the operator of the residence house shall, no later than [one (1)] year after enactment of the ordinance, comply with all standards of the ordinance, except any requirement that is less than the maximum capacity provided for under subsection (E)(1) of this section or which requires a relocation of the residence;

(3) The burden of proving that an existing residence house qualifies for continuing operation under this subsection shall be upon the operator of the residence house;

(4) Any change in the use of an existing residence house shall void the exception for the continuing operation of the house under the provisions of this section.

(F) If any person required to register pursuant to [insert citation], is on parole or probation under the supervision of the [state department of correction], the [department] shall be notified by the person or the person's agent of any intent to reside with another person required to register under [insert citation]. The [department] must approve the living arrangement in advance as consistent with the terms of the parole or probation, and consistent with the objective of

79 reducing the risk of recidivism. The [department] shall establish rules governing the application
80 of this subsection.

81 (G) Any person who knowingly and with intent violates the provisions of this section is
82 guilty of a [misdemeanor].

83 (H) Any city or county is entitled to injunctive relief against any person or entity
84 operating a residence house within its jurisdiction in violation of this section.

85
86 Section 3. [*Severability*.] [Insert severability clause.]

87
88 Section 4. [*Repealer*.] [Insert repealer clause.]

89
90 Section 5. [*Effective Date*.] [Insert effective date.]

Broadband Institute

This Act creates an institute to work to ensure all businesses and citizens of the state can get affordable high-speed Internet access.

Submitted as:

Massachusetts

Chapter 231, Acts of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish a Broadband
2 Institute.”

3
4 Section 2. [*Definitions.*] As used in this Act, “Broadband” means high-speed Internet
5 access, including wireless Internet access, and as may be further defined by the governing board
6 of the Broadband Institute established by this Act.

7
8 Section 3. [*Broadband Institute Established.*]

9 (A) There is created a Broadband Institute (institute) as a [unit/division/department] of
10 the [agency/corporation]. The purpose of the institute shall be to achieve the deployment of
11 affordable and ubiquitous broadband access across the state. The objectives of the institute shall
12 include assessing and improving broadband access conditions in communities which do not have
13 or have limited or insufficient access to broadband; promoting robust broadband access for
14 essential state and local governmental services including, without limitation, public safety, health
15 and education; promoting increased availability of, and competition for, broadband access and
16 related services; and creating conditions that will encourage economic competitiveness and
17 growth. The first priority of the institute shall be to assess and improve conditions in
18 communities which do not have broadband access.

19
20 Section 4. [*Broadband Institute Board of Directors.*]

21 (A) The Broadband Institute shall be governed and its corporate powers exercised by a
22 board of directors (board), which shall consist of the following [nine] members: [insert
23 members]; and [four] members to be appointed by the [governor], all of whom shall have
24 knowledge and experience in [one] or more of the following areas: telecommunications,
25 broadband infrastructure, public-private partnership development, information technology or
26 other fields of experience consistent with the mission of the institute. The [governor] shall, from
27 time to time, designate [one] member to chair the board. Each member appointed by the
28 [governor] shall serve a term of [four] years and thereafter until their successor is appointed.
29 However, notwithstanding any general or special law to the contrary, in making the initial
30 appointments pursuant to this section, the [governor] shall appoint [one] member to serve for a
31 term of [one] year, [one] member to serve for a term of [two] years, [one] member to serve for a
32 term of [three] years, and [one] member to serve for a term of [four] years. Any person appointed
33 to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the
34 unexpired term of such member. Any appointed member shall be eligible for reappointment. An
35 appointed member may be removed by the [governor] for cause. [Five] members of the board

36 shall constitute a quorum, and the affirmative vote of a majority of the members present and
37 eligible to vote at a meeting shall be necessary for any action to be taken by the board. The
38 members shall serve without compensation, but each member shall be entitled to reimbursement
39 for actual and necessary expenses incurred in the performance of their official duties. The board
40 shall meet at least [four] times annually. The [executive director of the parent agency/corporation
41 of the institute] shall appoint the executive director of the institute, subject to the approval of the
42 institute's board.

43 (B) The board shall leverage private sector and federal investment by financing the
44 construction and acquisition of broadband infrastructure to promote the development of
45 broadband access. This broadband infrastructure shall include, but not be limited to, conduit,
46 fiber and towers. Any equipment or other property financed by the institute shall be owned by
47 the [parent agency/corporation of the institute], the state or [one] or more other public entities,
48 but may be leased or licensed by the institute, for a fee or otherwise, for use by nonprofit or for-
49 profit private-sector entities. Any such transaction shall constitute a transaction with the state for
50 the purpose of [insert citation]. The lessee or licensee shall pay any lease or license fees to the
51 the institute, which shall credit such payments to the Broadband Incentive Fund established in
52 Section 5 of this Act. The institute may provide and pay for advisory services and technical
53 assistance as may be necessary or desired to carry out its purposes. The board may work in
54 collaboration with other quasi-public and nonprofit entities and state agencies, and may provide
55 advisory assistance to local entities, local authorities, public bodies and private corporations for
56 the purposes of maximizing opportunities for the expansion of broadband access in the state and
57 fostering innovative approaches to broadband access in the state.

58 (C) The board shall collect information from reasonably available sources including, but
59 not limited to municipalities and other public entities and agencies of the state, local and regional
60 nonprofit entities and telecommunications and broadband service providers to develop and
61 maintain an inventory of:

62 (1) locations where telecommunications and broadband services are not available
63 in the state;

64 (2) locations where telecommunications and broadband infrastructure is available
65 or is likely to be available to support the provision of services to unserved and underserved areas;

66 (3) locations where new infrastructure may be necessary to support the provision
67 of services to unserved and underserved areas;

68 (4) the quality of such services, including, but not limited to, speed of data
69 transmission and cost of such services; and

70 (5) any other relevant information as the board may deem necessary.

71 (D) The board shall establish a detailed long-term plan for the operation of the institute
72 and the administration of the Broadband Incentive Fund created under Section 5 of this Act and
73 shall consult with the [joint committee on telecommunications, utilities and energy] and the
74 [joint committee on economic development and emerging technologies] on the plan. The plan,
75 and any amendments thereto, shall be subject to the approval of the [secretary of housing and
76 economic development] and the [secretary of administration and finance] and shall be filed with
77 the [clerks of the house of representatives and the senate] who shall forward the same to the
78 [house and senate committees on ways and means], the [joint committee on telecommunications,
79 utilities and energy] and the [joint committee on economic development and emerging
80 technologies].

81 (E) The board shall annually adopt an operating plan governing disbursements from the
82 fund and, to the extent the plan provides for disbursement of appropriations or other moneys
83 authorized by the [legislature], the plan shall be subject to the approval of the [secretary of

housing and economic development] and the [secretary of administration and finance]. The board shall file the plan, and any amendments thereto, with the [clerks of the house of representatives and the senate] who shall forward the same to the [house and senate committees on ways and means], the [joint committee on telecommunications, utilities and energy] and the [joint committee on economic development and emerging technologies].

(F) The board shall promulgate rules and regulations for the administration and enforcement of this section and Section 5 of this Act.

(G) The board shall review and recommend changes in laws, rules, programs and policies of the state and its agencies and subdivisions to further financing, infrastructure and development for broadband access throughout the state.

(H) The board shall prepare, publish and distribute, with or without charge, as the institute may determine, any studies, reports and bulletins and other material as the institute deems appropriate.

(I) The institute shall file an annual report of its activities with the [governor] and the [clerks of the house of representatives and the senate] who shall forward the same to the [joint committee on telecommunications, utilities and energy], the [joint committee on economic development and emerging technologies], and the [house and senate committees on ways and means].

(J) Actions of the board may take effect immediately and notice thereof shall be published and posted. Meetings of the board shall be subject to [insert citation]. Records pertaining to the activities of the institute shall be subject to [insert citation]. The operations of the institute shall be subject to [insert citation], provided however, that the members of the board shall be considered directors for the purposes of [insert citation].

Section 5. [*Broadband Incentive Fund.*] There is created a Broadband Incentive Fund (fund) to be held by the [parent agency/corporation of the institute]. The [parent agency/corporation of the institute] shall hold the fund separate and apart from its other funds, to finance the activities of the institute. The [parent/corporation agency of the institute] shall credit to the fund any appropriations, bond proceeds or other money authorized by the [legislature] and specifically designated to be credited to the fund, and any other money legally available to the [parent agency/corporation of the institute] which the [board of the parent agency/corporation of the institute] may determine to deposit in the fund.

Section 6. [*Broadband Institute Bonds.*] Notwithstanding any general or special law to the contrary, the [state treasurer] shall, upon request of the [governor], issue and sell bonds of the [state] in an amount to be specified by the [governor] from time to time, but not exceeding, in the aggregate, [\$40,000,000]. All bonds issued by the [state] as aforesaid shall be designated on their face, [Broadband Incentive Fund Loan Act of 2008], and shall be issued for a maximum term of years, not exceeding [thirty] years, as the [governor] may recommend to the [legislature] pursuant to [insert citation]. All such bonds shall be payable not later than [June 30, 2043]. No authorization shall be expended unless expressly authorized by the [secretary of administration and finance]. All interest and payments on account of principal of such obligations shall be payable from the [General Fund]. Bonds issued under the authority of this section shall be general obligations of the [state].

Section 7. [*Severability.*] [Insert severability clause.]

Section 8. [*Repealer.*] [Insert repealer clause.]

Section 9. [*Effective Date.*] [Insert effective date.]

Cancer Incidence and Environmental Facilities Mapping

This Act creates a system to map incidences of cancer and “environmental facilities” throughout the state.

Submitted as:

New York

S01592/A1143B/Chapter 638 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Authorize Mapping Cancer
2 Incidences and Environmental Facilities.”

3
4 Section 2. [*Collaboration Between State Agencies to Create Cancer Incidence and*
5 *Environmental Facility Maps.*] The [department of health] and [department of environmental
6 conservation] shall collect and develop information about cancer cases and environmental
7 facilities in this state for the purpose of plotting the incidence of cancer and environmental
8 facilities on computer generated maps. For purposes of this Act, an “environmental facility” is a
9 facility as defined under [insert citation].

10
11 Section 3. [*Examining and Reporting the Scientific Strengths and Limitations of*
12 *Environmental Facilities and Cancer Incidence Mapping.*]

13 (A) Within [one hundred eighty days of the effective date of this Act], the [health
14 department] shall:

15 (1) examine the scientific strengths and limitations of such mapping and overlay
16 methodologies for cancer tracking and geospatial linking to significant disease risk factors;

17 (2) develop guidance for both the appropriate use and communication of such
18 information; and

19 (3) establish safeguards to prevent misuse of such methodologies including but
20 not limited to:

21 (a) collecting data to assure the accuracy of cancer diagnoses;

22 (b) identifying the appropriate uses of such mapping;

23 (c) ensuring the protection of the confidentiality of all individual medical
24 data; and

25 (d) preventing inappropriate release or use of such data.

26 (B) Within [one hundred eighty days of the effective date of this Act], the [health
27 department] shall issue a report of its findings under subsection (A) of this section. A draft of
28 that report shall be subject to public review and comment before the report is issued in its final
29 format.

30

31 Section 4. [*Computer Mapping System.*]

32 (A) After the final report required by Section 3 (B) of this Act is issued, the [department
33 of environmental conservation] shall establish and maintain a computer mapping system for
34 plotting the incidences of cancer reported in the database established by Section 6 of this Act and
35 the environmental facilities listed in the database established by Section 7 of this Act.

36 (B) Prior to plotting such data, the [department of environmental conservation] shall use a
37 spatial filter, or such other statistical method as may be required, to detect statistical anomalies
38 for the purposes of identifying cancer clusters.

39 (C) Plotting shall be by census block, except in cases where such plotting could make it
40 possible to identify any cancer patient, as determined by the [state department of health], in
41 which case census blocks shall be aggregated for plotting to protect the identity of such person.

42
43 Section 5. *[Reporting Cancer Cases to State Department of Health].*

44 (A) Every physician, dentist and other health care provider shall give notice immediately
45 but not later than [one hundred eighty days] after every case of cancer or other malignant disease
46 comes under their care, to the [department of health]. The information reported to the [state
47 department of health] shall include, but is not limited to, genetic history, occupational history,
48 age, residence history, and other relevant information as the [department of health] determines.

49 (B) The [department of health], in consultation with [insert agency], shall aggregate the
50 data reported under this section and all related data being collected by the [department of health]
51 for other purposes.

52 (C) The [department of health] shall develop procedures to ensure correct counting of
53 cancer cases and other malignant diseases reported under this section.

54
55 Section 6. *[Cancer Incidence Database.]*

56 (A) The [department of health] shall establish and maintain a cancer incidence database
57 consisting of the information reported under Section 5 of this Act and resulting from a review of
58 existing, applicable, [department of health] records as of the effective date of this Act.

59 (B) The cancer incidence database shall be compatible with the environmental facilities
60 database established by Section 7 of this Act.

61 (C) The cancer incidence database established by this Section of this Act shall be
62 accessible to the [department of environmental conservation].

63 (D) The [department of health] shall provide to the [department of environmental
64 conservation] cancer incidence data to be plotted on computer generated maps as required by this
65 Act and in accordance with methodologies and safeguards established pursuant [insert citation].
66 This data shall be posted on the [department of health's] webpage.

67 (E) The [department of health] will work with the [department of environmental
68 conservation] to provide all data and any other information in possession of the [department of
69 health] and any assistance necessary to comply with this Act.

70
71 Section 7. *[Environmental Facility Database.]*

72 (A) The [department of environmental conservation] shall establish and maintain an
73 environmental facility database.

74 (B) That database shall be compatible with the cancer incidence database established by
75 Section 6 of this Act.

76 (C) The [department of health] shall be granted access to the environmental facility
77 database.

78 (D) The [department of environmental protection] shall make available to the public
79 within [ninety days] after the adoption and issuance of the report on cancer incidence mapping

80 pursuant to Section 3 (B) of this Act information about facilities and sites subject to this section
81 in possession of the [department of environmental protection] and required for the environmental
82 facility and cancer incidence maps.
83

84 Section 8. [*Reporting the Status of the Cancer Incidence Maps.*]

85 (A) The [department of environmental conservation] shall submit [quarterly] reports to
86 the [governor], [president of the senate], and the [speaker of the assembly] about the status of
87 developing the environmental facility and cancer incidence maps required by this Act and any
88 related findings by the [department of environmental conservation].

89 (B) The [department of environmental conservation] shall develop a plan to use state
90 research money to examine the location of environmental facilities and sites subject to this Act to
91 identify and focus on statistical anomalies and areas of high concentrations of cancer cases
92 known as cancer clusters.

93 (C) The [department of environmental conservation] shall issue a report to the
94 [governor], [president of the senate] by [insert date] about the plan required by Section 8 (B) by
95 [insert date] and include any related findings concerning the the maps required by this Act or
96 from the research required by Section 8 (B) of this Act.
97

98 Section 9. [*Severability.*] [Insert severability clause.]
99

100 Section 10. [*Repealer.*] [Insert repealer clause.]
101

102 Section 11. [*Effective Date.*] [Insert effective date.]

Carbon Sequestration

This Act creates a regulatory scheme for geologic CO₂ storage. It directs the state department of environmental quality (DEQ) to develop standards for regulating long-term, geologic storage of carbon dioxide (CO₂) in the state. The Act provides a list of specific information that is required in permit applications for CO₂ storage injection wells. It allows the DEQ to issue permits for pilot-scale CO₂ sequestration and storage projects under current rules and regulations. It also requires the State Oil and Gas Supervisor, State Geologist and Director of DEQ to convene a working group to develop an appropriate bonding procedure and provides a \$250,000 appropriation for the working group.

Submitted as:

Wyoming

Chapter 30 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Relating to Carbon
2 Sequestration.”

3
4 Section 2. [*Definitions.*]

5 (A) [As used in this Act, these are] [specific definitions applying to water quality]:

6 (1) “Geologic sequestration” means the injection of carbon dioxide and
7 associated constituents into subsurface geologic formations intended to prevent its release into
8 the atmosphere;

9 (2) “Geologic sequestration site” means the underground geologic formations
10 where the carbon dioxide is intended to be stored;

11 (3) “Geologic sequestration facilities” means the surface equipment used for
12 transport, storage and injection of carbon dioxide.

13
14 Section 3. [*Carbon Sequestration; Permit Requirements.*]

15 (A) The geologic sequestration of carbon dioxide is prohibited unless authorized by a
16 permit issued by the [department].

17 (B) The injection of carbon dioxide for purposes of a project for enhanced recovery of oil
18 or other minerals approved by the [state oil and gas conservation commission] shall not be
19 subject to the provisions of this Act.

20 (C) If an oil and gas operator converts to geologic sequestration upon the cessation of oil
21 and gas recovery operations, then regulation of the geologic sequestration facility and the
22 geologic sequestration site shall be transferred to the [department]. If the oil and gas operator
23 does not convert to geologic sequestration, the wells shall be plugged and abandoned according
24 to the rules of the [state oil and gas conservation commission].

25 (D) Temporary time limited permits for pilot scale testing of technologies for geologic
26 sequestration shall be issued by the [department] based upon current rules and regulations.

27 (E) Permit requirements for geologic sequestration of carbon dioxide shall be as defined
28 by [department] rules.

(F) The [administrator of the water quality division of the department of environmental quality], after receiving public comment and after consultation with the [state geologist] and the [advisory board created under this Act], shall recommend to the [director] rules, regulations and standards for:

(1) The creation of subclasses of wells within the existing Underground Injection Control (UIC) program administered by the United States Environmental Protection Agency under Part C of the Safe Drinking Water Act to protect human health, safety and the environment and allow for the permitting of the geologic sequestration of carbon dioxide;

(2) Requirements for the content of applications for geologic sequestration permits. Such applications shall include:

(a) A description of the general geology of the area to be affected by the injection of carbon dioxide including geochemistry, structure and faulting, fracturing and seals, stratigraphy and lithology including petrophysical attributes;

(b) A characterization of the injection zone and aquifers above and below the injection zone which may be affected including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(c) The identification of all other drill holes and operating wells that exist within and adjacent to the proposed sequestration site;

(d) An assessment of the impact to fluid resources, on subsurface structures and the surface of lands that may reasonably be expected to be impacted and the measures required to mitigate such impacts;

(e) Plans and procedures for environmental surveillance and excursion detection, prevention and control programs. For purposes of this section, "excursion" shall mean the detection of migrating carbon dioxide at or beyond the boundary of the geologic sequestration site;

(f) A site and facilities description, including a description of the proposed geologic sequestration facilities and documentation sufficient to demonstrate that the applicant has all legal rights, including but not limited to the right to surface use, necessary to sequester carbon dioxide and associated constituents into the proposed geologic sequestration site;

(g) Proof that the proposed injection wells are designed at a minimum to the construction standards set forth by the [department] and the [state oil and gas conservation commission];

(h) A plan for periodic mechanical integrity testing of all wells;

(i) A monitoring plan to assess the migration of the injected carbon dioxide and to insure the retention of the carbon dioxide in the geologic sequestration site;

(j) Proof of bonding or financial assurance to ensure that geologic sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this Act and the rules and regulations promulgated pursuant to this Act;

(k) A detailed plan for post-closure monitoring, verification, maintenance and mitigation;

(l) Proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests as to the contents of such notice. Notice requirements shall at a minimum require:

(i) The publishing of notice of the application in a newspaper of general circulation in each county of the proposed operation at weekly intervals for [four (4)] consecutive weeks;

(ii) A copy of the notice shall also be mailed to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests which are located within [one (1) mile] of the proposed boundary of the geologic sequestration site.

(3) Requirements for the operator to provide immediate verbal notice to the [department] of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests within [thirty (30)] days of when the excursion is discovered;

(4) Procedures for the termination or modification of any applicable Underground Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act if an excursion cannot be controlled or mitigated;

(5) Such other conditions and requirements as necessary to carry out this section.

(G) As soon as practical and prior to [September 30, 2009], the [state oil and gas supervisor, the state geologist and the director] shall convene a [working group] for the purpose of developing an appropriate bonding procedure and other financial assurance methods to assure that adequate financial resources are provided to pay for any mitigation or reclamation costs that the state may incur as a result of default by the permit holder. The bond or other financial assurance shall be required during the operating life of the sequestration project and throughout the post-closure care period in order to abate or remedy any violation of a permit, standard or rule established under the provisions of this Act. The [working group] shall recommend to the [joint minerals, business and economic development and joint judiciary interim committees], on or before [September 30, 2009], the duration of the post-closure care period. At a minimum, the bond or other financial assurance shall provide assurance for closure and reclamation costs, post-closure inspection and maintenance costs and environmental monitoring, verification and control costs.

(H) At the time a permit application is filed, an applicant shall pay a fee to be determined by the [director] based upon the estimated costs of reviewing, evaluating, processing, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the [division] as required to complete the tasks necessary to process, publish and reach a decision on the permit application. Unused fees shall be returned to the applicant.

(I) The [director] shall recommend to the [council] any changes that may be required to provide consistency and equivalency between the rules or regulations promulgated under this section and any promulgated for the regulation of carbon dioxide sequestration by the United States Environmental Protection Agency.

(J) The [state oil and gas conservation commission] shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.

(K) Nothing in this section shall be construed to create any liability by the state for failure to comply with this section.

Section 4. *[Reporting Compliance.]* The [department of environmental quality] and the [oil and gas conservation commission] shall submit a joint written report, on or before [November 1] of each year, to the [joint minerals, business and economic development and joint judiciary interim committees] as to all aspects of compliance with this legislation including, but not limited to, the promulgation of rules and regulations, the formation of the [working group], permitting and changes to pertinent federal regulations affecting the same.

123 Section 5. [*Appropriations to Perform Tasks Assigned Pursuant to the Act.*] There is
124 appropriated [two hundred fifty thousand dollars (\$250,000.00) from the general fund] to the
125 [department of environmental quality] for use by the [working group] created by Section 3 (G) of
126 this Act for expenses related to performing the tasks assigned it pursuant to this Act. Expenses
127 may include the costs to secure expert consultation. This appropriation shall be for the period
128 beginning with the effective date of this Act and ending [June 30, 2010]. Notwithstanding any
129 other provision of law, this appropriation shall not be transferred or expended for any other
130 purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as
131 provided by law on [June 30, 2010]. This appropriation shall not be included in the
132 [department's] standard [biennial budget request].
133

134 Section 6. [*Oil and Gas Activities at Geologic Sequestration Sites.*] Nothing in Section 3
135 of this Act shall be deemed to affect the otherwise lawful right of a surface or mineral owner to
136 drill or bore through a geologic sequestration site as defined by Section 2 (A)(2) of this Act, if
137 done in accordance with the [commission rules] for protecting the geologic sequestration site
138 against the escape of carbon dioxide.
139

140 Section 7. [*Selling Emission Reduction Credits.*] Nothing in this Act is intended to
141 impede or impair the ability of an oil and gas operator to inject carbon dioxide through an
142 approved enhanced oil or gas recovery project and establish, verify, register and sell emission
143 reduction credits associated with the project.
144

145 Section 8. [*Severability.*] [Insert severability clause.]
146

147 Section 9. [*Repealer.*] [Insert repealer clause.]
148

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

Child Passenger Safety Technician Liability

This Act limits liability for certified child passenger safety technicians and sponsoring organizations for acts or omissions in the inspection, installation, or adjustment of child safety seats or in providing education regarding the installation or adjustment of child safety seats. This Act defines “Certified Child Passenger Safety Technician” as an individual who successfully completes and maintains certification through the National Child Passenger Safety Training Program. It defines “Sponsoring organization” as a person or organization other than a manufacturer of child safety seats that offers or arranges a nonprofit child safety seat educational program or event using certified technicians or that owns property on which a nonprofit child safety seat educational program or event is held.

The Act provides that a certified child passenger safety technician or sponsoring organization is not liable as a result of any act or omission occurring solely in the inspection, installation, or adjustment of a child safety seat, or in providing education regarding the installation or adjustment of a child safety seat if the certified technician or sponsoring organization acts in good faith and within the scope of the training for which the technician is currently certified and the service is provided without fee or charge other than reimbursement for expenses.

The limitation of liability does not apply if the act or omission constitutes willful and wanton misconduct or gross negligence, or if the service or education was provided in conjunction with the for-profit sale of a child safety seat.

Submitted as:
North Carolina
Session Law 2008-178
Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Limit the Liability of Child
2 Passenger Safety Technicians.”

3
4 Section 2. [*Child Passenger Safety Technician; Limitation of Liability.*]

5 (A) The following definitions apply in this section:

6 (1) Certified child passenger safety technician. – A certified child passenger
7 safety technician is an individual who has successfully completed the U.S. Department of
8 Transportation National Highway Traffic Safety Administration's (NHTSA) National
9 Standardized Child Passenger Safety Certification Training Program and who maintains a
10 current child passenger safety technician or technician instructor certification through the current
11 certifying body for the National Child Passenger Safety Training Program as designated by the
12 National Highway Traffic Safety Administration.

13 (2) Sponsoring organization. – A sponsoring organization is a person or
14 organization other than a manufacturer of or employee or agent of a manufacturer of child safety
15 seats that:

16 (a) Offers or arranges for the public a nonprofit child safety seat
17 educational program, checkup event, or checking station program utilizing certified child
18 passenger safety technicians; or

19 (b) Owns property upon which a nonprofit child safety seat educational
20 program, checkup event, or checking station program for the public occurs utilizing certified
21 child passenger safety technicians.

22 (B) Limitation of Liability. – Except as provided in subsection (C) of this section, a
23 certified child passenger safety technician or sponsoring organization shall not be liable to any
24 person as a result of any act or omission that occurs solely in the inspection, installation, or
25 adjustment of a child safety seat or in providing education regarding the installation or
26 adjustment of a child safety seat if:

27 (1) The service is provided without fee or charge other than reimbursement for
28 expenses, and

29 (2) The child passenger safety technician or sponsoring organization acts in good
30 faith and within the scope of training for which the technician is currently certified.

31 (C) Exceptions. – The limitation on liability shall not apply under any of the following
32 conditions:

33 (1) The act or omission of the certified child passenger safety technician or
34 sponsoring organization constitutes willful or wanton misconduct or gross negligence.

35 (2) The inspection, installation, or adjustment of a child safety seat or education
36 provided regarding the installation or adjustment of a child safety seat is in conjunction with the
37 for-profit sale of a child safety seat.

38
39 Section 3. [*Severability.*] [Insert severability clause.]

40
41 Section 4. [*Repealer.*] [Insert repealer clause.]

42
43 Section 5. [*Effective Date.*] [Insert effective date.]

Climate Protection and Green Economy

This Act addresses reducing statewide greenhouse gas emissions by 80 percent from 1990 levels by 2050. The Act directs the state department of environmental protection to determine the baseline emissions level in 1990. The legislation also authorizes regulations creating a statewide and regional registry of greenhouse gas emissions and requires businesses and utilities which emit greenhouse gases to report those emissions to the registry.

Submitted as:
Massachusetts
Chapter 298, Acts of 2008
Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Climate Protection and Green
2 Economy Act.”

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

5 (1) “Allowance” means an authorization to emit, during a specified year, up to [1] ton of
6 carbon dioxide equivalent.

7 (2) “Alternative compliance mechanism” means an action undertaken by a greenhouse
8 gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the
9 same time period as a direct emissions reduction, that is approved by the [department,] and that
10 is real, permanent, quantifiable, verifiable and enforceable.

11 (3) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that
12 would produce the same global warming impact as a given weight of another greenhouse gas,
13 based on the best available science, including from the Intergovernmental Panel on Climate
14 Change.

15 (4) “Department” means the state [department of environmental protection].

16 (5) “Direct emissions” means emissions from sources that are owned or operated, in
17 whole or in part, by an entity or facility including, but not limited to, emissions from factory
18 stacks, manufacturing processes and vents, and company-owned or company-leased motor
19 vehicles.

20 (6) “Direct emissions reduction” means a greenhouse gas emission reduction action made
21 by a greenhouse gas emissions source at that source.

22 (7) “Emission” means emission of a greenhouse gas into the air.

23 (8) “Emissions reduction measures” means programs, measures, standards, and
24 alternative compliance mechanisms authorized pursuant to this Act, applicable to sources or
25 categories of sources that are designed to reduce emissions of greenhouse gases.

26 (9) “Entity” means a person that owns or operates, in whole or in part, a source of
27 greenhouse gas emissions from a generator of electricity or a commercial or industrial site
28 including, but not limited to, a transportation fleet.

29 (10) “Executive office” means the state [executive office of energy and environmental
30 affairs].

(11)“Facility” means a building, structure or installation located on contiguous or adjacent properties of an entity.

(12)“Greenhouse gas” means any chemical or physical substance that is emitted into the air and that the [department] may reasonably anticipate will cause or contribute to climate change including, but not limited to, carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, per fluorocarbons and sulfur hexafluoride.

(13)“Greenhouse gas emissions limit” means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the [secretary], expressed in tons of carbon dioxide equivalents.

(14)“Greenhouse gas emissions source” means a source, or category of sources, of greenhouse gas emissions with emissions that are at a level of significance, as determined by the [secretary], that its participation in the program established under this Act will enable the [secretary] to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(15)“Indirect emissions” means emissions associated with the consumption of purchased electricity, steam and heating or cooling by an entity or facility.

(16)“Leakage” means the offset of a reduction in emissions of greenhouse gases within the [state] by an increase in emissions of greenhouse gases outside the [state].

(17)“Market-based compliance mechanism” means (i) a system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases or (ii) greenhouse gas emissions exchanges, banking, credits and other transactions governed by rules and protocols established by the [secretary] or a [regional greenhouse gas initiative], that result in the same greenhouse gas emissions reduction, over the same time period, as direct compliance with a greenhouse gas emissions limit or emission reduction measure adopted by the [executive office] pursuant to this Act.

(18)“Person” means an agency or political subdivision of the [state], a state, public or private corporation or authority or an individual, trust firm, joint stock company, partnership, association or other entity or group thereof or an officer, employee or agent thereof.

(19)“Secretary” means the [secretary of energy and environmental affairs].

(20)“Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the [state], including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in the [state], accounting for transmission and distribution line losses, whether the electricity is generated in the [state] or imported; provided, however, that statewide greenhouse gas emissions shall be expressed in tons of carbon dioxide equivalents.

(21)“Statewide greenhouse gas emissions limit” means the maximum allowable level of statewide greenhouse gas emissions in a given year, as determined by the [secretary].

Section 3. *[Regional Greenhouse Gas Registry and Reporting System.]*

(A) The [department] shall monitor and regulate emissions of greenhouse gases with the goal of reducing those emissions.

(B) The [department] shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this Act. The regulations shall:

(1) establish a regional greenhouse gas registry and reporting system for greenhouse gas emission sources; provided, however, that in establishing the greenhouse gas registry and reporting system, the [department] may collaborate with other states or a regional consortium;

(2) [annually] require the owner or operator of any facility that is required to report air emissions data to the [department] pursuant to Title V of the federal Clean Air Act and that has stationary emissions sources that emit greenhouse gases to report [annually] to the regional registry direct stack emissions of greenhouse gases from such sources;

(3) require the owner or operator of a facility that has stationary emissions sources that emit greenhouse gases in excess of [5,000] tons of greenhouse gases per year in carbon dioxide equivalents to report [annually] to the regional registry direct emissions of greenhouse gases from such sources; provided, however, that the [department] shall develop a simplified estimation form to assist facilities in determining who shall report emissions and shall consider, on an [annual] basis, requiring the expansion of reporting to a regional greenhouse gas registry;

(4) provide for the voluntary reporting of emissions of greenhouse gases to a regional greenhouse gas registry by entities and facilities that are not required to submit information pursuant to clauses (2) and (3); provided, however, that the greenhouse gas emissions reported shall be of a type and format that the regional greenhouse gas registry can accommodate;

(5) require reporting of greenhouse gas emissions from generation sources producing all electricity consumed, including transmission and distribution line losses from electricity generated within the [state] or imported from outside the [state]; provided, however, that this requirement shall apply to all retail sellers of electricity, including electric utilities, municipal electric departments and municipal light boards as defined in [insert citation];

(6) ensure rigorous and consistent accounting of emissions and provide reporting tools and formats to ensure collection of necessary data; and

(7) ensure that greenhouse gas emissions sources maintain comprehensive records of all reported greenhouse gas emissions.

(C) Clauses (2) and (3) of Section (3)(B) of this Act shall take effect not later than [insert date].

(D) Clauses (4) and (5) of Section (3)(B) of this Act shall be implemented not later than [insert date].

(E) Sections 3(A) and 3(B) of this Act shall be implemented not later than [insert date].

(F) The [department] shall consult with the [secretary] on periodic review and updates of emission reporting requirements as necessary; review existing and proposed state, federal and international greenhouse gas emissions reporting programs; make reasonable efforts to promote consistency among the programs established pursuant to this Act and other programs; and make reasonable efforts to streamline reporting requirements on greenhouse gas emissions sources.

(G) The [department] shall [triennially] publish a state greenhouse gas emissions inventory that includes comprehensive estimates of the quantity of greenhouse gas emissions in the [state] for the last [three] years in which data is available. The first inventory shall be published not later than [insert date].

(H) Notwithstanding any general or special law to the contrary, the [executive office of energy and environmental affairs] shall promulgate regulations pursuant to Section 3 of this Act not later than [insert date].

Section 4. *[Greenhouse Gas Emission Limits.]*

(A) The [department] shall, pursuant to [insert citation], determine the statewide greenhouse gas emissions level in calendar year 1990 and reasonably project what the emissions level will be in calendar year 2020 if no measures are imposed to lower emissions other than those formally adopted and implemented as of [January 1, 2009]. This projection shall hereafter be referred to as the projected 2020 business as usual level.

(B) The [secretary] shall, in consultation with the [department] and the [department of energy resources], adopt the following statewide greenhouse gas emissions limits:

(1) by [insert date], a 2020 statewide emissions limit and a plan to achieve that limit pursuant to subsection (4) of this Section 4 (B);

(2) an interim 2030 emissions limit accompanied by plans to achieve this limit in accordance with said subsection (4) of this Section 4 (B); provided, however, that the 2030 interim emissions limits shall maximize the ability of the [state] to meet the 2050 emissions limit;

(3) an interim 2040 emissions limit accompanied by plans to achieve this limit in accordance with said subsection (4) of this Section 4 (B); provided, however, that the 2040 interim emissions limit shall maximize the ability of the [state] to meet the 2050 emissions limit; and

(4) a 2050 statewide emissions limit that is at least 80 percent below the 1990 level.

(C) Emissions levels and limits associated with the electric sector shall be established by the [executive office] and the [department], in consultation with the [department of energy resources], based on consumption and purchases of electricity from the regional electric grid, taking into account the regional greenhouse gas initiative and the renewable portfolio standard.

(D) The [department] shall promulgate regulations not later than [insert date] establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions. These regulations shall take effect on [insert date], and shall expire on [insert date].

(E) The [secretary] shall adopt not later than [insert date], the 2020 statewide greenhouse gas emissions limit pursuant to Section 4 (B) of this Act which shall be between 10 percent and 25 percent below the 1990 emissions level and a plan for achieving said reduction. The [secretary] shall consult with all state agencies and regional authorities with jurisdiction over sources of greenhouse gases on all elements of the emissions limit and plan that pertain to energy-related matters including, but not limited to, electrical generation, load based-standards or requirements, the provision of reliable and affordable electrical service and statewide fuel supplies, to ensure the greenhouse gas emissions reduction activities to be adopted and implemented by the [secretary] are complementary, non-duplicative and can be implemented in an efficient and cost-effective manner. The 2020 statewide emissions limit and implementation plan shall comply with this section.

(F) The [secretary] shall analyze the feasibility of measures to comply with the emissions limit established in subsection (E) of this section. Such measures shall include, but not be limited to, the electric generating facility aggregate limit established pursuant to [insert citation], direct emissions reduction measures from other sectors of the economy, alternative compliance mechanisms, market-based compliance mechanisms and potential monetary and nonmonetary incentives for sources and categories of sources that the [secretary] finds are necessary or desirable to facilitate the achievement of reductions of greenhouse gas emissions limits.

(G) The [secretary] shall consider all relevant information pertaining to greenhouse gas emissions reduction goals and programs in other states and nations.

(H) The [secretary] shall evaluate the total potential costs and economic and noneconomic benefits of various reduction measures to the economy, environment and public health, using the best available economic models, emissions estimation techniques and other scientific methods.

(I) The [secretary] shall take into account the relative contribution of each source or source category to statewide greenhouse gas emissions and shall recommend a de minimis

threshold of greenhouse gas emissions below which emissions reduction requirements shall not apply.

(J) The [secretary] shall identify opportunities for emissions reduction measures from all verifiable and enforceable voluntary actions.

(K) The [secretary] shall conduct public hearings on the proposed 2020 emission limit and implementing plan. The [secretary] shall conduct a portion of these workshops in regions that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both.

(L) The [secretary] shall update its plan for achieving the maximum technologically feasible reductions of greenhouse gas emissions at least [once] every [5] years, including the plans to implement the 2030, 2040 and 2050 statewide emission limits.

(M) Nothing in this Act shall restrict the [secretary of energy and environmental affairs] from adopting greenhouse gas emissions limits or emissions reduction measures prior to [January 1, 2011], that are consistent with general or special laws or rules or regulations, imposing those limits prior to [January 1, 2012], or providing early reduction credit, where appropriate, nor shall this Act prevent the imposition of more stringent limits on emissions.

Section 5. *[Monitoring Effects of Greenhouse Gas Regulations.]*

(A) The [secretary] shall monitor the implementation of regulations relative to climate change and shall, every [5] years, publish a report which shall include recommendations regarding such implementation. The [secretary] shall publish the first report not later than [insert date].

(B) The report shall include, without limitation:

(1) whether regulations or other measures undertaken, including distribution of emissions allowances, are equitable and minimize costs and maximize the total benefits to the state and encourage early action to reduce greenhouse gas emissions;

(2) whether activities undertaken to comply with state regulations and efforts disproportionately impact low-income communities;

(3) whether entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this Act receive appropriate credit for early voluntary reductions;

(4) whether activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and reduce toxic air contaminant emissions;

(5) descriptions of overall societal benefits, including reductions in other air pollutants, diversification of energy sources and other benefits to the economy, environment and public health;

(6) whether state actions minimize the administrative burden of implementing and complying with these regulations;

(7) whether state actions minimize leakage;

(8) descriptions of the significance of the contribution of each source or category of sources to statewide emissions of greenhouse gases;

(9) whether greenhouse gas emissions reductions achieved are real, permanent, quantifiable, verifiable and enforceable; and

(10) recommendations for future policy action.

(C) The report shall be filed with the [clerk of the house of representatives, the clerk of the senate, the chairs of the house and senate committees on ways and means, the chairs of the joint committee of telecommunications, utilities and energy and the chairs of the joint committee on the environment, natural resources and agriculture].

223
224 Section 6. *[Market-Based Compliance Mechanisms.]*

225 (A) The [secretary], in consultation with the [executive office of administration and
226 finance], may consider the use of market-based compliance mechanisms to address climate
227 change concerns; provided, however, that prior to the use of any market-based compliance
228 mechanism, to the extent feasible and in furtherance of achieving the statewide greenhouse gas
229 emissions limit, the [secretary] shall:

230 (1) consider the potential for direct, indirect and cumulative emission impacts
231 from these mechanisms, including localized impacts in communities that are already adversely
232 impacted by air pollution;

233 (2) design any market-based compliance mechanism to prevent any increase in
234 the emissions of toxic air contaminants or criteria air pollutants, with particular attention paid to
235 emissions of nitrous oxide, sulfur dioxide and mercury; and

236 (3) maximize additional environmental and economic benefits for the [state], as
237 appropriate.

238 (B) The [secretary] may adopt regulations governing how market-based compliance
239 mechanisms may be used by regulated entities subject to greenhouse gas emissions limits and
240 mandatory emissions reporting requirements to achieve compliance with their greenhouse gas
241 emissions limits.

242 (C) The [executive office] and the [department] may work with the participating regional
243 greenhouse gas initiative states and other interested states and [Canadian Provinces] to develop a
244 plan to expand market-based compliance mechanisms such as the regional greenhouse gas
245 initiative to other sources and sectors necessary or desirable to facilitate the achievement of the
246 greenhouse gas emissions limits.

247 (D) The [executive office] shall monitor compliance with and enforce any rule,
248 regulation, order, emissions limitation, emissions reduction measure or market-based compliance
249 mechanism adopted by the [executive office] or [department] pursuant to this Act. The
250 [department] may impose a civil administrative penalty pursuant to [insert citation] for a
251 violation of any rule, regulation, order, emissions limitation, emissions reduction measure or
252 other measure adopted by the [executive office] pursuant to this Act.

253
254 Section 7. *[Advisory Committee to Oversee Greenhouse Emission Reduction Measures.]*

255 The [secretary] shall convene an [advisory committee] to advise the [executive office] in
256 overseeing the greenhouse emissions reduction measures. The [advisory committee] shall consist
257 of representatives from the following sectors: commercial, industrial and manufacturing;
258 transportation; low-income consumers; energy generation and distribution; environmental
259 protection; energy efficiency and renewable energy; local government; and academic
260 institutions.

261
262 Section 8. *[Regulations to Reduce Energy Use, Promote Energy Efficiency and Promote
263 Renewable Energy Sources.]* In implementing its plan for statewide greenhouse gas emissions
264 limits, the [state] and its agencies shall promulgate regulations that reduce energy use, increase
265 efficiency and encourage renewable sources of energy in the sectors of energy generation,
266 buildings and transportation.

267
268 Section 9. *[Advisory Committee to Analyze Strategies to Adapt to Climate Change.]* The
269 [secretary] shall convene an [advisory committee] to analyze strategies for adapting to the
270 predicted impacts of climate change on this state. The [advisory committee] shall be chaired by

the [secretary], or their designee, and comprised of representatives with expertise in the following areas: transportation and built infrastructure; commercial, industrial and manufacturing activities; low income consumers; energy generation and distribution; land conservation; water supply and quality; recreation; ecosystems dynamics; coastal zone and oceans; rivers and wetlands; and local government. The [advisory committee] shall file a report of its findings and recommendations regarding strategies for adapting to climate change not later than [insert date].

Section 10. [*Factoring Foreseeable Climate Change Impacts into Decisions to Issue Permits and Licenses.*] When considering and issuing permits, licenses and other administrative approvals and decisions, the respective agency, department, board, commission or authority shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.

Section 11. [*Authority of Public Utility Commission; Obligations of Electrical Utilities; Building or Expanding Certain Facilities.*] Nothing in this Act shall affect the authority of the [state public utility commission] or the obligation of an electrical utility to provide customers with safe and reliable electric service. Nothing in this Act shall preclude, prohibit, or restrict the construction of a new facility or the expansion of an existing facility subject to regulation under this chapter, if all applicable requirements are met and the facility is in compliance with regulations adopted pursuant this Act.

Section 12. [*Severability.*] [Insert severability clause.]

Section 13. [*Repealer.*] [Insert repealer clause.]

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

Collecting Student Biometric Information

This SSL draft is based on Arizona law. According to Arizona legislative staff, “Biometric technologies are those which automatically measure people’s physiological or behavioral characteristics. Examples include automatic fingerprint identification, iris and retina scanning, face recognition, and hand geometry. There are two approaches to recording an individual’s biometric characteristics. The first is to record a complete image of a face or a finger, as in a passport photograph or a fingerprint. The second is to take measurements that adequately capture the uniqueness of the source but do not capture a complete image and therefore do not allow the original to be reconstructed from the data. The second approach is the one that is typically being used in schools’ biometric technology systems, specifically in the implementation of school lunch programs.”

This draft Act prohibits school districts and charter schools from collecting a pupil’s biometric information without written permission from the pupil’s parent. The Act requires each school to provide written notice to the parents or guardians of pupils stating their intent to collect biometric information 30 days prior to the collection. It stipulates that the written notice must contain a statement informing the parent or guardian that they must give written permission before the school can collect biometric information from the pupil.

Submitted as:

Arizona

Chapter 189 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Regulate Collecting Student
2 Biometric Information.”

3
4 Section 2. [*Collecting Student Biometric Information.*]

5 (A) A school in a school district or a charter school shall not collect biometric
6 information from a pupil unless the pupil's parent or guardian gives written permission to collect
7 biometric information from the pupil.

8 (B) At least [thirty] days before a school in a school district or charter school will collect
9 biometric information, the school shall provide written notice to the parents and guardians of
10 pupils of the intent to collect biometric information. The notice shall include a statement in
11 eighteen point bold-faced capital letters that the parent or guardian must give written permission
12 to collect biometric information from the pupil before the school may collect biometric
13 information.

14 (C) For the purposes of this section, "collect biometric information" means the
15 noninvasive electronic measurement and evaluation of any physical characteristics that are
16 attributable to a single person, including fingerprint characteristics, eye characteristics, hand
17 characteristics, vocal characteristics, facial characteristics and any other physical characteristics
18 used for the purpose of electronically identifying that person with a high degree of certainty.

19
20 Section 3. [*Severability.*] [Insert severability clause.]

21

22

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

23

24

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

Communications Sales and Use Tax

This Act creates a new centrally administered Communications Sales and Use Tax and a Uniform Statewide E-911 tax. The Communications Tax is imposed on customers of communications services at the rate of 5% of the sales price of the services. The new tax appears as a line item on customers' bills.

Communications services subject to the tax include:

- landline and wireless telephone services (including Voice Over Internet Protocol);
- paging;
- cable television; and
- satellite television.

The Communications Tax will be collected by all communications services providers ("Providers") with sufficient contact, or nexus, with the state to be subject to the tax using the same rules that apply to the retail sales and use tax. Providers register with the state department of taxation in the same manner as sales tax dealers. Each provider separately states the amount of the tax and adds that tax to the sales price of the service. Thereafter, the tax is a debt from the customer to the provider until paid. All sums collected by a provider are held in trust for the state. As with the retail sales and use tax, every provider required to collect or pay the Communications Tax is required to file with the state department of taxation a monthly return and remit the tax due on or before the twentieth day of the month following the month in which the tax is billed. Providers are allowed a dealer discount on the first three percent of the Communications Tax in the following percentages:

Monthly Taxable Sales	Percentage
• \$ 0 to \$62,500	4%
• \$ 62,501 to \$208,000	3%
• \$ 208,001 and above	2%

The bill provides a mandatory procedure for customers to resolve erroneous billings of the Communications and E-911 taxes by writing their service provider.

The bill provides accounting rules for transactions where services that are subject to different tax treatments are sold for a non-itemized charge. If the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services is subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

For purposes of the Communications Tax, the sales price does not include the following:

- excise taxes on communications services that are permitted or required to be added to the sales price of such service, if the tax is stated separately;
- a fee or assessment that is required to be added to the price of service if the fee or assessment is separately stated;
- coin-operated communications services;
- sale or recharge of a prepaid calling service;
- air-to-ground radiotelephone services;
- a provider's internal use of communications services in connection with its business of providing communications services;
- charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; and

- charges for communications services to the state, any political subdivision of the state, and the federal government and any agency or instrumentality of the federal government.

The following are not considered taxable communications services:

- information services;
- installation or maintenance of wiring or equipment on a customer's premises;
- the sale or rental of tangible personal property;
- the sale of advertising, including but not limited to, directory advertising;
- bad check charges;
- billing and collection services;
- Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging;
- digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and
- over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission.

All sales by a provider are subject to the Communications Tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the provider unless it obtains an exemption certificate from the customer. Internet access service providers that purchase telecommunications services to provide Internet access are authorized to use self-issued exemption certificates. Upon receipt of the certificate, the communications service provider is relieved of any liability for the tax related to that sale. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, the Internet access service provider is required to pay the Communications Tax directly to the department of taxation.

The department of taxation is required to allow a person who uses taxable communications services to pay the Communications Tax directly to the department and waive the collection of the tax by the provider.

This bill exempts from the Communications Tax any entity that was exempt from the local consumer utility tax on landline and wireless telephone service and the local E-911 tax on landline telephone service.

The bill imposes a new E-911 tax on landline telephone service. The E-911 tax will be state tax administered and enforced by the department of taxation. The E-911 tax is imposed on the end user of each access line at the rate of \$0.75 per access line. The new tax appears as a line item on customers' bills. Providers are allowed a dealer discount of three percent of the amount of the E-911 tax revenues.

Submitted as:

Virginia

HB 568/Chapter 780

Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Establish a
- 2 Communications Sales and Use Tax.”

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Section 2. [Definitions.] As used in Sections 1 through 17 of this Act:

(1) “Cable service” means the one-way transmission to subscribers of video programming as defined in 47 U.S.C. § 522(20) or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303(v).

(2) “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.

(3) “Coin-operated communications service” means a communications service paid for by means of inserting coins in a coin-operated telephone.

(4) “Communications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, the connection, movement, change, or termination of communications services; detailed billing of communications services; sale of directory listings in connection with a communications service; central office and custom calling features; voice mail and other messaging services; and directory assistance.

(5) “Communications services provider” means every person who provides communications services to customers in the state and is or should be registered with the [state department of taxation] as a provider.

(6) “Cost price” means the actual cost of the purchased communications service computed in the same manner as the sales price.

(7) “Customer” means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. “Customer” does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider’s licensed service area.

(8) “Customer channel termination point” means the location where the customer either inputs or receives the private communications service.

(9) “Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

(10) “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. “Internet access service” does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(11) “Place of primary use” means the street address representative of where the customer’s use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile

communications services, the place of primary use shall be within the licensed service area of the home service provider.

(12) “Postpaid calling service” means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

(13) “Prepaid calling service” means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

(14) “Private communications service” means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(15) “Retail sale” or a “sale at retail” means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

(16) “Sales price” means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the state, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

(17) “Service address” means, (i) the location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known in clause (i), “service address” means (ii) the origination point of the signal of the telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not known in clauses (i) and (ii), the “service address means” (iii) the location of the customer’s place of primary use.

Section 3. *[Administration.]* The [Tax Commissioner] shall administer and enforce the collection of the taxes and penalties imposed by this Act.

Section 4. *[Imposition of Sales Tax; Exemptions.]*

A. Beginning [insert date], there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of [5%] of the sales price of each communications service that is sourced to the state in accordance with Section 5 of this Act.

B. The sales price on which the tax is levied shall not include charges for any of the following: an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; coin-operated communications

98 services; sale or recharge of a prepaid calling service; provision of air-to-ground radiotelephone
99 services, as that term is defined in 47 C.F.R. § 22.99; a communications services provider's
100 internal use of communications services in connection with its business of providing
101 communications services; charges for property or other services that are not part of the sale of
102 communications services, if the charges are stated separately from the charges for
103 communications services; sales for resale; and charges for communications services to the state,
104 any political subdivision of the state, and the federal government and any agency or
105 instrumentality of the federal government.

106 C. Communications services on which the tax is hereby levied shall not include the
107 following: information services; installation or maintenance of wiring or equipment on a
108 customer's premises; the sale or rental of tangible personal property; the sale of advertising,
109 including but not limited to, directory advertising; bad check charges; billing and collection
110 services; Internet access service, electronic mail service, electronic bulletin board service, or
111 similar services that are incidental to Internet access, such as voice capable email or instant
112 messaging; digital products delivered electronically, such as software, downloaded music, ring
113 tones, and reading materials; and over-the-air radio and television service broadcast without
114 charge by an entity licensed for such purposes by the Federal Communications Commission.
115 Also, those entities exempt from the tax imposed in accordance with the provisions of [insert
116 citation], shall continue to be exempt from the tax imposed in accordance with the provisions of
117 this Act.

118
119 Section 5. [*Sourcing Rules for Communication Services.*]

120 A. Except for the defined communication services in subsection C, the sale of
121 communications service sold on a call-by-call basis shall be sourced to the state when the call
122 originates and terminates in the state or either originates or terminates in the state and the service
123 address is also located in the state.

124 B. Except for the defined communication services in subsection C, a sale of
125 communication services sold on a basis other than a call-by-call basis, shall be sourced to the
126 customer's place of primary use.

127 C. The sale of the following communication services shall be sourced to the state as
128 follows:

129 1. Subject to the definitions and exclusions of the federal Mobile
130 Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services
131 shall be sourced to the customer's place of primary use.

132 2. A sale of postpaid calling service shall be sourced to the origination point of the
133 communications signal as first identified by either the seller's communications system or
134 information received by the seller from its service provider, where the system used to transport
135 such signals is not that of the seller.

136 3. A sale of a private communications service shall be sourced as follows:

137 a. Service for a separate charge related to a customer channel termination
138 point shall be sourced to each jurisdiction in which such customer channel termination point is
139 located;

140 b. Service where all customer termination points are located entirely
141 within [one jurisdiction] shall be sourced to such jurisdiction in which the customer channel
142 termination points are located;

143 c. Service for segments of a channel between [two customer channel
144 termination points] located in different jurisdictions and which segments of a channel are

separately charged shall be sourced [50% to each jurisdiction in which the customer channel termination points are located]; and

d. Service for segments of a channel located in [more than one jurisdiction and which segments are not separately billed shall] be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.

Section 6. [*Bundled Transaction of Communications Services.*]

A. For purposes of this Act, a bundled transaction of communications services includes communications services taxed under this Act and consists of distinct and identifiable properties, services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

Section 7. [*Tax Collectible by Communication Service Providers; Jurisdiction.*]

A. The tax levied by Section 4 of this Act shall be collectible by all people who are communications services providers, who have sufficient contact with the state to qualify under subsection B, and who are required to be registered under Section 9 of this Act. However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. A communications services provider shall be deemed to have sufficient activity within the state to require registration if they do any of the activities listed in [insert citation].

C. Nothing contained in this Act shall limit any authority that the state may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.

Section 8. [*Customer Remedy Procedures for Billing Errors.*] If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within [15 days] of receiving a notice under this section in the provider's billing dispute office, the communications service provider shall review its records, within an additional [15 days], to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to [two years]. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary

193 use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by
194 the communications service provider, and no cause of action based upon a dispute arising from
195 such taxes shall accrue until a customer has reasonably exercised the rights and procedures set
196 forth in this subsection.

197
198 Section 9. [*Communications Services Providers' Certificates of Registration; Penalty.*]

199 A. Every person desiring to engage in or conduct business as a communications services
200 provider in the state shall file with the [Tax Commissioner] an application for a certificate of
201 registration.

202 B. Every application for a certificate of registration shall set forth the name under which
203 the applicant transacts or intends to transact business, the location of his place of business, and
204 such other information as the [Tax Commissioner] may reasonably require.

205 C. When the required application has been made, the [Tax Commissioner] shall issue to
206 each applicant a certificate of registration. A certificate of registration is not assignable and is
207 valid only for the person in whose name it is issued and for the transaction of the business
208 designated therein.

209 D. Whenever a person fails to comply with any provision of this Act or any rule or
210 regulation relating thereto, the [Tax Commissioner], upon a hearing after giving the
211 noncompliant person [30 days'] notice in writing, specifying the time and place of the hearing
212 and requiring them to show cause why their certificate of registration should not be revoked or
213 suspended, may revoke or suspend the certificate of registration held by that person. The notice
214 may be personally served or served by registered mail directed to the last known address of the
215 noncompliant person.

216 E. Any person who engages in business as a communications services provider in the
217 state without obtaining a certificate of registration, or after a certificate of registration has been
218 suspended or revoked, shall be guilty of a [Class 2 misdemeanor] as shall each officer of a
219 corporation that so engages in business as an unregistered communications services provider.
220 Each day's continuance in business in violation of this section shall constitute a separate offense.

221 F. If the holder of a certificate of registration ceases to conduct their business, the
222 certificate shall expire upon cessation of business, and the certificate holder shall inform the [Tax
223 Commissioner] in writing within [30 days] after they have ceased to conduct business. If the
224 holder of a certificate of registration desires to change their place of business, they shall so
225 inform the [Tax Commissioner] in writing and their certificate shall be revised accordingly.

226 G. This section shall also apply to any person who engages in the business of furnishing
227 any of the things or services taxable under this Act. Moreover, it shall apply to any person who is
228 liable only for the collection of the use tax.

229
230 Section 10. [*Returns by Communications Services Providers; Payment to Accompany*
231 *Return.*]

232 A. Every communications services provider required to collect or pay the sales or use tax
233 shall, [on or before the twentieth day of the month following the month in which the tax is
234 billed], transmit to the [Tax Commissioner] a return showing the sales price, or cost price, as the
235 case may be, and the tax collected or accrued arising from all transactions taxable under this Act.
236 In the case of communications services providers regularly keeping books and accounts on the
237 basis of an [annual period] that varies from [52 to 53 weeks], the [Tax Commissioner] may make
238 rules and regulations for reporting consistent with such accounting period. A sales or use tax
239 return shall be filed by each registered communications services provider even though the

communications services provider is not liable to remit to the [Tax Commissioner] any tax for the period covered by the return.

B. At the time of transmitting the return required under subsection A, the communications services provider shall remit to the [Tax Commissioner] the amount of tax due after making appropriate adjustments for accounts uncollectible and charged off as provided in Section 11 of this Act. The tax imposed by this Act shall, for each period, become delinquent on the [twenty-first day of the succeeding month] if not paid.

Section 11. [*Bad Debts.*] In any return filed under the provisions of this Act, the communications services provider may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts that are owed to the communications services provider and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, sales tax, and other nontaxable charges as in the total debt originally owed to the communications services provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the communications services provider shall be included in the first return filed after such collection.

Section 12. [*Discount.*] For the purpose of compensating a communications services provider holding a certificate of registration under Section 9 of this Act for accounting for and remitting the tax levied by this Act, a communications services provider shall be allowed the following percentages of the [first 3% of the tax levied by Section 4 of this Act] and accounted for in the form of a deduction in submitting their return and paying the amount due by them if the amount due was not delinquent at the time of payment.

Monthly Taxable Sales	Percentage
\$0 to \$62,500	4%
\$62,501 to \$208,000	3%
\$208,001 and above	2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a communications services provider.

Section 13. [*Sales Presumed Subject to Tax; Exemption Certificates; Internet Access Service Providers.*]

A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the communications services provider unless they take from the taxpayer a certificate to the effect that the service is exempt under this Act.

B. The exemption certificate mentioned in this section shall relieve the person who obtains such a certificate from any liability for the payment or collection of the tax, except upon notice from the [Tax Commissioner] that the certificate is no longer acceptable. The exemption certificate shall be signed, manually or electronically, by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and shall be substantially in the form as the [Tax Commissioner] may prescribe.

287 C. In the case of a provider of Internet access service that purchases a
288 telecommunications service to provide Internet access, the Internet access provider shall give the
289 communications service provider a certificate of use containing its name, address and signature,
290 manually or electronically, of an officer of the Internet access service provider. The certificate of
291 use shall state that the purchase of telecommunications service is being made in its capacity as a
292 provider of Internet access in order to provide such access. Upon receipt of the certificate of use,
293 the communications service provider shall be relieved of any liability for the communications
294 sales and use tax related to the sale of telecommunications service to the Internet access service
295 provider named in the certificate. In the event the provider of Internet access uses the
296 telecommunications service for any taxable purpose, that provider shall be liable for and pay the
297 communications sales and use tax directly to the state in accordance with Section 14 of this Act.

298 D. If a taxpayer who holds a certificate under this section and makes any use of the
299 service other than an exempt use or retention, demonstration, or display while holding the
300 communications service for resale in the regular course of business, such use shall be deemed a
301 taxable sale by the taxpayer as of the time the service is first used by them, and the cost of the
302 property to them shall be deemed the sales price of such retail sale.

303
304 Section 14. *[Direct Payment Permits.]*

305 A. Notwithstanding any other provision of this Act, the [Tax Commissioner] shall
306 authorize a person who uses taxable communications services within the state to pay any tax
307 levied by this Act directly to the state and waive the collection of the tax by the communications
308 services provider. No such authority shall be granted or exercised except upon application to the
309 [Tax Commissioner] and issuance by the [Tax Commissioner] of a direct payment permit. If a
310 direct payment permit is issued, then payment of the communications sales and use tax on
311 taxable communications services shall be made directly to the [Tax Commissioner] by the permit
312 holder.

313 B. On or before the [twentieth day of each month] every permit holder shall file with the
314 [Tax Commissioner] a return for the preceding month, in a form prescribed by the [Tax
315 Commissioner], showing the total value of the taxable communications services so used, the
316 amount of tax due from the permit holder, which amount shall be paid to the [Tax
317 Commissioner] with the submitted return, and other information as the [Tax Commissioner]
318 deems reasonably necessary. The [Tax Commissioner], upon written request by the permit
319 holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on
320 the tax shall be chargeable on every extended payment at the rate determined in accordance with
321 [insert citation].

322 C. A permit granted pursuant to this section shall continue to be valid until surrendered
323 by the holder or cancelled for cause by the [Tax Commissioner].

324 D. A person holding a direct payment permit that has not been cancelled shall not be
325 required to pay the tax to the communications services provider as otherwise required by this
326 Act. Such people shall notify each communications services provider from whom purchases of
327 taxable communications services are made of their direct payment permit number and that the
328 tax is being paid directly to the [Tax Commissioner]. Upon receipt of notice, a communications
329 services provider shall be absolved from all duties and liabilities imposed by this Act for the
330 collection and remittance of the tax with respect to sales of taxable communications services to
331 the direct payment permit holder. Communications services providers who make sales upon
332 which the tax is not collected by reason of the provisions of this section shall maintain records in
333 a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this Act, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this Act, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

Section 15. [*Collection of Tax; Penalty.*]

A. The tax levied by this Act shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes that any communications services provider now or hereafter may enjoy under the [Constitution or laws of the state], or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable communications services and shall remit the same to the [Tax Commissioner] as provided by this Act.

C. Any communications services provider collecting the communications sales or use tax on transactions exempt or not taxable under this Act shall remit to the [Tax Commissioner] such erroneously or illegally collected tax unless or until the communications services provider can affirmatively show that the tax has been refunded to the customer or credited to the customer's account.

D. Any communications services provider who intentionally neglects, fails, or refuses to collect the tax upon every taxable sale of communications services made by them, their employees, or their agents or employees on their behalf, shall be liable for and pay the tax them self. Moreover, any communications services provider who intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by themselves or through their agents or employees, shall be guilty of a [Class 1 misdemeanor]. All sums collected by a communications services provider as required by this Act shall be deemed to be held in trust for the state.

Section 16. [*Sale of Business.*] If any communications services provider liable for any tax, penalty, or interest levied by this Act sells their business or stock of goods or quits the business, they shall make a final return and payment within [15 days] after the date of selling or quitting the business. Their successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the [Tax Commissioner] showing that all taxes, penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required above, they shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, shall the tax, penalties, and interest due by the purchaser be more than the purchase price paid for the business or stock of goods.

Section 17. [*Disposition of Communications Sales and Use Tax Revenue; Communications Sales and Use Tax Trust Fund; Localities' Share.*]

381 A. There is hereby created in the [Department of the Treasury] a special nonreverting
382 fund which shall be known as the [Communications Sales and Use Tax Trust Fund (the Fund)].
383 The Fund shall be established on the books of the [Comptroller] and any funds remaining in the
384 Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.
385 Interest earned on the funds shall be credited to the Fund. After transferring moneys from the
386 Fund to the [Department of Taxation] to pay for the direct costs of administering this Act, the
387 moneys in the Fund shall be allocated to the state's counties, cities, and towns, and distributed in
388 accordance with subsection C, after the payment for the [telephone relay service center] is made
389 to the [Department of Deaf and Hard-of-Hearing] in accordance with the provisions of [insert
390 citation] and of any franchise fee amount due to localities in accordance with any cable franchise
391 in effect as of [insert date].

392 B. The localities' share of the net revenue distributable under this section among the
393 counties, cities, and towns shall be apportioned by the [Tax Commissioner] and distributed as
394 soon as practicable after the close of each month during which the net revenue was received into
395 the Fund. The distribution of the localities' share of such net revenue shall be computed with
396 respect to the net revenue received in the state treasury during each month.

397 C. The net revenue distributable among the counties, cities, and towns shall be
398 apportioned and distributed monthly during the remainder of [insert fiscal year] and during each
399 subsequent fiscal year according to [the percentage of telecommunications and television cable
400 funds (local consumer utility tax on landlines and wireless, E911, business license tax in excess
401 of 0.5%, cable franchise fee, video programming excise tax, local consumer utility tax on cable
402 television] they received respectively in [insert fiscal year] from local tax rates adopted on or
403 before [insert date]. An amount equal to the total franchise fee paid to each locality with a cable
404 franchise existing on the effective date of this section at the rate in existence on [insert date],
405 shall be subtracted from the amount owed to such locality prior to the distribution of moneys
406 from the Fund.

407 D. For the purposes of the [Comptroller] making the required transfers, the [Tax
408 Commissioner] shall make a written certification to the [Comptroller] no later than the [twenty-
409 fifth of each month] certifying the communications sales and use tax revenues generated in the
410 preceding month. Within [three calendar days] of receiving such certification, the [Comptroller]
411 shall make the required transfers to the [Communications Sales and Use Tax Trust Fund].

412 E. If errors are made in any distribution, or adjustments are otherwise necessary, the
413 errors shall be corrected and adjustments made in the distribution for the next month or for
414 subsequent months.

415
416 Section 18. [*Enhanced 911 Service (E911) Tax Definitions.*] As used in Sections 18 and
417 19 of this Act:

418 (1) "Access lines" are defined to include residence and business telephone lines and
419 other switched (packet or circuit) lines connecting the customer premises to the public switched
420 telephone network for the transmission of outgoing voice-grade-capable telecommunications
421 services. Centrex, PBX or other multistation telecommunications services will incur an E911 tax
422 charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous
423 unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate
424 Interface services will be charged five E911 tax charges for every ISDN Primary Rate Interface
425 network facility established by the customer. Other channelized services in which each voice-
426 grade channel is controlled by the telecommunications provider shall be charged one tax for each
427 line that allows simultaneous unrestricted outward dialing to the public switched telephone
428 network. Access lines do not include local, state, and federal government lines; access lines used

to provide service to users as part of the state Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off premises extensions; official lines internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

(2) "Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 911 call.

(3) "Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 911 call.

(4) "Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

(5) "Communications services provider" means the same as provided in Section 2 of this Act.

(6) "Enhanced 911 service" or "E911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling users to reach a PSAP by dialing the digits "911." Such service automatically directs 911 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated, and provides the capability for ANI and ALI features.

(7) "ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

(8) "Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

(9) "PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

(10) "PBX trunk" means a connection of the customer's PBX switch to the central office.

(11) "Public Safety Answering Point" or "PSAP" means a communications facility equipped and staffed on a 24 hour basis to receive and process 911 calls.

Section 19. *[Enhanced 911 Service (E911) Tax.]*

A. There is hereby imposed a monthly tax of [\$0.75] on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of mobile telecommunications services (CMRS) as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended. The revenues shall be collected and remitted monthly by the communications services provider to the [Department] and deposited into the [Communications Sales and Use Tax Trust Fund]. This tax shall be subject to the notification and jurisdictional provisions of subsection B of this Section 19 of this Act.

B. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within [15 days] of receiving a notice under this

477 section, the communications services provider shall review its records within an additional [15
478 days] to determine the customer's taxing jurisdiction. If this review shows that the amount of tax
479 or assignment of place of primary use or taxing jurisdiction is in error, the communications
480 services provider shall correct the error and refund or credit the amount of tax erroneously
481 collected from the customer for a period of up to [two years]. If this review shows that the
482 amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the
483 communications services provider shall provide a written explanation to the customer. The
484 procedures in this section shall be the first course of remedy available to customers seeking
485 correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other
486 compensation for taxes erroneously collected by the communications services provider, and no
487 cause of action based upon a dispute arising from such taxes shall accrue until a customer has
488 reasonably exercised the rights and procedures set forth in this subsection. For the purposes of
489 this subsection, the terms "customer" and "place of primary use" shall have the same meanings
490 provided in Section 2 of this Act.

491 C. For the purpose of compensating a communications services provider for accounting
492 for and remitting the tax levied by this section, each communications services provider shall be
493 allowed [3% of the amount of tax revenues due and accounted for] in the form of a deduction in
494 submitting the return and remitting the amount due.

495
496 Section 20. [*Severability.*] [Insert severability clause.]

497
498 Section 21. [*Repealer.*] [Insert repealer clause.]

499
500 Section 22. [*Effective Date.*] [Insert effective date.]

Computer Security (Spyware)

This draft legislation is one of several efforts by the SSL Committee to address the widespread problem of “spyware,” which occurs when software is surreptitiously loaded on someone’s computer to monitor their Internet searches or collect data on their computer without their knowledge or consent.

In 2005, the SSL Committee reviewed Utah H.B. 323 4th Sub. The SSL Committee ultimately pulled that bill from its dockets at the request of the bill’s sponsor. That Utah legislation was also struck down for violating the First Amendment and Dormant Commerce Clauses of the U.S. Constitution in *WhenU.com, Inc., v. State of Utah*. An SSL draft about spyware based on Utah H.B. 104 of the 2005 session (enrolled version) is in the 2006 ***Suggested State Legislation*** volume.

Several bills about spyware were also introduced in Georgia in 2005. An SSL draft based on Georgia SB127 of 2005 (SB127/CSFA/1) is in the 2006 ***Suggested State Legislation*** volume. The SSL draft in this 2010 volume is based on Georgia 05 SB127/AP, a different version of that 2005 Georgia bill.

This draft makes it illegal for third parties to knowingly and deceptively cause computer software to be copied onto personal computers that:

- changes the computer users’ settings without the users’ permission;
- prevents users from resetting their computers to their original preferences or removing the third party software;
- secretly collects information about Internet searches;
- disables the computer’s security software; or
- causes related disruptive activities.

Submitted as:

Georgia

SB 127 (As Passed)

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Computer Security Act.”

2

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

4 (1) “Advertisement” means a communication, the primary purpose of which is the
5 commercial promotion of a commercial product or service, including content on an Internet
6 website operated for a commercial purpose.

7 (2) “Authorized user,” with respect to a computer, means a person who owns or is
8 authorized by the owner or lessee to use the computer.

9 (3) “Cause to be copied” means to distribute or transfer computer software or any
10 component thereof. Such term shall not include providing:

11 (a) Transmission, routing, provision of intermediate temporary storage, or caching
12 of software;

13 (b) A storage medium, such as a compact disk, website, or computer server,
14 through which the software was distributed by a third party; or

15 (c) An information location tool, such as a directory, index, reference, pointer, or
16 hypertext link, through which the user of the computer located the software.

17 (4) "Computer software" means a sequence of instructions written in any programming
18 language that is executed on a computer. Such term shall not include a text or data file, a web
19 page, or a data component of a web page that is not executable independently of the web page.

20 (5) "Computer virus" means a computer program or other set of instructions that is
21 designed to degrade the performance of or disable a computer or computer network and is
22 designed to have the ability to replicate itself on other computers or computer networks without
23 the authorization of the owners of those computers or computer networks.

24 (6) "Consumer" means an individual who resides in this state and who uses the computer
25 in question primarily for personal, family, or household purposes.

26 (7) "Damage" means any significant impairment to the integrity or availability of data,
27 software, a system, or information.

28 (8) "Execute," when used with respect to computer software, means the performance of
29 the functions or the carrying out of the instructions of the computer software.

30 (9) "Intentionally deceptive" means any of the following:

31 (a) By means of an intentionally and materially false or fraudulent statement;

32 (b) By means of a statement or description that intentionally omits or
33 misrepresents material information in order to deceive the consumer; or

34 (c) By means of an intentional and material failure to provide any notice to an
35 authorized user regarding the download or installation of software in order to deceive the
36 consumer.

37 (10) "Internet" means the global information system that is logically linked together by a
38 globally unique address space based on the Internet Protocol or its subsequent extensions; that is
39 able to support communications using the Transmission Control Protocol/Internet Protocol suite,
40 its subsequent extensions, or other Internet Protocol compatible protocols; and that provides,
41 uses, or makes accessible, either publicly or privately, high level services layered on the
42 communications and related infrastructure described in this paragraph.

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

45 (12) "Personally identifiable information" means any of the following:

46 (a) A first name or first initial in combination with a last name;

47 (b) Credit or debit card numbers or other financial account numbers;

48 (c) A password or personal identification number required to access an identified
49 financial account;

50 (d) A Social Security number; or

51 (e) Any of the following information in a form that personally identifies an
52 authorized user:

53 (i) Account balances;

54 (ii) Overdraft history;

55 (iii) Payment history;

56 (iv) A history of websites visited;

57 (v) A home address;

58 (vi) A work address; or

59 (vii) A record of a purchase or purchases.
60

61 Section 3. [*Unlawful Acts Involving Computer Software.*]

62 (A) It shall be illegal for a person or entity that is not an authorized user, as defined in
63 Section 2 of this Act, of a computer in this state to knowingly, willfully, or with conscious
64 indifference or disregard cause computer software to be copied onto such computer and use the
65 software to do any of the following:

66 (1) Modify, through intentionally deceptive means, any of the following settings
67 related to the computer's access to, or use of, the Internet:

68 (a) The page that appears when an authorized user launches an Internet
69 browser or similar software program used to access and navigate the Internet;

70 (b) The default provider or web proxy the authorized user uses to access or
71 search the Internet; or

72 (c) The authorized user's list of bookmarks used to access web pages;

73 (2) Collect, through intentionally deceptive means, personally identifiable
74 information that meets any of the following criteria:

75 (a) It is collected through the use of a keystroke-logging function that
76 records all keystrokes made by an authorized user who uses the computer and transfers that
77 information from the computer to another person;

78 (b) It includes all or substantially all of the websites visited by an
79 authorized user, other than websites of the provider of the software, if the computer software was
80 installed in a manner designed to conceal from all authorized users of the computer the fact that
81 the software is being installed; or

82 (c) It is a data element described in subparagraph (b), (c), or (d) of
83 paragraph (12) of section 2 of this Act, or in division (i) or (ii) of subparagraph (e) of paragraph
84 (12) of section 2 of this Act, that is extracted from the consumer's or business entity's computer
85 hard drive for a purpose wholly unrelated to any of the purposes of the software or service
86 described to an authorized user;

87 (3) Prevent, without the authorization of an authorized user, through intentionally
88 deceptive means, an authorized user's reasonable efforts to block the installation of, or to
89 disable, software, by causing software that the authorized user has properly removed or disabled
90 to automatically reinstall or reactivate on the computer without the authorization of an authorized
91 user;

92 (4) Intentionally misrepresent that software will be uninstalled or disabled by an
93 authorized user's action, with knowledge that the software will not be so uninstalled or disabled;
94 or

95 (5) Through intentionally deceptive means, remove, disable, or render inoperative
96 security, antispyware, or antivirus software installed on the computer.

97 (B) It shall be illegal for a person or entity that is not an authorized user, as defined in
98 section 2 of this Act, of a computer in this state to knowingly, willfully, or with conscious
99 indifference or disregard cause computer software to be copied onto such computer and use the
100 software to do any of the following:

101 (1) Take control of the consumer's or business entity's computer by doing any of
102 the following:

103 (a) Transmitting or relaying commercial electronic mail or a computer
104 virus from the consumer's or business entity's computer, where the transmission or relaying is
105 initiated by a person other than the authorized user and without the authorization of an
106 authorized user;

107 (b) Accessing or using the consumer's or business entity's modem or
108 Internet service for the purpose of causing damage to the consumer's or business entity's

computer or of causing an authorized user or a third party affected by such conduct to incur financial charges for a service that is not authorized by an authorized user;

(c) Using the consumer's or business entity's computer as part of an activity performed by a group of computers for the purpose of causing damage to another computer, including, but not limited to, launching a denial of service attack; or

(d) Opening multiple, sequential, stand-alone advertisements in the consumer's or business entity's Internet browser without the authorization of an authorized user and with knowledge that a reasonable computer user cannot close the advertisements without turning off the computer or closing the consumer's or business entity's Internet browser;

(2) Modify any of the following settings related to the computer's access to, or use of, the Internet:

(a) An authorized user's security or other settings that protect information about the authorized user for the purpose of stealing personal information of an authorized user; or

(b) The security settings of the computer for the purpose of causing damage to one or more computers; or

(3) Prevent, without the authorization of an authorized user, an authorized user's reasonable efforts to block the installation of, or to disable, software, by doing any of the following:

(a) Presenting the authorized user with an option to decline installation of software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds; or

(b) Falsely representing that software has been disabled.

(C) It shall be illegal for a person or entity that is not an authorized user, as defined in section 2 of this Act, of a computer in this state to do any of the following with regard to such computer:

(1) Induce an authorized user to install a software component onto the computer by intentionally misrepresenting that installing software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or

(2) Deceptively causing the copying and execution on the computer of a computer software component with the intent of causing an authorized user to use the component in a way that violates any other provision of this paragraph C of this section of this Act.

(D) Nothing in this section of this Act shall apply to any monitoring of, or interaction with, a user's Internet or other network connection or service, or a protected computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, network management, network maintenance, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing software proscribed under this Act.

Section 4. *[Penalties.]*

(A) Any person who violates the provisions of paragraph (2) of section 3 (A) of this Act, subparagraph (a), (b), or (c) of paragraph (1) of section 3 (B), or paragraph (2) of subsection (A) of section 3 (B) of this Act shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for [not less than one nor more than ten years] or a fine of [not more than \$3 million], or both.

(B) The [Attorney General] may bring a civil action against any person violating this Act to the penalties for the violation and may recover any or all of the following:

(1) A [civil penalty] of [up to \$100 per violation] of this Act, or up to [\$100,000] for a pattern or practice of such violations;

(2) Costs and reasonable attorney's fees; and

(3) An order to enjoin the violation.

(C) In the case of a violation of subparagraph (B) of paragraph (1) of subsection (B) of section 3 of this Act that causes a telecommunications carrier to incur costs for the origination, transport, or termination of a call triggered using the modem of a customer of such telecommunications carrier as a result of such violation, the telecommunications carrier may bring a civil action against the violator to recover any or all of the following:

(1) The charges such carrier is obligated to pay to another carrier or to an information service provider as a result of the violation, including, but not limited to, charges for the origination, transport or termination of the call;

(2) Costs of handling customer inquiries or complaints with respect to amounts billed for such calls;

(3) Costs and reasonable attorney's fees; and

(4) An order to enjoin the violation.

(D) An Internet service provider or software company that expends resources in good faith assisting consumers or business entities harmed by a violation of this Act, or a trademark owner whose mark is used to deceive consumers or business entities in violation of this Act, may enforce the violation and may recover any or all of the following:

(1) Statutory damages of [not more than \$100 per violation] of this Act, or up to [\$1 million] for a pattern or practice of such violations;

(2) Costs and reasonable attorney's fees; and

(3) An order to enjoin the violation.

Section 5. *[Immunity from Liability for Violating this Act.]*

(A) For the purposes of this section, the term "employer" includes a business entity's officers, directors, parent corporation, subsidiaries, affiliates, and other corporate entities under common ownership or control within a business enterprise. No employer may be held criminally or civilly liable under this Act as a result of any actions taken:

(1) With respect to computer equipment used by its employees, contractors, subcontractors, agents, leased employees, or other staff which the employer owns, leases, or otherwise makes available or allows to be connected to the employer's network or other computer facilities; or

(2) By employees, contractors, subcontractors, agents, leased employees, or other staff who misuse an employer's computer equipment for an illegal purpose without the employer's knowledge, consent, or approval.

(B) No person shall be held criminally or civilly liable under this Act when its protected computers have been used by unauthorized users to violate this Act or other laws without such person's knowledge, consent, or approval.

(C) A manufacturer or retailer of computer equipment shall not be liable under this section, criminally or civilly, to the extent that the manufacturer or retailer is providing third party branded software that is installed on the computer equipment that the manufacturer or retailer is manufacturing or selling.

204 Section 6. [*Preempting Other Jurisdictional Actions About Spyware.*] The [General
205 Assembly] finds that this Act is a matter of state-wide concern. This Act supersedes and
206 preempts all rules, regulations, codes, ordinances, and other laws adopted by any county,
207 municipality, consolidated government, or other local governmental agency regarding spyware
208 and notices to consumers from computer software providers regarding information collection.
209

210 Section 7. [*Severability.*] [Insert severability clause.]
211

212 Section 8. [*Repealer.*] [Insert repealer clause.]
213

214 Section 9. [*Effective Date.*] [Insert effective date.]

Confidentiality of State Held Information

This Act:

- requires certain state agencies adopt rules regulating access to the confidential personal information the agencies keep, whether paper or electronic;
- provides that a person harmed by a violation of a rule of a state agency adopted under the Act may bring an action in a court of claims against any person who directly and proximately caused the harm, and
- requires the state tax commissioner adopt rules to generally require the tracking of searches of any of the department of taxation's databases.

The Act generally defines “state agency” as the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state. “Local Agency” means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.

Submitted as:

Ohio

Substitute House Bill Number 648

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Address The
2 Confidentiality of State Held Information.”

3
4 Section 2. [*State Agencies to Adopt Rules Regulating Access to Confidential Personal*
5 *Information Kept by the Agencies*.]

6 (A) As used in this Section:

7 (1) "Confidential personal information" means personal information that is not a
8 public record for purposes of [insert citation].

9 (2) "State agency" does not include the courts or any judicial agency, any state-
10 assisted institution of higher education, or any local agency.

11 (B) Each state agency shall adopt rules under [insert citation] regulating access to the
12 confidential personal information the agency keeps, whether electronically or on paper. The rules
13 shall include all the following:

14 (1) Criteria for determining which employees of the state agency may access, and
15 which supervisory employees of the state agency may authorize those employees to access,
16 confidential personal information;

17 (2) A list of the valid reasons, directly related to the state agency's exercise of its
18 powers or duties, for which only employees of the state agency may access confidential personal
19 information;

20 (3) References to the applicable federal or state statutes or administrative rules
21 that make the confidential personal information confidential;

22 (4) A procedure that requires the state agency to do all of the following:

(a) Provide that any upgrades to an existing computer system, or the acquisition of any new computer system, that stores, manages, or contains confidential personal information include a mechanism for recording specific access by employees of the state agency to confidential personal information;

(b) Until an upgrade or new acquisition of the type described in division (B)(4)(a) of this section occurs, except as otherwise provided in division (C)(1) of this section, keep a log that records specific access by employees of the state agency to confidential personal information;

(5) A procedure that requires the state agency to comply with a written request from an individual for a list of confidential personal information about the individual that the state agency keeps, unless the confidential personal information relates to an investigation about the individual based upon specific statutory authority by the state agency;

(6) A procedure that requires the state agency to notify each person whose confidential personal information has been accessed for an invalid reason by employees of the state agency of that specific access;

(7) A requirement that the director of the state agency designate an employee of the state agency to serve as the data privacy point of contact within the state agency to work with the chief privacy officer within the office of information technology to ensure that confidential personal information is properly protected and that the state agency complies with this section and rules adopted thereunder;

(8) A requirement that the data privacy point of contact for the state agency complete a privacy impact assessment form; and

(9) A requirement that a password or other authentication measure be used to access confidential personal information that is kept electronically.

(C) (1) A procedure adopted pursuant to division (B)(4) of this section shall not require a state agency to record in the log it keeps under division (B)(4)(b) of this section any specific access by any employee of the agency to confidential personal information in any of the following circumstances:

(a) The access occurs as a result of research performed for official agency purposes, routine office procedures, or incidental contact with the information, unless the conduct resulting in the access is specifically directed toward a specifically named individual or a group of specifically named individuals.

(b) The access is to confidential personal information about an individual, and the access occurs as a result of a request by that individual for confidential personal information about that individual.

(2) Each state agency shall establish a training program for all employees of the state agency described in division (B)(1) of this section so that these employees are made aware of all applicable statutes, rules, and policies governing their access to confidential personal information. The office of information technology shall develop the privacy impact assessment form and post the form on its Internet Web site by the [first day of December] each year. The form shall assist each state agency in complying with the rules it adopted under this section, in assessing the risks and effects of collecting, maintaining, and disseminating confidential personal information, and in adopting privacy protection processes designed to mitigate potential risks to privacy.

(D) Each state agency shall distribute the policies included in the rules adopted under division (B) of this section to each employee of the agency described in division (B)(1) of this section and shall require that the employee acknowledge receipt of the copy of the policies. The state agency shall create a poster that describes these policies and post it in a conspicuous place

71 in the main office of the state agency and in all locations where the state agency has branch
72 offices. The state agency shall post the policies on the Internet Web site of the agency if it
73 maintains such an Internet Web site. A state agency that has established a manual or handbook of
74 its general policies and procedures shall include these policies in the manual or handbook.

75 (E) No collective bargaining agreement entered into under [insert citation] shall prohibit
76 disciplinary action against or termination of an employee of a state agency who is found to have
77 accessed, disclosed, or used personal confidential information in violation of a rule adopted
78 under division (B) of this section or as otherwise prohibited by law.

79 (F) The [auditor of the state] shall obtain evidence that state agencies adopted the
80 required procedures and policies in a rule under division (B) of this section, shall obtain evidence
81 supporting whether the state agency is complying with those policies and procedures, and may
82 include citations or recommendations relating to this section in any audit report issued under
83 [insert citation].

84 (G) A person who is harmed by a violation of a rule of a state agency described in
85 division (B) of this section may bring an action in the court of claims, as described in [insert
86 citation], against any person who directly and proximately caused the harm.

87 (H) (1) No person shall knowingly access confidential personal information in
88 violation of a rule of a state agency described in division (B) of this section.

89 (2) No person shall knowingly use or disclose confidential personal information
90 in a manner prohibited by law.

91 (3) No state agency shall employ a person who has been convicted of or pleaded
92 guilty to a violation of division (H)(1) or (2) of this section.

93 (4) A violation of division (H)(1) or (2) of this section is a violation of a state
94 statute for purposes of [insert citation].

95 (I) Whoever violates division (H)(1) or (2) of this section is guilty of a [misdemeanor of
96 the first degree].

97
98 Section 3. *[Tax Commissioner to Adopt Rules to Track Searches of Databases*
99 *Maintained by the Department of Taxation.]*

100 (A) The [tax commissioner] shall adopt rules under [insert citation] that, except as
101 otherwise provided in division (B) of this section, require that any search of any of the databases
102 of the [department of taxation] be tracked so that administrators of the database or investigators
103 can identify each account holder who conducted a search of the database.

104 (B) The rules adopted under division (A) of this section shall not require the tracking of
105 any search of any of the databases of the [department of taxation] conducted by an account
106 holder in any of the following circumstances:

107 (1) The search occurs as a result of research performed for official agency
108 purposes, routine office procedures, or incidental contact with the information, unless the search
109 is specifically directed toward a specifically named individual or a group of specifically named
110 individuals.

111 (2) The search is for information about an individual, and it is performed as a
112 result of a request by that individual for information about that individual.

113
114 Section 4. *[Severability.]* [Insert severability clause.]

115
116 Section 5. *[Repealer.]* [Insert repealer clause.]

117
118 Section 6. *[Effective Date.]* [Insert effective date.]

Digital Learning Academy

This Act creates a digital learning academy to provide choice, accessibility, flexibility, quality and equity in curricular offerings for secondary students. The Act sets up a board of directors for the academy and provides for liability insurance for academy directors. The Act creates a Digital Learning Academy Fund and designates the digital learning academy as an employer within the state public employee retirement system.

Submitted as:

Idaho

HB 552

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as the “Digital Learning Academy Act.”
2
- 3 Section 2. [*Definitions.*] As used in this Act:
4 (1) “Academy board,” or “board,” means the board of directors of the digital learning
5 academy created in Section 3 of this Act.
6 (2) “Host district” means the school district where the fiscal operations of the digital
7 learning academy are housed until [insert date].
8 (3) “Digital learning academy” means an online educational program organized as a fully
9 accredited school with statewide capabilities for delivering accredited courses to resident
10 students at no cost to the student unless the student enrolls in additional courses beyond full-time
11 enrollment. Participation in the digital learning academy by public school students shall be in
12 compliance with academy and local school district policies. Adult learners and out-of-state
13 students shall pay tuition commensurate with rates established by the state board with the advice
14 of the [superintendent], and such funds shall be included in the budget and audit of the academy's
15 fiscal records.
16 (4) “State board” means the [state board of education]. The state board is authorized and
17 directed, with the advice and recommendation of the academy board, to promulgate rules to
18 implement the provisions of this Act.
19
- 20 Section 3. [*Digital Learning Academy: Creation; Legislative Intent; Goal.*]
21 (A) There is hereby created the [state] digital learning academy, a public school-choice
22 learning environment which joins the best technology with the best instructional practices. The
23 [state] digital learning academy is not a single department of state government unto itself, nor is
24 it a part of any of the [twenty departments] of state government authorized by the [state
25 constitution]. It is legislative intent that the [state] digital learning academy operate and be
26 recognized not as a state agency or department, but as a governmental entity whose creation has
27 been authorized by the state, much in the manner as other single purpose districts.
28 (B) The [legislature] finds that it is in the best public interest to create the [state] digital
29 learning academy based on findings that indicate:
30 (1) Technology continues to impact all facets of life, including the education of
31 students of school age and adult learners;

(2) Systems for delivery of education are as diverse as the learners;
(3) Public school systems are seeking high quality educational choices within the public system, and are aligning curriculum and assessment with state achievement standards; and
(4) The development of a comprehensive digital learning environment is cost prohibitive for individual school districts.

(C) The goal of the [state] digital learning academy is to provide choice, accessibility, flexibility, quality and equity in curricular offerings for students in this state.

Section 4. *[Academy Board of Directors.]*

(A) There is hereby created an academy board of directors which shall be responsible for the development and oversight of the [state] digital learning academy.

(B) The academy board of directors shall be comprised of [eight] voting members and [one] nonvoting member as follows:

(1) [Three] members shall be [superintendents], each elected to a [three] year term and each representing [two educational classification regions] as established by the [state board of education]. [One] [superintendent] shall be elected from among the [superintendents] in regions [one and two] on a rotating term basis between the two regions; [one] [superintendent] shall be elected from among the [superintendents] in regions [three and four] on a rotating term basis between the two regions; and [one] [superintendent] shall be elected from among the [superintendents] in regions [five and six] on a rotating term basis between the two regions;

(2) [Two] members shall be high school principals, each elected to a [three] year term by the [governing body of the state association of secondary school administrators];

(3) [Two] members shall be citizens at-large who are not professional educators, appointed by the members of the academy board, each to a term of [three] years; and

(4) The [state superintendent of public instruction] shall be a voting member and shall serve concurrently with the term of office to which the [state superintendent of public instruction] is elected;

(5) [One] member shall be an ex officio, nonvoting member appointed by the academy board of directors to serve as secretary to the academy board.

(C) For purposes of establishing staggered terms of office, the initial term of office for the [superintendent] position representing educational classification regions [one and two] shall be [one] year, and thereafter shall be [three] years. The initial term of office for the [superintendent] position representing educational classification regions [three and four] shall be [two] years, and thereafter shall be [three] years. The [superintendent] position representing educational classification regions [five and six] shall be [three] years. The initial term of office for [one] high school principal position shall be [one] year and thereafter shall be [three] years, and the initial term of office for the other high school principal position shall be [two] years and thereafter shall be [three] years. The initial term of office for [one] member at-large shall be [one] year and thereafter shall be [three] years, and the term of office for the other member at-large shall be [three] years.

(D) No voting member shall serve for more than [two] consecutive full terms. Members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(E) The academy board shall meet in person at least [three] times [annually]; none of these [three] meetings shall be conducted by telephone or video conferencing.

Section 5. *[Duties of the Academy Board of Directors.]* The [state] digital learning academy board of directors shall be responsible for ensuring that academy procedures and

courses comply with the rules of the [state board of education] and applicable statutes of this state. In addition, the academy board shall:

(1) Recommend policies to be established by rule of the [state board of education] for effecting the purposes of this Act;

(2) Employ or contract with staff as necessary and purchase such supplies and equipment as are necessary to implement the provisions of this Act, which purchases shall be exempt from the purchasing laws in [insert citation].

(3) Enter into contracts with any other governmental or public agency whereby the board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the costs of rendering such service.

(4) Accept, receive and utilize any gifts, grants or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this Act.

(5) Employ or contract with necessary faculty and teaching staff who are fully certificated [state] teachers or administrators, to design and deliver planned curriculum content. The academy shall be exempt from [insert citation]. All teaching and educational staff of the academy shall be exempt, at will employees. The number of such staff shall largely be dictated by the number of courses under development, the number of courses offered, and the number of students participating in academy programs.

(6) Obtain housing where actual operations of the academy are conducted by academy staff.

(7) Contract with a service provider for delivery of academy courses online which shall be accessible twenty-four (24) hours a day, seven (7) days a week.

(8) Ensure that the academy is accredited as established by rule of the [state board of education].

(9) Develop policy for earning credit in courses based on mastery of the subject, demonstrated competency, and meeting the standards set for each course.

(10) Provide for articulating the content of certain high school courses with college and university courses in order to award both high school and undergraduate college credit.

(11) Develop policies and practices which provide strict application of time limits for completion of courses.

(12) Develop policies and practices on accountability, both by the student and the teacher, and in accordance with the provisions of [insert citation].

(13) Manage the moneys disbursed to the academy board from the [state superintendent of public instruction].

(14) Set fees charged to school districts for student participation; fees charged for summer school; and fees charged to students and adults for professional development offerings.

(15) Contract with a certified public accounting firm to conduct an annual audit of the [state] digital learning academy.

Section 6. *[State Digital Learning Academy: Governmental Entity; Liability; Insurance.]*

(A) The [state] digital learning academy shall be a governmental entity as provided in Section 3 of this Act. For the purposes of [insert citation], the [state] digital learning academy created pursuant to this Act shall be deemed a governmental entity. Pursuant to the provisions of [insert citation], sales to or purchases by the [state] digital learning academy are exempt from payment of the sales and use tax. The [state] digital learning academy and its board of directors are subject to the following provisions in the same manner as a traditional public school and the board of trustees of a school district:

127 (1) [Insert citation], about bribery and corrupt influence, except as provided by
128 [insert citation];

129 (2) [Insert citation], about prohibitions against contracts with officers;

130 (3) [Insert citation], about ethics in government;

131 (4) [Insert citation], about open public meetings; and

132 (5) [Insert citation], about disclosure of public records.

133 (B) The [state] digital learning academy may sue or be sued, purchase, receive, hold and
134 convey real and personal property for school purposes, and its employees, directors and officers
135 shall enjoy the same immunities as employees, directors and officers of traditional public school
136 districts and other public schools, including those provided by [insert citation].

137 (C) The [state] digital learning academy shall secure insurance for liability and property
138 loss.

139 (D) It shall be unlawful for:

140 (1) Any director to have pecuniary interest directly or indirectly in any contract or
141 other transaction pertaining to the maintenance or conduct of the [state] digital learning academy,
142 or to accept any reward or compensation for services rendered as a director except as may be
143 otherwise provided in this subsection (D). The board of directors of the [state] digital learning
144 academy may accept and award contracts involving the [state] digital learning academy to
145 businesses in which the director or a person related to them by blood or marriage within the
146 second degree of consanguinity has a direct or indirect interest, provided that the procedures set
147 forth in [insert citation], are followed. The receiving, soliciting or acceptance of moneys of the
148 [state] digital learning academy for deposit in any bank or trust company, or the lending of
149 moneys by any bank or trust company to the [state] digital learning academy, shall not be
150 deemed to be a contract pertaining to the maintenance or conduct of the [state] digital learning
151 academy within the meaning of this section; nor shall the payment of compensation by the [state]
152 digital learning academy board of directors to any bank or trust company for services rendered in
153 the transaction of any banking business with the [state] digital learning academy board of
154 directors be deemed the payment of any reward or compensation to any officer or director of any
155 such bank or trust company within the meaning of this section.

156 (2) The board of directors of the [state] digital learning academy to enter into or
157 execute any contract with the spouse of any member of such board, the terms of which said
158 contract require, or will require, the payment or delivery of any [state] digital learning academy
159 funds, moneys or property to such spouse, except as provided in [insert citation].

160 (E) When any relative of any director, or relative of the spouse of a director related by
161 affinity or consanguinity within the second degree, is to be considered for employment in the
162 [state] digital learning academy, such director shall abstain from voting in the election of such
163 relative, and shall be absent from the meeting while such employment is being considered and
164 determined.

165
166 Section 7. *[Expenditures; Budget.]*

167 (A) There is hereby created in the state treasury the [state] digital learning academy fund.
168 The fund shall consist of appropriations, fees, grants, gifts or moneys from any other source. The
169 [state treasurer] shall invest all idle moneys in the fund and interest earned on such investments
170 shall be retained by the fund.

171 (B) On or before the first [Monday in July], there will be held at the time and place
172 determined by the [state] digital learning academy board, a budget meeting and public hearing
173 upon the proposed budget of the [state] digital learning academy. Notice of the budget meeting
174 and public hearing shall be posted at least [ten] full days prior to the date of the meeting in at

175 least [one] conspicuous place to be determined by the [state] digital learning academy board of
176 directors. The place, hour and day of the hearing shall be specified in the notice, as well as the
177 place where such budget may be examined prior to the hearing. On or before the [first Monday in
178 July] a budget for the [state] digital learning academy shall be agreed upon and approved by the
179 majority of the [state] digital learning academy board of directors.

180
181 Section 8. *[Digital Learning Academy Courses: Development; Brokered; Credit;*
182 *Accreditation.]*

183 (A) Online courses shall reflect state of the art in multimedia-based digital learning.
184 Courses offered shall be of high quality in appearance and presentation, and shall be designed to
185 meet the needs of all students regardless of the student's level of learning.

186 (B) All courses developed under the auspices of the academy are the property of the
187 academy. Courses may be developed by qualified [state] teachers who possess the necessary
188 technical background and instructional expertise. Such people may also be hired to deliver the
189 course online. Nothing shall prevent the board from providing additional training to teachers in
190 the development and online delivery of courses.

191 (C) At the discretion of the board with consideration for necessity, convenience and cost
192 effectiveness, brokered courses developed by outside sources may be obtained for use by the
193 academy; however, such courses shall be taught online by [state] teachers unless special
194 circumstances require a waiver of this requirement.

195 (D) Grade percentages in courses shall be based on such criteria as mastery of the subject,
196 demonstrated competency, and meeting the standards set for each course.

197 (E) All courses shall meet criteria established by the [state] as necessary for accreditation
198 of the academy.

199
200 Section 9. *[Registration and Accountability.]*

201 (A) A student may register with the digital learning academy upon recommendation from
202 a traditional school counselor or administrator, or may register directly with the academy if there
203 is no current public school affiliation. However, in order for coursework completed through the
204 academy to be recorded on the student's transcript, the student shall indicate which school is to
205 receive and record credits earned.

206 (B) Students who register for courses shall provide the name of a responsible adult who
207 shall be the contact person for the academy in situations which require consultation regarding the
208 student's conduct and performance. A designated responsible adult for students with a school
209 affiliation may be a teacher, a counselor or a distance learning coordinator. For home schooled
210 students, a parent or guardian may be designated.

211 (C) Policies of accountability as established by rule of the [state board] shall address the
212 special conditions which exist in an environment where there is reduced face-to-face contact
213 between student and teacher; where students access courses at any time of day, from any location
214 and at the student's own pace; where online etiquette and ethics should be clearly understood and
215 required of all participants; and where all students' participation is monitored by online teachers
216 and academy personnel.

217 (D) Policies shall be established by rule of the [state board] for student-related issues
218 including taking exams, proctored or unproctored; ensuring that the work is being done by the
219 student; and ensuring that ethical conduct and proper etiquette are always observed by all
220 participants.

222 Section 10. [*Employers -- Members -- Exceptions.*] The [state] digital learning academy
223 created pursuant to this Act shall be an employer pursuant to the provisions of [insert citation]
224 concerning the [state public employee retirement system] and [insert citation].
225

226 Section 11. [*Severability.*] [Insert severability clause.]
227

228 Section 12. [*Repealer.*] [Insert repealer clause.]
229

230 Section 13. [*Effective Date.*] [Insert effective date.]

Energy Conservation Statement

According to a Pennsylvania legislative staff analysis, Pennsylvania HB 2200, which became law in 2008, generally:

- provides for the creation and implementation of a statewide energy efficiency and demand-side response program;
- requires electric distribution companies to procure energy through a competitive procurement plan that is designed to ensure adequate and reliable service and the least cost to customers over time;
- provides for the implementation of “smart meters” and real-time and time-of-use rates;
- sets forth new provisions for market misconduct; and
- requires a carbon sequestration network study.

The Act requires the state Public Utilities Commission (PUC) to adopt a program to require state Electric Distribution Companies (EDCs) to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the EDC territory. The PUC will have all of the following responsibilities:

- develop procedures for approving EDC plans;
- develop a plan evaluation process including a process to monitor and verify data collection, quality assurance and results submitted;
- analyze the cost and benefit of each plan in accordance with the total resource cost test, which is a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value basis of supplying electricity is greater than the net present value basis of energy efficiency measures and conservation of consumption;
- conduct an analysis of how the program and plans will enable each EDC to achieve the load and peak demand reduction goals;
- create standards to ensure that each plan includes a variety of energy efficiency and conservation measures to be provided equitably to all classes of consumers;
- enact procedures to make recommendations as to additional measures that will enable an EDC to improve its plan and exceed the required reductions;
- enact procedures to require that EDCs competitively bid all contracts with third party entities;
- develop procedures to review all proposed contracts prior to the execution of the contract with third-party entities;
- enact requirements for the participation of conservation service providers in the implementation of all or part of a plan. A conservation service provider is an entity that provides information and technical assistance on measures to enable a person to increase energy efficiency or reduce energy consumption and that has no direct or indirect ownership, partnership or other affiliated interest with an EDC.
- set forth procedures for the levy of assessments to fund plans, subject to limitations;
- direct an EDC to modify or terminate any part of an approved plan if, after an adequate period for implementation, it is determined that an energy efficiency or conservation measure included in the plan is not effective;
- approve or disapprove a plan within 120 days of submission. Where disapproval is given, describe in detail the reasons for disapproval; and

- by November 30, 2013, evaluate the costs and benefits of energy efficiency and conservation plans consistent with the total resource cost test or a cost versus benefit measurement, and if it determines that the benefits of the program exceed the costs, it shall adopt additional incremental required reductions in load and peak demand for the periods ending May 31, 2018 and May 31, 2017, respectively.

The Act directs each EDC by July 1, 2009 to develop and file an energy efficiency and conservation plan with the PUC. The energy efficiency and demand-side response programs within each EDC territory must:

- include specific proposals to implement energy efficiency and conservation measures to achieve or exceed the required reductions in load and peak demand;
- include provisions that a minimum of 10% of the required reductions be obtained from units of federal, state and local government, including municipalities, school districts, institutions of higher education and nonprofit entities;
- set forth the manner in which quality assurance and performance will be measured, verified and evaluated;
- provide for how the plan will achieve or exceed the reductions in load and peak demand;
- include a proposed cost-recovery tariff mechanism to fund the energy efficiency and conservation measures and to ensure recovery of prudent and reasonable costs of the plan; and
- demonstrate that the plan is cost-effective using the total resource cost test or other cost-benefit analysis approved by the PUC that provides a diverse cross section of alternatives for all consumer classes.

EDCs must submit a new plan to the PUC every five years or as otherwise required by the PUC.

EDCs must reduce the total annual deliveries to retail consumers (load reduction) as follows:

- by May 31, 2011, reduce the total annual weather-normalized consumption of the retail consumers (load reduction) by a minimum of 1% (this will be measured against the expected load forecasted by the PUC for June 1, 2009 through May 31, 2010, with provision made for weather adjustments and extraordinary loads that the EDC must serve).
- by May 31, 2013, reduce the total annual weather-normalized consumption of the retail consumers (load reduction) by a minimum of 3% (this will be measured against the expected load forecasted by the PUC for June 1, 2009, through May 31, 2010, with provision made for weather adjustments and extraordinary loads that the EDC must serve).

By May 31, 2013, EDCs must reduce peak demand by a minimum of 4.5% in the 100 hours of highest demand with provision made for weather adjustments and extraordinary load that the EDC must serve. This will be measured against the EDC's peak demand in the 100 hours of greatest demand for June 1, 2007, through May 31, 2008. Failure of an EDC to meet the required reductions will result in a civil penalty of not less than \$1 million but not more than \$20 million, which will not be a recoverable cost from rate payers. A similar penalty will attach for each 5 year period the required reductions were in place. If an EDC fails to achieve the required reductions by 2013, the responsibility to achieve the reductions will be transferred to the PUC, which will implement a plan to achieve the required reductions by contract with a conservation service provider.

The total cost of the plan cannot exceed 2% of the EDC's total annual revenue as of December 31, 2006. No more than 1% of the 2% of the EDC's revenue may be used for administrative costs.

Each EDC must submit an annual report to the PUC detailing the results of the energy efficiency and conservation plan. The report must include documentation of program expenditures, measurement and verification of energy savings, evaluation of the cost-effectiveness of expenditures, and any other information required by the PUC.

The Act requires EDCs to provide a list of all eligible Federal and State funding programs available to ratepayers for energy efficiency and conservation. Such information must be made available upon request and posted on the EDC's Internet website.

Under the Act, decreased revenues of an EDC due to reduced energy consumption or changes in energy demand are not considered a recoverable cost, except that such information may be reflected in revenue and sales data used to calculate rates in a distribution base rate proceeding.

The Act directs the PUC to establish a registry of approved people qualified to provide conservation services to all classes of consumers. The PUC will determine the experience and qualifications necessary in order to be included on the registry.

The Act requires EDCs to procure electricity pursuant to a PUC-approved competitive procurement plan that is designed to ensure adequate and reliable service and the least cost to customers overtime. EDCs must file a procurement plan with the PUC, which has 9 months to approve or disapprove the plan. Once approved, all plans are deemed to be reflecting the least cost over time. In evaluating the plan, the PUC must:

- consider the EDC's obligation to provide adequate and reliable service;
- consider whether the EDC obtained a prudent mix of contracts to obtain least cost on long-term, short-term and spot market basis;
- determine if the EDC plan includes prudent steps necessary to negotiate favorable generation supply contracts and to obtain the least cost generation supply contracts on a long-term, short-term and spot market basis; and
- determine whether neither the EDC nor its affiliated interest has withheld or asked to withhold from the market any generation supply which should have been utilized as part of the least cost procurement policy.

The electricity procured must include a prudent mix of spot market purchases; short-term contracts; and long-term contracts. The PUC is not authorized to modify contracts or disallow costs associated with the EDC procurement plan when it has reviewed and approved the results of the procurements; however the PUC is authorized to modify contracts or disallow costs when the contract has not been implemented as approved or does not comply with an approved plan or there has been fraud, collusion or market manipulation with regard to a contract. EDCs are authorized to recover on a full and current basis all costs incurred relating to the filing and implementation of a competitive procurement plan.

The Act requires EDCs, within 9 months after the effective date of the Act to file a smart meter technology procurement and installation plan with the PUC. Smart meter technology is metering technology and network communications technology capable of bidirectional communication and that records electricity usage on at least an hourly basis, directly provides consumers with information on their hourly consumption, enables time-of use and real-time price programs; and supports the automatic control of the consumer's electricity consumption by the consumer, the consumer's utility, or a third party.

EDCs are required to furnish smart meters to consumers upon the request of a consumer who agrees to pay for the cost of the smart meter; install smart meters in new building construction; replace existing meters with smart meters in accordance with a schedule of replacement of full depreciation of the existing meters not to exceed 15 years; and make available, with the consumer's consent, electronic access to consumer meter data to third parties,

including electric generation suppliers and providers of conservation and load management services.

By January 1, 2010, or at the end of the applicable generation rate cap period, EDCs are required to submit to the PUC one or more time-of-use rate and real-time price rate plans. A time-of-use rate is a rate that reflects the costs of serving consumers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour. A real-time price rate reflects the different costs of energy during each hour. Once approved, EDCs are required to make each of these plans available to all residential and commercial consumers that have been provided with smart meters. Consumer participation in a time-of-use or real-time price rate plan is voluntary. EDCs are required to submit an annual report to the PUC detailing the participation of consumers in the rates schemes.

Lost or decreased revenues as a result of reduced electricity consumption due to smart meter technology cannot be considered recoverable cost for an EDC. Except that such information may be reflected in the revenue and sales data used to calculate rates in a distribution base rate proceeding. An EDC can recover reasonable and prudent costs of providing smart meter technology.

The Act directs that, in addition to any other rates that may be offered by the EDC, it must offer all residential and small business consumers a rate that cannot change more frequently than on a quarterly basis. Additionally, the PUC is required to make sure that there is no cross-class subsidization.

Submitted as:

Pennsylvania

HB 2200

Status: Enacted into law in 2008.

Fetal Deaths, Grieving Parents Statement

The Ohio Legislative Services Commission reports that historically, Ohio law established requirements for death certificates and burial permits for fetal deaths. The law defined “fetal death” as a “death prior to the complete expulsion or extraction from its mother of a product of human conception of at least twenty weeks of gestation, which after such expulsion or extraction does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.” A fetal death certificate must be issued by a local registrar of vital statistics prior to a burial permit being issued. However, historically, Ohio law did not authorize death certificates and burial permits for fetal deaths occurring prior to the twentieth week of gestation.

Ohio Substitute Senate Bill Number 175, which became law in 2008, generally permits a death certificate and burial permit to be issued for the product of human conception, irrespective of the duration of pregnancy. Under the Act, “fetal death” is re-defined as “death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.”

The Act requires a fetal death certificate be issued for the product of human conception that suffers a fetal death prior to 20 weeks of gestation, on application by either parent. The parent must include with the application a copy of a statement from the hospital or physician that confirms that the woman suffered a miscarriage that resulted in a fetal death (see “Notice requirements” below). If the father submits the application, he must include a signed and notarized document from the mother attesting that she voluntarily provided the father with a copy of the statement. The Act does not specify where or how the parent is to file an application for the fetal death certificate.

The Act provides that a burial permit for the product of human conception that suffers a fetal death prior to 20 weeks of gestation is to be issued by the local registrar of vital statistics of the registration district in which the fetal death occurs if a parent files a fetal death certificate with the registrar.

The Act provides that the product of a fetal death for which a burial permit has been issued is to be interred, on the request of the mother, in a township cemetery, municipal cemetery, or cemetery of a cemetery company or association by one of the following:

- (1) In a single grave within the cemetery that contains, or will contain, the remains of a parent, sibling, or grandparent;
- (2) In another location of the cemetery, including a separate burial ground for infants, on a temporary or permanent basis.

The legislation provides that if a woman presents herself at a hospital or to a physician as a result of a fetal death prior to 20 weeks of gestation that is not the purposeful termination of her pregnancy (abortion), the hospital or physician is to provide the woman with the following information:

- (1) A written statement, not longer than one page, that confirms that the woman was pregnant and suffered a miscarriage that resulted in a fetal death;
- (2) Notice of the right of the woman to apply for a fetal death certificate;
- (3) A short, general description of the hospital or physician's procedure for disposing of the remains of the product of a fetal death.

A hospital or hospital employee or a physician may present the information listed in (2) and (3) above through oral or written means.

The Act provides that a hospital or hospital employee or physician is immune from civil or criminal liability or professional disciplinary action with regard to any action taken in good faith compliance with the notice requirement.

The legislation also requires emergency medical service personnel dispose of the product of a fetal death in the manner set forth for the disposal of fetal remains in the “Emergency Medical Technician-Basic: National Standard Curriculum.”

The Act directs that a fetal death certificate for the product of human conception prior to 20 weeks of gestation is not to list the cause of death and is not proof of a live birth for tax purposes.

Submitted as:

Ohio

Substitute Senate Bill Number 175

Status: Enacted into law in 2008.

Financial Incentives Accountability Statement

Rhode Island Chapter 08-165 requires analysis and documentation of how certain financial incentives offered by the state to promote economic development impact the state economy. Generally, such incentives are offered through an economic development corporation, the state Distressed Areas Revitalization Act, state Jobs Development Act, a state Mill Building and Economic Revitalization Act, and the state Motion Picture Production Tax Credits program.

The Act prohibits the state economic development corporation from undertaking certain projects without preparing and publicly releasing an analysis of the projected impacts of the proposed project on the state economy. The analysis must be supported by data and documentation that addresses factors such as:

- the impact on the industry or industries in which the completed project will be involved;
- state fiscal matters, including the state budget (revenues and expenses);
- the financial exposure of the taxpayers of the state under the plans for the proposed project and negative foreseeable contingencies that may arise therefrom;
- the approximate number of full-time, part-time, temporary, seasonal, and/or permanent jobs projected to be created, construction and non-construction;
- identification of geographic sources of the staffing for identified jobs;
- the projected duration of the identified construction jobs;
- the approximate wage rates for each category of the identified jobs;
- the types of fringe benefits to be provided with the identified jobs, including healthcare insurance and any retirement benefits;
- the projected fiscal impact on increased personal income taxes to the state; and
- the description of any plan or process intended to stimulate hiring from the host community, training of employees or potential employees and outreach to minority job applicants and minority businesses.

The Act directs the state economic development corporation to compile and submit reports about projects that get tax credits or other financial incentives to the state division of taxation, the legislature, and the governor. The reports must also be available to the public and published on the tax division's website. These reports must provide information about the actual versus projected impact on the factors listed above for projects getting financial incentives from the corporation.

Specifically, the Act directs the corporation to certify to the legislature and the state tax agency the actual number of new full-time jobs with benefits created by certain projects, that the projects are on target to meet or exceed the estimated number of new jobs identified in the initial analysis, and the actual number of existing full-time jobs with benefits has not declined.

The law directs taxpayers to annually report to the state division of taxation the source and amount of any bonds, grants, loans, loan guarantees, matching funds or tax credits received from any state governmental entity, state agency or public agency during the previous state fiscal year. This report must be available to the public and published on the tax division's website.

The Act directs the director of revenue to compile and publish, in printed and electronic form, including on the Internet, an annual Unified Economic Development Budget Report that provides information about the costs and benefits of all tax credits or other tax benefits referenced in the Act during the preceding fiscal year, including information such as:

- the name of each recipient of any such tax credit or other tax benefit;
- the dollar amount of each such tax credit or other tax benefit;

- summaries of the number of full-time and part-time jobs created or retained;
- employee benefits provided and the degree to which job creation and retention, wage and benefit goals and requirements of recipient and related corporations, if any, have been met;
- aggregate dollar amounts for each category of tax credit or other tax benefit and for geographical areas within the state;
- the number of recipients within each category of tax credit or other tax benefit;
- the degree to which job creation and retention, wage and benefit rate goals and requirements have been met within each category of tax credit or other tax benefit;
- the dollar amounts of all such tax credits and other tax benefits by approving authority; together with the cost to the state and to the approving agency; and
- the value of the tax credit or other tax benefits to each recipient.

Submitted as:

Rhode Island

Chapter 08-165

Status: Enacted into law in 2008.

Food Facilities: Trans Fats

This Act requires food facilities to maintain on the premises the label required for any food or food additive that is, or includes, any fat, oil, or shortening, for as long as this food or food additive is stored, distributed, or served by, or used in the preparation of food within, the food facility.

Commencing January 1, 2010, this Act prohibits oil, shortening, or margarine containing specified trans fats for specified purposes, from being stored, distributed, or served by, or used in the preparation of any food within, a food facility. Commencing January 1, 2011, it also prohibits any food containing artificial trans fat, from being stored, distributed, or served by, or used in the preparation of any food within, a food facility.

The bill exempts certain public school cafeterias and food sold or served in a manufacturer's original, sealed package.

Submitted as:

California

Chapter 207 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Trans Fat Labeling and Use Act.”

2

3 Section 2. [*Trans Fat Labeling.*]

4 (a) Every food facility shall maintain on the premises the label for any food or food
5 additive that is, or includes, any fat, oil, or shortening, for as long as this food or food additive is
6 stored, distributed, or served by, or used in the preparation of food within, the food facility. The
7 label described in this subdivision refers to the label that is required by applicable federal and
8 state law to be on the food or food additive at the time of purchase by the food facility.

9 (b) (1) Commencing [January 1, 2010], no oil, shortening, or margarine containing
10 artificial trans fat for use in spreads or frying, except for the deep frying of yeast dough or cake
11 batter, may be stored, distributed, or served by, or used in the preparation of any food within, a
12 food facility.

13 (2) Commencing [January 1, 2011], no food containing artificial trans fat,
14 including oil and shortening that contains artificial trans fat for use in the deep frying of yeast
15 dough or cake batter, may be stored, distributed, or served by, or used in the preparation of any
16 food within, a food facility.

17 (c) Subdivision (b) shall not apply to food sold or served in a manufacturer's original,
18 sealed package.

19 (d) For purposes of this section, a food contains artificial trans fat if the food contains
20 vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the
21 label required on the food, pursuant to applicable federal and state law, lists the trans fat content
22 as less than 0.5 grams per serving.

23 (e) This section shall not apply to public elementary, middle, junior high, or high school
24 cafeterias.

25 (f) Notwithstanding [insert citation], a violation of this section shall be punishable by a
26 fine of not less than [twenty-five dollars] or more than [one thousand dollars].
27

28 Section 3. [*Severability*.] [Insert severability clause.]
29

30 Section 4. [*Repealer*.] [Insert repealer clause.]
31

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

GPS Tracking of Domestic Violent Offenders

This Act is based on Michigan law. This Act:

- allows a judge or district court magistrate to order a defendant charged with a crime involving domestic violence, to carry or wear a global positioning system (GPS) device as a condition of release;
- allows the court, with the victim's informed consent, to order the defendant to give the victim a device to receive information from the defendant's GPS device;
- allows the victim to give the court a list of areas from which he or she wanted the defendant excluded, and require the court to consider the request;
- requires the court to instruct the global positioning monitoring system to notify the proper authorities if the defendant violated the order;
- allows the defendant to be released only if he or she agreed to pay the GPS costs or perform community service in lieu of payment;
- provides that the victim could request the court to terminate his or her participation in GPS monitoring of the defendant at any time; and
- requires the court to impose a condition that the defendant not purchase or possess a firearm.

Michigan's law is similar to Massachusetts Chapter 418, Acts of 2006. That Massachusetts law directs that when a defendant has been found in violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device.

Submitted as:

Michigan

Act 192, Public Acts of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as "An Act to Protect Victims of
2 Domestic Violence."

3
4 Section 2. [*Conditions for Releasing Defendants to Protective Conditions.*]

5 (A) A judge or district court magistrate may release under this section a defendant subject
6 to conditions reasonably necessary for the protection of [one] or more named persons. If a judge
7 or district court magistrate releases under this section a defendant subject to protective
8 conditions, the judge or district court magistrate shall make a finding of the need for protective

9 conditions and inform the defendant on the record, either orally or by a writing that is personally
10 delivered to the defendant, of the specific conditions imposed and that if the defendant violates a
11 condition of release, he or she will be subject to arrest without a warrant and may have his or her
12 bail forfeited or revoked and new conditions of release imposed, in addition to any other
13 penalties that may be imposed if the defendant is found in contempt of court.

14 (B) An order or amended order issued under subsection (A) shall contain all of the
15 following:

16 (1) A statement of the defendant's full name.

17 (2) A statement of the defendant's height, weight, race, sex, date of birth, hair
18 color, eye color, and any other identifying information the judge or district court magistrate
19 considers appropriate.

20 (3) A statement of the date the conditions become effective.

21 (4) A statement of the date on which the order will expire.

22 (5) A statement of the conditions imposed.

23 (C) An order or amended order issued under this subsection and subsection (A) may
24 impose a condition that the defendant not purchase or possess a firearm. However, if the court
25 orders the defendant to carry or wear a global positioning system device as a condition of release
26 as described in subsection (F), the court shall also impose a condition that the defendant not
27 purchase or possess a firearm.

28 (D) The judge or district court magistrate shall immediately direct a law enforcement
29 agency within the jurisdiction of the court, in writing, to enter an order or amended order issued
30 under subsection (A) or subsections (A) and (C) into the law enforcement information network
31 as provided by [insert citation]. If the order or amended order is rescinded, the judge or district
32 court magistrate shall immediately order the law enforcement agency to remove the order or
33 amended order from the law enforcement information network.

34 (E) A law enforcement agency within the jurisdiction of the court shall immediately enter
35 an order or amended order into the law enforcement information network as provided by [insert
36 citation], or shall remove the order or amended order from the law enforcement information
37 network upon expiration of the order or as directed by the court under subsection (D).

38 (F) If a defendant who is charged with a crime involving domestic violence is released
39 under this section, the judge or district court magistrate may order the defendant to carry or wear
40 a global positioning system device as a condition of release. With the informed consent of the
41 victim, the court may also order the defendant to provide the victim of the charged crime with an
42 electronic receptor device capable of receiving the global positioning system information from
43 the device carried or worn by the defendant that notifies the victim if the defendant is located
44 within a proximity to the victim as determined by the judge or district court magistrate in
45 consultation with the victim. The victim shall also be furnished with a telephone contact with the
46 local law enforcement agency to request immediate assistance if the defendant is located within
47 that proximity to the victim. In addition, the victim may provide the court with a list of areas
48 from which he or she would like the defendant excluded. The court shall consider the victim's
49 request and shall determine which areas the defendant shall be prohibited from accessing. The
50 court shall instruct the global positioning monitoring system to notify the proper authorities if the
51 defendant violates the order. In determining whether to order a defendant to participate in global
52 positioning system monitoring, the court shall consider the likelihood that the defendant's
53 participation in global positioning system monitoring will deter the defendant from seeking to
54 kill, physically injure, stalk, or otherwise threaten the victim prior to trial. The victim may
55 request the court to terminate the victim's participation in global positioning system monitoring
56 of the defendant at any time. The court shall not impose sanctions on the victim for refusing to

participate in global positioning system monitoring under this subsection. A defendant described in this subsection shall only be released under this section if he or she agrees to pay the cost of the device and any monitoring of the device as a condition of release or to perform community service work in lieu of paying that cost. As used in this subsection:

(1) “Domestic violence” means that term as defined in [insert citation].

(2) “Global positioning monitoring system” means a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual that transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not contain or operate any global positioning system technology or radio frequency identification technology or similar technology that is implanted in or otherwise invades or violates the corporeal body of the individual.

(3) “Informed consent” means that the victim was given information concerning all of the following before consenting to participate in global positioning system monitoring:

(a) The victim’s right to refuse to participate in global positioning system monitoring and the process for requesting the court to terminate the victim’s participation after it has been ordered.

(b) The manner in which the global positioning system monitoring technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim’s location and movements.

(c) The boundaries imposed on the defendant during the global positioning system monitoring.

(d) Sanctions that the court may impose on the defendant for violating an order issued under this subsection.

(e) The procedure that the victim is to follow if the defendant violates an order issued under this subsection or if global positioning system equipment fails.

(f) Identification of support services available to assist the victim to develop a safety plan to use if the court’s order issued under this subsection is violated or if global positioning system equipment fails.

(g) Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence.

(h) The nonconfidential nature of the victim’s communications with the court concerning global positioning system monitoring and the restrictions to be imposed upon the defendant’s movements.

(G) This section does not limit the authority of judges or district court magistrates to impose protective or other release conditions under other applicable statutes or court rules.

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

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

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

Grooming and Traveling Sex Offenses

This Act makes it a crime to use an electronic device to entice a child's guardian to engage in unlawful sexual acts with the child and makes it a crime to travel within or to and from the state to engage in unlawful sexual acts with a child.

Submitted as:

Illinois

Public Act 095-0901

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Certain Offenses
2 Against Minors.”

3
4 Section 2. [*Grooming.*]

5 (A) A person commits the offense of grooming when he or she knowingly uses a
6 computer on-line service, Internet service, local bulletin board service, or any other device
7 capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to
8 seduce, solicit, lure, or entice, a child, a child's guardian, or another person believed by the
9 person to be a child or a child's guardian, to commit any sex offense as defined in [Section 2 of
10 the Sex Offender Registration Act] or to otherwise engage in any unlawful sexual conduct with
11 a child or with another person believed by the person to be a child.

12 (B) Grooming is a [Class 4 felony].
13

14 Section 3. [*Traveling to Meet a Minor.*]

15 (A) A person commits the offense of traveling to meet a minor when he or she travels any
16 distance either within this state, to this state, or from this state by any means, attempts to do so,
17 or causes another to do so or attempt to do so for the purpose of engaging in any sex offense as
18 defined in [Section 2 of the Sex Offender Registration Act], or to otherwise engage in other
19 unlawful sexual conduct with a child or with another person believed by the person to be a child
20 after using a computer on-line service, Internet service, local bulletin board service, or any other
21 device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or to
22 attempt to seduce, solicit, lure, or entice, a child or a child's guardian, or another person believed
23 by the person to be a child or a child's guardian, for such purpose.

24 (B) Traveling to meet a minor is a [Class 3 felony].
25

26 Section 4. [*Severability.*] [Insert severability clause.]
27

28 Section 5. [*Repealer.*] [Insert repealer clause.]
29

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

Health Care Coverage: Underwriting Practices

This Act prohibits the compensation of a person or entity employed by, or contracted with, a health care service plan or disability insurer from being based on, or related to, the number of health care service plan or health insurance contracts, policies, or certificates that the person has caused or recommended to be rescinded, canceled, or limited, or the resulting cost savings to the plan or insurer.

Submitted as:

California

Chapter 188 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Certain
2 Underwriting Practices for Health Care Service Plans and Disability Insurers.”

3
4 Section 2. [*Prohibitions for Compensating a Person or Entity Employed by, or*
5 *Contracted With, a Health Care Service Plan or Disability Insurer.*]

6 (A) Compensation of a person or entity employed by, or contracted with, a health care
7 service plan shall not be based on, or related in any way to, the number of contracts that the
8 person or entity has caused or recommended to be rescinded, canceled, or limited, or the
9 resulting cost savings to the health plan.

10 (B) A health care service plan shall not set performance goals or quotas, or provide
11 compensation to any person or entity employed by, or contracted with, the health care service
12 plan, based on the number of people whose coverage is rescinded or any financial savings to the
13 health care service plan associated with rescission of coverage.

14 (C) Compensation of a person or entity employed by, or contracted with, a disability
15 insurer shall not be based on, or related in any way to, the number of policies or certificates for
16 health insurance that the person or entity has caused or recommended to be rescinded, canceled,
17 or limited, or the resulting cost savings to the insurer.

18 (D) A disability insurer shall not set performance goals or quotas, or provide
19 compensation to any person or entity employed by, or contracted with, the insurer, based on the
20 number of people whose health insurance coverage is rescinded or any financial savings to the
21 insurer associated with rescission of coverage.

22
23 Section 3. [*Severability.*] [Insert severability clause.]

24
25 Section 4. [*Repealer.*] [Insert repealer clause.]

26
27 Section 5. [*Effective Date.*] [Insert effective date.]

High Speed Internet Services and Information Technology

Access to high speed Internet services is vital to America's economy. Developing a comprehensive strategy to provide access statewide is a goal in most, if not all, states. Illinois and Minnesota are two states which are using a nonprofit organization to plan or manage the process to make it happen.

Section 30 of Minnesota S.F. No. 3337, an omnibus energy bill that became law in 2008, "Directs the Commissioner of Commerce to contract with a nonprofit organization to develop geographical information system maps that display levels of broadband service by connection speed and technology and integrated maps with demographic information. The maps will be used to produce a comprehensive statewide inventory and map of existing broadband service and capability."

This SSL draft is based on Illinois law. This Act directs the state department of commerce and economic opportunity to enlist a nonprofit corporation to implement a comprehensive, statewide high speed Internet deployment strategy. It also creates a High Speed Internet Services and Information Technology Fund to provide grants to the nonprofit organization to implement the Act.

Interested readers can get information about other state programs to establish high speed Internet connections statewide at Connected Nation (<http://www.connectednation.org>), an organization that "facilitates public-private partnerships to increase access to and use of broadband and related technology." Illinois used language from a model bill by Connected Nation to develop Public Act 095-0684.

Submitted as:

Illinois

Public Act 095-0684

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "High Speed Internet Services and
2 Information Technology Act."

3
4 Section 2. [*Findings.*] With respect to high speed Internet services and information
5 technology, the [General Assembly] finds the following:

6 (1) The deployment and adoption of high speed Internet services and information
7 technology has resulted in enhanced economic development and public safety for the state's
8 communities, improved health care and educational opportunities, and a better quality of life for
9 the state's residents.

10 (2) Continued progress in the deployment and adoption of high speed Internet services
11 and information technology is vital to ensuring that this state remains competitive and continues
12 to create business and job growth.

(3) The state must encourage and support the partnership of the public and private sectors in the continued growth of high speed Internet and information technology for the State's residents and businesses.

(4) Local governmental entities play a role in assessing the needs of their communities with respect to high speed Internet services and information technology.

Section 3. *[Definitions.]* In this Act:

(1) "Nonprofit organization" means an organization that (i) is a nonprofit organization as described in Section 501(c)(3) of the federal Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of that Code; (ii) has no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (iii) is organized under, subject to, and has all the powers and duties of a not-for-profit corporation under the [state General Not For Profit Corporation Act of 1986]; (iv) has statewide representation; and (v) has a board of directors that is not composed of a majority of individuals who are also employed by, or otherwise associated with, any federal, state, or local government or agency.

(2) "Department" means the [Department of Commerce and Economic Opportunity]."

Section 4. *[Enlistment of a Nonprofit Organization.]*

(a) Notwithstanding any other statute, the [Department of Commerce and Economic Opportunity] shall enlist a nonprofit organization to implement a comprehensive, statewide high speed Internet deployment strategy and demand creation initiative with the purpose of:

(1) ensuring that all state residents and businesses have access to affordable and reliable high speed Internet service;

(2) achieving improved technology literacy, increased computer ownership, and home high speed Internet use among state residents and businesses;

(3) establishing and empowering local technology planning teams in each county to plan for improved technology use across multiple community sectors; and

(4) establishing and sustaining an environment ripe for high speed Internet access and technology investment statewide.

(b) The nonprofit organization shall have an established competency and proven record of working with public and private sectors to accomplish wide-scale deployment and adoption of broadband and information technology in this state.

(c) The [Department] shall adopt rules regarding the enlistment of a nonprofit organization.

Section 5. *[Duties of the Enlisted Nonprofit Organization.]*

(a) The high speed Internet deployment strategy and demand creation initiative to be performed by the nonprofit organization shall include, but not be limited to, the following actions:

(1) Create a geographic statewide inventory of high speed Internet service and other relevant broadband and information technology services. The inventory shall:

(A) identify geographic gaps in high speed Internet service through a method of GIS mapping of service availability and GIS analysis at the census block level; and

(B) provide a baseline assessment of statewide high speed Internet deployment in terms of percentage of households in this state with high speed Internet availability.

59 (2) Track and identify, through customer interviews and surveys and other
60 publicly available sources, statewide residential and business adoption of high speed Internet,
61 computers, and related information technology and any barriers to adoption.

62 (3) Build and facilitate in each county or designated region a local technology
63 planning team with members representing a cross section of the community, including, but not
64 limited to, representatives of business, K-12 education, health care, libraries, higher education,
65 community-based organizations, local government, tourism, parks and recreation, and
66 agriculture. Each team shall benchmark technology use across relevant community sectors, set
67 goals for improved technology use within each sector, and develop a plan for achieving its goals,
68 with specific recommendations for online application development and demand creation.

69 (4) Collaborate with high speed Internet providers and technology companies to
70 encourage deployment and use, especially in underserved areas, by aggregating local demand,
71 mapping analysis, and creating market intelligence to improve the business case for providers to
72 deploy.

73 (5) Collaborate with the [Department] in developing a program to increase
74 computer ownership and broadband access for disenfranchised populations across the state. The
75 program may include grants to local community technology centers that provide technology
76 training, promote computer ownership, and increase broadband access.

77 (b) The nonprofit organization may apply for federal grants consistent with the objectives
78 of this Act.

79 (c) The [Department of Commerce and Economic Opportunity] shall use the funds in the
80 High Speed Internet Services and Information Technology Fund to provide grants to the
81 nonprofit organization enlisted under this Act and for any costs incurred by the [Department] to
82 administer this Act.

83 (d) The nonprofit organization shall have the power to obtain or to raise funds other than
84 the grants received from the [Department] under this Act.

85 (e) The nonprofit organization and its Board of Directors shall exist separately and
86 independently from the [Department] and any other governmental entity, but shall cooperate
87 with other public or private entities it deems appropriate in carrying out its duties.

88 (f) Notwithstanding anything in this Act or any other Act to the contrary, any information
89 that is designated confidential or proprietary by an entity providing the information to the
90 nonprofit organization or any other entity to accomplish the objectives of this Act shall be
91 deemed confidential, proprietary, and a trade secret and treated by the nonprofit organization or
92 anyone else possessing the information as such and shall not be disclosed.

93 (g) The nonprofit organization shall provide a report to the [Commission on Government
94 Forecasting and Accountability] on an [annual] basis for the first [3] complete state fiscal years
95 following its enlistment.

96
97 Section 6. [*Scope of Authority.*] Nothing in this Act shall be construed as giving the
98 [Department of Commerce and Economic Opportunity], the nonprofit organization, or other
99 entities any additional authority, regulatory or otherwise, over providers of telecommunications,
100 broadband, and information technology.

101
102 Section 7. [*High Speed Internet Services and Information Technology Fund.*]

103 (a) There is created in the state treasury a special fund to be known as the [High Speed
104 Internet Services and Information Technology Fund], to be used, subject to appropriation, by the
105 [Department of Commerce and Economic Development] for purposes of providing grants to the
106 nonprofit organization enlisted under this Act.

(b) On the effective date of this Act, [\$4,000,000] in the [Digital Divide Elimination Infrastructure Fund] shall be transferred to the [High Speed Internet Services and Information Technology Fund]. Nothing contained in this subsection (b) shall affect the validity of grants issued with moneys from the [Digital Divide Elimination Infrastructure Fund] before [June 30, 2007].

Section 8. [*Local Broadband Projects.*] Any municipality or county may undertake local broadband projects and the provision of services in connection therewith; may lease infrastructure that it owns or controls; may aggregate customers or demand for broadband services; may apply for and receive funds or technical assistance to undertake such projects to address the level of broadband access available to its businesses and residents. To the extent that it seeks to serve as a retail provider of telecommunications services, the municipality or county shall be required to obtain appropriate certification from the [state Commerce Commission] as a telecommunications carrier.

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

Section 10. [*Repealer.*] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]

Hospital Assessment

This Act encourages the maximization of financial resources eligible and available for Medicaid services by establishing a fund within the state department of health and welfare to receive private hospital assessments to use in securing federal matching funds under federally prescribed Upper Payment Limit programs available through the state Medicaid plan.

Submitted as:

Idaho

HB443

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “The Hospital Assessment Act.”

2

3 Section 2. [*Legislative Intent.*] It is the intent of the [legislature] to encourage the
4 maximization of financial resources eligible and available for Medicaid services by establishing
5 a fund within the [department of health and welfare] to receive private hospital assessments to
6 use in securing federal matching funds under federally prescribed Upper Payment Limit
7 programs available through the state Medicaid plan.

8

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

10 (1) “Governmental entity” means and includes the state and its political subdivisions.

11 (2) “Hospital” means that defined in [insert citation].

12 (3) “Political subdivision” means a county, city, municipal corporation or hospital taxing
13 district as defined in [insert citation] and, shall include state licensed hospitals established by
14 counties pursuant to [insert citation], or jointly by cities and counties pursuant to [insert citation].

15 (4) “Private hospital” means a hospital that is not owned by a governmental entity.

16 (5) “Upper Payment Limit” means a limitation established by federal regulations, 42 CFR
17 447.272 and 42 CFR 447.321, that disallows federal matching funds when state Medicaid
18 agencies pay certain classes of hospitals an aggregate amount for inpatient and outpatient
19 hospital services that would exceed the amount that would be paid for the same services
20 furnished by that class of hospitals under Medicare payment principles.

21

22 Section 4. [*Hospital Assessment Fund Established.*]

23 (A) There is hereby created in the [office of the state treasurer] a dedicated fund to be
24 known as the Hospital Assessment Fund, hereinafter “fund,” to be administered by the
25 [department of health and welfare], hereinafter “department.” The [state treasurer] shall invest
26 idle moneys in the fund and any interest received on those investments shall be returned to the
27 fund.

28 (B) Moneys in the fund shall consist of:

29 (1) All moneys collected or received by the [department] from hospital
30 assessments required by this Act;

31 (2) All federal matching funds received by the [department] as a result of
32 expenditures made by the [department] that are attributable to moneys deposited in the fund;

(3) Any interest or penalties levied in conjunction with the administration of this Act; and

(4) Any appropriations, federal funds, donations, gifts or moneys from any other sources.

(C) The fund is created for the purpose of receiving moneys in accordance with this section and section 5 of this Act. The fund shall not be used to replace any moneys appropriated to the [state medical assistance program] under [insert citation] by the [legislature]. Moneys in the fund shall be distributed by the [department] subject to appropriation for the following purposes only:

(1) Payments to hospitals as required under the [state medical assistance program] as set forth in [insert citation];

(2) Reimbursement of moneys collected by the [department] from hospitals through error or mistake in performing the activities authorized under the [state medical assistance program];

(3) Payments of administrative expenses incurred by the [department] or its agent in performing the activities authorized by this Act;

(4) Payments made to the federal government to repay excess payments made to hospitals from the fund if the assessment plan is deemed out of compliance and after the state has appealed the findings. Hospitals shall refund the payments in question to the assessment fund. The state in turn shall return funds to both the federal government and hospital providers in the same proportion as the original financing. Individual hospitals shall be reimbursed based on the proportion of the individual hospital's assessment to the total assessment paid by all hospitals. If a hospital is unable to refund payments, the state shall develop a payment plan and deduct moneys from future Medicaid payments;

(5) Transfers to any other fund in the [state treasury], provided such transfers shall not exceed the amount transferred previously from that other fund into the [Hospital Assessment Fund]; and

(6) Making refunds to hospitals pursuant to section 11 of this Act.

Section 5. *[Assessments.]*

(A) All hospitals, except those exempted under section 9 of this Act, shall make payments to the fund in accordance with this Act. Subject to section 9 of this Act, an annual assessment on both inpatient and outpatient services is determined for each qualifying hospital for [state fiscal years 2009, 2010 and 2011], in an amount calculated by multiplying the rate, as set forth in subsection (C) of this section, by the assessment base, as set forth in subsection (D) of this section.

(B) The [department] shall calculate the private hospital Upper Payment Limit gap for both inpatient and outpatient services. The Upper Payment Limit gap is the difference between the maximum allowable payments eligible for federal match, less Medicaid payments not financed using hospital assessment funds. The Upper Payment Limit gap shall be calculated separately for hospital inpatient and outpatient services. Medicaid disproportionate share payments shall be excluded from the calculation.

(C) The [department] shall calculate the assessment rate for [state fiscal years 2009, 2010 and 2011] to be the percentage that, when multiplied by the assessment base as defined in subsection (D) of this section, equals the Upper Payment Limit gap determined in subsection (B) of this section, but is not greater than [one and one-half percent].

(D) The assessment base shall be the hospital's net patient revenue for the applicable period. "Net patient revenue" for [state fiscal year 2009] shall be determined using the most

81 recent data available from each hospital's [fiscal year 2004] Medicare Cost Report on file with
82 the [department] on [June 30, 2008], without regard to any subsequent adjustments or changes to
83 such data. Net patient revenue for [state fiscal year 2010] shall be determined using the most
84 recent data available for each hospital's [fiscal year 2005] Medicare Cost Report on file with the
85 [department] on [June 30, 2009], without regard to any subsequent adjustments or changes to
86 such data. Net patient revenue for [state fiscal year 2011] shall be determined using the most
87 recent data available from each hospital's [fiscal year 2006] Medicare Cost Report on file with
88 the [department] on [June 30, 2010], without regard to any subsequent adjustments or changes to
89 such data.

90
91 Section 6. *[Review of Annual Assessment Amount.]* Each [state fiscal year], hospitals shall
92 have at least [thirty] days prior to implementation to review and verify the assessment base, rate,
93 and the estimated assessment amount.

94
95 Section 7. *[Inpatient and Outpatient Adjustment Payments.]* All hospitals, except those
96 exempted under section 9 of this Act, shall be eligible for inpatient and outpatient adjustments as
97 follows:

98 (1) For [state fiscal year 2009], the inpatient Upper Payment Limit gap for private
99 hospitals shall be divided by Medicaid inpatient days for the same hospitals from [calendar year
100 2007] to establish an average per diem adjustment rate. Each hospital shall receive an annual
101 payment that is equal to the average per diem adjustment rate multiplied by the hospital's
102 [calendar year 2007] Medicaid inpatient days. For purposes of this section, "hospital Medicaid
103 inpatient days" are days of inpatient hospitalization paid for by the [state medical assistance
104 program] for the applicable calendar year. For [fiscal year 2010], [calendar year 2008] inpatient
105 hospital Medicaid days shall be used to determine the hospital inpatient adjustment payment. For
106 [state fiscal year 2011], [calendar year 2009] hospital Medicaid inpatient days shall be used to
107 determine the hospital inpatient adjustment payment. In the event that either the inpatient Upper
108 Payment Limit gap for private hospitals or the available hospital assessment funding is lower
109 than anticipated, the [department] shall apply an across-the-board factor such that the inpatient
110 payment adjustments are maximized, financed entirely from hospital assessment funding, and do
111 not exceed the state inpatient upper payment limit for private hospitals. Payments shall be made
112 no later than [seven] days after the due date for the hospital assessment required in section 5 of
113 this Act.

114 (2) For [state fiscal year 2009], the outpatient Upper Payment Limit gap for private
115 hospitals shall be divided by Medicaid outpatient hospital reimbursement for the same hospitals
116 from [calendar year 2007] to establish an average percentage adjustment rate. Each hospital,
117 except those exempt under section 9 of this Act, shall receive an annual payment that is equal to
118 the average percentage adjustment rate multiplied by the hospital's [calendar year 2007] hospital
119 Medicaid outpatient reimbursement. For purposes of this section, "hospital outpatient
120 reimbursement" is reimbursement for hospital outpatient services paid for by the [state medical
121 assistance program] for the applicable calendar year. For [state fiscal year 2010], [calendar year
122 2008] hospital Medicaid outpatient reimbursement shall be used to determine the outpatient
123 hospital adjustment payment. For [state fiscal year 2011], [calendar year 2009] hospital Medicaid
124 outpatient reimbursement shall be used to determine the outpatient hospital adjustment payment.
125 In the event that either the outpatient Upper Payment Limit gap for private hospitals or the
126 available hospital assessment funding is lower than anticipated, the [department] shall apply an
127 across-the-board factor, such that outpatient adjustment payments are maximized, financed
128 entirely from hospital assessment funding, and do not exceed the [state] outpatient Upper

Payment Limit for private hospitals. Payments shall be made no later than [seven] days after the due date for the hospital assessments required in section 5 of this Act.

Section 8. *[Timing of Payments and Assessments.]*

(A) The [department] shall establish an annual assessment schedule for all payments created under this [Act].

(B) If a hospital fails to pay the full amount of an installment when due, including any extensions granted, there shall be added to the assessment imposed by section 5 of this Act, unless waived by the [department] for reasonable cause, a penalty equal to the lesser of:

(1) An amount equal to [five percent] of the assessment installment amount not paid on or before the due date, plus [five percent] of the portion thereof remaining unpaid on the last day of each month thereafter; or

(2) An amount equal to [one hundred percent] of the assessment installment amount not paid on or before the due date.

(C) For purposes of subsection (B) of this section, payments shall be credited first to unpaid installment amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

Section 9. *[Exemptions.]*

(A) A hospital that is a governmental entity, including a state agency, is exempt from the assessment required by section 5 of this Act, unless the exemption is adjudged to be unconstitutional or otherwise invalid, in which case the hospital shall pay such assessment.

(B) A private hospital that does not provide emergency services through an emergency department and is not categorized as “rehabilitation” or “psychiatric” as provided in [insert citation] is exempt from the assessment required by section 5 of this Act.

Section 10. *[Multihospital Locations, Hospital Closure and New Hospitals.]*

(A) If a hospital conducts, operates or maintains more than [one] hospital licensed by the [department], the hospital shall pay the assessment for each hospital separately.

(B) A hospital, subject to assessments under this Act, that ceases to conduct hospital operations or maintain its state license or did not conduct hospital operations throughout a calendar or fiscal year, shall have its required assessment adjusted by multiplying the assessment computed under section 5 of this Act, by a fraction, the numerator of which is the number of days in the year during which the hospital conducts hospital business, operates a hospital and maintains licensure, and the denominator of which is three hundred sixty-five. The hospital shall pay the required assessment computed under section 5 of this Act, on the date and in pro rata installments as required by the [department] for that portion of the state fiscal year during which the hospital operated and maintained state licensure, to the extent not previously paid.

(C) A hospital, subject to assessments under this Act, that has not been previously licensed as a hospital by the [department] and that commences hospital operations during a fiscal year, shall pay the required assessment computed under section 5 of this Act, and shall be eligible for payment adjustments under section 4 (C) of this Act, only after [two] complete state fiscal years have elapsed and [two] full fiscal year Medicare cost reports are filed with the [Center for Medicare and Medicaid services (CMS)] after the commencement of operations and on the date as required by the [department] beginning on the [first day of the next state fiscal year].

Section 11. *[Applicability.]*

177 (A) The assessment required by section 5 of this Act, shall not take effect or shall cease
178 to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion
179 to the amounts paid by such hospitals if:

180 (1) The appropriation for each state [fiscal year 2009, 2010 and 2011] from the
181 [General Fund] for hospital payments under the state [Medical Assistance Program] is less than
182 that for [fiscal year 2008];

183 (2) The [department] makes changes in its rules that reduce the hospital inpatient
184 or outpatient payment rates, including adjustment payment rates, in effect on [January 1, 2008];
185 or

186 (3) The payments to hospitals required under section 4 (C) of this Act, are
187 changed or are not eligible for federal matching funds under the [state medical assistance
188 program].

189 (B) The assessment required by section 5 of this Act shall not take effect or shall cease to
190 be required if the assessment is not approved or is determined to be impermissible under Title
191 XIX of the Social Security Act. Moneys in the fund derived from assessments required prior
192 thereto shall be distributed in accordance with section 4 (C) of this Act, to the extent federal
193 matching funds are not reduced due to the impermissibility of the assessments, and any
194 remaining moneys shall be refunded to hospitals in proportion to the amounts paid by such
195 hospitals.

196
197 Section 12. [*Severability.*] [Insert severability clause.]

198
199 Section 13. [*Repealer.*] [Insert repealer clause.]

200
201 Section 14. [*Effective Date.*] [Insert effective date.]

Inmate Fraud

This Act makes it a felony for inmates to obtain money by defrauding people. The bill permits corrections staff to freeze all or a portion of an inmate's account while investigating whether the inmate has committed inmate fraud or while a criminal case involving inmate fraud is pending against the inmate. It requires corrections staff to return money in the inmate's account to the rightful owner if the inmate is convicted, and specifies that such money must be deposited in a Violent Crime Victims' Compensation Fund if the rightful owner cannot be located.

Submitted as:

Indiana

Senate Enrolled Act No. 10

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Inmate Fraud.”

2

3 Section 2. [*Inmate Fraud.*]

4 (A) As used in this Act, “inmate” means a person who is confined in the custody of the
5 [department of correction], a sheriff, a county jail or a secure juvenile facility.

6 (B) An inmate who, with the intent of obtaining money or other property from a person
7 who is not an inmate, knowingly or intentionally makes a misrepresentation to a person who is
8 not an inmate and obtains or attempts to obtain money or other property from the person who is
9 not an inmate; or obtains or attempts to obtain money or other property from the person who is
10 not an inmate through a misrepresentation made by another person; commits inmate fraud, a
11 [Class C felony].

12

13 Section 3. [*Freezing Inmate Accounts.*]

14 (A) If the [department] has reasonable suspicion that money in an inmate's account was
15 derived from the commission of inmate fraud the [department] may freeze all or a part of the
16 inmate's account for not more than [one hundred eighty] days while the [department] conducts
17 an investigation to determine whether money in the inmate's account derives from inmate fraud.
18 If the [department] freezes the account of an inmate under this subsection, the [department] shall
19 notify the inmate in writing.

20 (B) If the [department's] investigation reveals that no money in the inmate's account was
21 derived from inmate fraud, the [department] shall unfreeze the account at the conclusion of the
22 investigation.

23 (C) If the [department's] investigation reveals that money in the inmate's account may
24 have been derived from the commission of inmate fraud, the [department] shall notify the
25 prosecuting attorney of the results of the [department's] investigation.

26 (D) If the prosecuting attorney charges the inmate with inmate fraud, the [department]
27 shall freeze the inmate's account until the case reaches final judgment.

28 (E) If the prosecuting attorney does not charge the inmate with inmate fraud, or if the
29 inmate is acquitted of the charge of inmate fraud, the [department] shall unfreeze the inmate's
30 account.

31 (F) If the inmate is convicted of inmate fraud, the [department], in consultation with the
32 prosecuting attorney, shall locate the money or property derived from inmate fraud and return it
33 to the rightful owner.

34 (G) If, [ninety] days after the date of a inmate's conviction for inmate fraud, the
35 [department] has located the money or property derived from the commission of inmate fraud but
36 is unable to return the money to the rightful owner, the [department] shall deposit the money in
37 the [Violent Crime Victims Compensation Fund] established by [insert citation].

38 (H) Confidential information held by the [department] about a person who has been
39 committed to the [department] shall be disclosed to a person who is or may be the victim of
40 inmate fraud if the [commissioner] determines that the interest in disclosure overrides the interest
41 to be served by nondisclosure or if the [commissioner] determines there exists a compelling
42 public interest to be as defined in [insert citation] for disclosure which overrides the interest to be
43 served by nondisclosure.

44
45 Section 4. [*Severability*.] [Insert severability clause.]

46
47 Section 5. [*Repealer*.] [Insert repealer clause.]

48
49 Section 6. [*Effective Date*.] [Insert effective date.]

Insurance Bill of Rights Statement

According to a Florida legislative bill analysis, Florida Chapter 2008-66 makes major changes to state insurance law by:

- increasing penalties for violating the state Insurance Code;
- changing standards and procedures for property insurance rate filings;
- applying antitrust laws to the business of insurance;
- prohibiting unfair claims handling practices;
- freezing rates and changing coverage and assessments for the Citizens Property Insurance Corporation;
- revising windstorm mitigation premium credits;
- requiring approval of nonrenewal plans;
- revising conditions for state-funded surplus notes to insurers; and
- providing criminal felony penalties for materially false rate filings with intent to deceive and for corruptly interfering with the lawful regulation of insurance.

The law:

- requires a commitment by the insurer to meet minimum premium-to-surplus writing ratios for residential property insurance and for taking policies out of the Citizens Property Insurance Corporation;
- requires insurers to commit to maintaining certain levels of surplus and reinsurance;
- authorizes the Office of Insurance Regulation to require an insurer to file its claims handling practices and procedures as a public record based on findings of a market conduct examination;
- requires that an insurer planning to not renew more than a specified number of residential property insurance policies notify the Office of Insurance Regulation and obtain approval for such nonrenewal;
- increases the maximum fines that may be imposed for nonwillful and willful violations of state law regarding unfair methods of competition and unfair or deceptive acts or practices related to insurance;
- specifies an additional unfair claims settlement practice;
- provides criteria for administrative hearings to determine whether an insurer's property insurance rates, rating manuals, premium credits, discount schedules, and surcharge schedules comply with state law;
- requires that an insurer seeking a rate for property insurance that is greater than the rate most recently approved by the Office of Insurance Regulation make a "file and use" filing for all such rate filings made after a specified date;
- revises the factors the Office of Insurance Regulation must consider in reviewing a rate filing;
- prohibits the Office of Insurance Regulation from disapproving as excessive a rate solely because the insurer obtained reinsurance covering a specified probable maximum loss;
- allows the office to disapprove a rate as excessive within 1 year after the rate has been approved under certain conditions related to nonrenewal of policies by the insurer;
- authorizes an insurer to request an expedited appellate review;
- requires the Division of Administrative Hearings to expedite a hearing request by an insurer and for the administrative law judge to commence the hearing within a specified time;

- expresses legislative intent for an expedited appellate review;
- revises provisions relating to the submission of a disputed rate filing, other than a rate filing for medical malpractice insurance, to an arbitration panel in lieu of an administrative hearing if the rate is filed before a specified date;
- provides legislative findings relating to final agency action for insurance ratemaking;
- requires the Financial Services Commission to consider and adopt findings relating to certain actuarial models, principles, standards, or models for certain maximum loss level calculations;
- requires that with respect to rate filings, insurers must use actuarial methods or models found to be accurate or reliable by the Florida Commission on Hurricane Loss Projection Methodology;
- requires the Office of Insurance Regulation develop and make publicly available before a specified deadline a proposed method for insurers to establish windstorm mitigation premium discounts that correlate to the Uniform Home Rating Scale;
- requires the Financial Services Commission adopt rules before a specified deadline;
- requires insurers to make rate filings pursuant to such method;
- authorizes the commission to make changes by rule to the Uniform Home Grading Scale and specify by rule the minimum required discounts, credits, or other rate differentials;
- requires such rate differentials be consistent with generally accepted actuarial principles and wind loss mitigation studies;
- requires written disclosure of windstorm mitigation ratings for certain structures;
- revises threshold amounts of deficits incurred in a calendar year on which the decision to levy assessments and the types of such assessments are based;
- revises the formula used to calculate shares of assessments owed by certain assessable insureds;
- requires that the board of governors make certain determinations before levying emergency assessments;
- provides the board of governors with discretion to set the amount of an emergency assessment within specified limits;
- requires the board of governors to levy a Citizens Policyholder Surcharge under certain conditions;
- requires that funds collected from the levy of such surcharges be used for certain purposes;
- requires insurers to provide written notice of certain cancellations, nonrenewals, or terminations;
- requires a purchaser of residential property in wind-borne debris regions to be presented with the windstorm mitigation rating of the structure;
- authorizes the Financial Services Commission to adopt rules requiring the Citizens Property Insurance Corporation to transfer funds to the General Revenue Fund if the losses due to a hurricane do not exceed a specified amount;
- requires the board of governors of the Citizens Property Insurance Corporation to make a reasonable estimate of such losses by a certain date;
- requires the State Board of Administration to transfer to Citizens Property Insurance Corporation certain uncommitted or unreserved funds under certain circumstances;

- prohibits the Citizens Property Insurance Corporation from using certain statutory changes or authorized transfers of funds as justification or cause to seek any rate or assessment increase;
- provides for residential property insurers to have access to and use a public hurricane loss projection model, and requires the office to establish a fee schedule for such model access and use;
- expands the application of policyholder loss or expense-related premium discounts;
- creates a Citizens Property Insurance Corporation Mission Review Task Force;
- requires the Chief Financial Officer to provide a report on the economic impact on the state of certain hurricanes, and providing report requirements;
- provides requirements for transparency in rate regulation;
- provides for a website for public access to rate filing information, and providing requirements;
- extends for an additional year the offer of reimbursement coverage for specified insurers;
- revises the qualifying criteria for such insurers; revising provisions to conform;
- deletes cross-references to conform to changes made by the Act; and
- requires insurers to provide notice to mortgage holders or lien holders of certain policies not providing wind coverage for certain structures.

Submitted as:

Florida

Chapter 2008-66

Status: Enacted into law in 2008.

Internet Caller Identification

This Act directs that no person, other than the recipient of a call, shall use any Internet caller identification equipment or Internet phone equipment in such a manner as to make a number or name, other than the residential or business phone number or legal or business name of the subscriber or registered user of the Internet phone service, appear on a caller identification system of the recipient of the call. The Act does not apply to service providers who transmit caller identification information created or supplied by others.

Submitted as:

Illinois

Public Act 095-0413

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “The Internet Caller Identification Act.”

2

3 Section 2. [*Definition.*] As used in this Act, “Caller identification” means the display of
4 the caller's telephone number or identity to the recipient of the call.

5

6 Section 3. [*Internet Caller Identification.*] No person, other than the recipient of the call,
7 shall use any Internet caller identification equipment or Internet phone equipment in such a
8 manner as to make a number or name, other than the residential or business phone number or
9 legal or business name of the subscriber or registered user of the Internet phone service, appear
10 on a caller identification system of the recipient of the call. This Section does not apply to
11 service providers who transmit caller identification information created or supplied by others.

12

13 Section 4. [*Violations.*] Whenever any person knowingly uses or has knowingly used any
14 Internet caller identification equipment or Internet phone equipment in violation of this Act, that
15 use shall be deemed an unlawful act or practice under the state [Consumer Fraud and Deceptive
16 Business Practices Act.] In the case of the use of Internet caller identification or Internet phone
17 equipment in violation of this Act, all remedies, penalties, and authority available to the
18 [Attorney General] and the several [State's Attorneys] under the state [Consumer Fraud and
19 Deceptive Business Practices Act] for the enforcement of that Act shall be available for the
20 enforcement of this Act.

21

22 Section 5. [*Severability.*] [Insert severability clause.]

23

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

25

26 Section 7. [*Effective Date.*] [Insert effective date.]

Medical Release for Ill and Disabled Inmates

This Act establishes a process to release inmates with certain medical conditions. The Act directs the state parole and probation commission to set reasonable conditions on medical release that will apply for any length of time determined by the commission through the date the inmate's sentence would have expired.

Inmates who are diagnosed as permanently and totally disabled, terminally ill, or geriatric or incapacitated to the extent they do not pose a public safety are eligible for medical release. Inmates convicted of certain felonies and registered sex offenders are not eligible for medical release.

The Act establishes the following conditions of medical release:

- care is to be consistent with the care specified in a medical care plan;
- the inmate must cooperate with and comply with the prescribed medical release plan and with reasonable requirements of medical providers to whom the released inmate is to be referred for continued treatment;
- the inmate must be subject to supervision by the division of community corrections and must permit officers from the division to visit the inmate at reasonable times at the inmate's home or elsewhere;
- the inmate must comply with any conditions of release set by the commission; and
- the state department of corrections must receive periodic assessments from the treating physician.

If the commission receives credible information that an inmate has failed to comply with any reasonable condition set for release, the inmate must be promptly ordered returned to the custody of the state department of corrections to await a revocation hearing. If the commission subsequently revokes an inmate's medical release for failure to comply, the inmate must resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with the conditions.

If an inmate on medical release shows improvement and would no longer meet program eligibility requirements, the inmate can be returned to the department of corrections' custody and will be given credit for the time on medical release.

Submitted as:

North Carolina

Session Law 2008-2

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Provide for Medical
- 2 Release of No-Risk Inmates Who are Either Permanently and Totally Disabled, Terminally Ill, or
- 3 Geriatric.”
- 4
- 5 Section 2. [*Definitions*.] For purposes of this Act, the term:
- 6 (1) “Commission” means the [Post-Release Supervision and Parole Commission].
- 7 (2) “Department” means the [Department of Correction].

(3) “Geriatric” describes an inmate who is [65] years of age or older and suffers from chronic infirmity, illness, or disease related to aging that has progressed such that the inmate is incapacitated to the extent that he or she does not pose a public safety risk.

(4) “Inmate” means any person sentenced to the custody of the [Department of Correction].

(5) “Medical release” means a program enabling the [Commission] to release inmates who are permanently and totally disabled, terminally ill, or geriatric.

(6) “Medical release plan” means a comprehensive written medical and psychosocial care plan that is specific to the inmate and includes, at a minimum:

- a. The proposed course of treatment;
- b. The proposed site for treatment and post-treatment care;
- c. Documentation that medical providers qualified to provide the medical services identified in the medical release plan are prepared to provide those services; and
- d. The financial program in place to cover the cost of this plan for the duration of the medical release, which shall include eligibility for enrollment in commercial insurance, Medicare, or Medicaid or access to other adequate financial resources for the duration of the medical release.

(7) “Permanently and totally disabled” describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate permanently and totally disabled, such that the inmate does not pose a public safety risk.

(8) “Terminally ill” describes an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within six months, and that is so debilitating such that the inmate does not pose a public safety risk.

Section 3. [*Authority to Release.*] The [Commission] shall establish a medical release program to be administered by the [Department]. The [Commission] shall prescribe when and under what conditions an inmate may be released for medical release, consistent with the provisions of [insert citation]. The [Commission] may adopt rules to implement the medical release program.

Section 4. [*Eligibility.*]

(A) Except as otherwise provided in this section, notwithstanding any other provision of law, an inmate is eligible to be considered for medical release if the [Department] determines that the inmate is:

(1) Diagnosed as permanently and totally disabled, terminally ill, or geriatric under the procedure described in Section 5 of this Act; and

(2) Incapacitated to the extent that the inmate does not pose a public safety risk.

(B) People convicted of a [capital felony] or a [Class A, B1, or B2 felony] and people convicted of an offense that requires registration under [insert citation] shall not be eligible for release under this Act.

Section 5. [*Procedure for Medical Release.*]

(A) The [Commission] shall consider an inmate for medical release upon referral by the [Department]. The [Department] may base its referral upon either a request or petition for release

56 filed by the inmate, the inmate's attorney, or the inmate's next of kin or upon a recommendation
57 from within the [Department].

58 (B) The referral shall include an assessment of the inmate's medical and psychosocial
59 condition and the risk the inmate poses to society, as follows:

60 (1) The [Department medical director, or a designee of the director who is a
61 licensed physician], shall review the case of each inmate who meets the eligibility requirements
62 for medical release set forth in Section 4 of this Act. Any physician who examines an inmate
63 being considered for medical release shall prepare a written diagnosis that includes:

64 a. A description of any and all terminal conditions, physical incapacities,
65 and chronic conditions; and

66 b. A prognosis concerning the likelihood of recovery from any and all
67 terminal conditions, physical incapacities, and chronic conditions.

68 (2) The [Department] shall make an assessment of the risk for violence and
69 recidivism that the inmate poses to society. In order to make this assessment, the [Department]
70 may consider such factors as the inmate's medical condition, the severity of the offense for which
71 the inmate is incarcerated, the inmate's prison record, and the release plan.

72 (C) If the [Department] determines that the inmate meets the criteria for release, the
73 [Department] shall forward its referral and medical release plan for the inmate to the
74 [Commission]. The [Department] shall complete the risk assessment and forward its referral and
75 medical release plan within [45] days of receiving a request, petition, or recommendation for
76 release.

77 (D) The [Commission] shall make a determination of whether to grant medical release
78 within [15] days of receiving a referral from the [Department] for release of a terminally ill
79 inmate and within [20] days of receiving a referral from the [Department] for release of a
80 permanently and totally disabled inmate or a geriatric inmate. In making the determination, the
81 [Commission] shall make an independent assessment of the risk for violence and recidivism that
82 the inmate poses to society. The [Commission] also shall provide the victim or victims of the
83 inmate or the victims' family or families with an opportunity to be heard.

84 (E) A denial of medical release by the [Commission] shall not affect an inmate's
85 eligibility for any other form of parole or release under applicable law.

86 (F) If the [Department] determines that an inmate should not be considered for release
87 under this Act or the [Commission] denies medical release under this Act, the inmate may not
88 reapply or be reconsidered unless there is a demonstrated change in the inmate's medical
89 condition.

90
91 Section 6. *[Conditions of Medical Release.]*

92 (A) The [Commission] shall set reasonable conditions upon an inmate's medical release
93 that shall apply through the date upon which the inmate's sentence would have expired. These
94 conditions shall include:

95 (1) That the released inmate's care be consistent with the care specified in the
96 medical release plan as approved by the [Commission];

97 (2) That the released inmate shall cooperate with and comply with the prescribed
98 medical release plan and with reasonable requirements of medical providers to whom the
99 released inmate is to be referred to continued treatment;

100 (3) That the released inmate shall be subject to supervision by the [Division of
101 Community Corrections] and shall permit officers from the [Division] to visit the inmate at
102 reasonable times at the inmate's home or elsewhere;

103 (4) That the released inmate shall comply with any conditions of release set by the
104 [Commission]; and

105 (5) That the [Commission] shall receive periodic assessments from the inmate's
106 treating physician.

107 (B) The [Commission] shall promptly order an inmate returned to the custody of the
108 [Department] to await a revocation hearing if the [Commission] receives credible information
109 that an inmate has failed to comply with any reasonable condition set upon the inmate's release.
110 If the [Commission] subsequently revokes an inmate's medical release for failure to comply with
111 conditions of release, the inmate shall resume serving the balance of the sentence with credit
112 given only for the duration of the inmate's medical release served in compliance with all
113 reasonable conditions set forth pursuant to subsection (A) of this section. Revocation of an
114 inmate's medical release for violating a condition of release shall not preclude an inmate's
115 eligibility for any other form of parole or release provided by law but may be used as a factor in
116 determining eligibility for that parole or release.

117
118 Section 7. *[Change in Medical Status.]*

119 (A) If a periodic medical assessment reveals that an inmate released on medical release
120 has improved so that the inmate would not be eligible for medical release if being considered at
121 that time, the [Commission] shall order the inmate returned to the custody of the [Department] to
122 await a revocation hearing. In determining whether to revoke medical release, the [Commission]
123 shall consider the most recent medical assessment of the inmate and a risk assessment of the
124 inmate conducted pursuant to Section 5 (B)(2). If the [Commission] revokes the inmate's medical
125 release, the inmate shall resume serving the balance of the sentence with credit given for the
126 duration of the medical release.

127 (B) Revocation of an inmate's medical release due to a change in the inmate's medical
128 condition shall not preclude an inmate's eligibility for medical release in the future or for any
129 other form of parole or release provided by law.

130
131 Section 8. *[Severability.]* [Insert severability clause.]

132
133 Section 9. *[Repealer.]* [Insert repealer clause.]

134
135 Section 10. *[Effective Date.]* [Insert effective date.]

Missing Persons

This Act requires a law enforcement agency that receives a report of a missing person to take certain steps to locate the missing person. It also requires a coroner having custody of unidentified human remains take certain steps to attempt to identify the remains.

Submitted as:

Indiana

House Enrolled Act No. 1306

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as “The Missing Persons Act.”
- 2
- 3 Section 2. [*Definitions.*] As used in this Act:
- 4 (A) “High risk missing person” means a person whose whereabouts are not known and
- 5 who may be at risk of injury or death. The term includes the following:
- 6 (1) a person who is missing as the result of abduction by a stranger.
- 7 (2) a person whose disappearance may be the result of the commission of a crime.
- 8 (3) a person whose disappearance occurred under circumstances that are
- 9 inherently dangerous.
- 10 (4) a person who is missing for more than [thirty (30)] days.
- 11 (5) a missing person who is in need of medical attention or prescription
- 12 medication.
- 13 (6) a missing person who may be at risk due to abduction by a noncustodial
- 14 parent.
- 15 (7) a missing person who is mentally impaired.
- 16 (8) a missing person who is less than [twenty-one (21)] years of age.
- 17 (9) a missing person who has previously been the victim of a threat of violence or
- 18 an act of violence.
- 19 (10) a missing person who has been determined by a law enforcement agency to
- 20 be:
- 21 (a) at risk of injury or death; or
- 22 (b) a person that meets any of the descriptions in subdivisions (1) through
- 23 (9).
- 24 (11) A missing person who is an endangered adult (as defined in insert citation).
- 25 (B) “Law enforcement agency” means an agency or a department of any level of
- 26 government whose principal function is the apprehension of criminal offenders. The term does
- 27 not include the [inspector general] or the [attorney general].
- 28
- 29 Section 3. [*Children under Eighteen Years Old and Endangered Adults.*]
- 30 (A) A law enforcement agency receiving a report of a missing child less than [eighteen
- 31 (18)] years of age shall comply with the requirements of [insert citation] in addition to the
- 32 procedures described in this Act.

(B) A law enforcement agency receiving a report of an endangered adult (as defined in insert citation) shall comply with the requirements of [insert citation] in addition to the procedures described in this Act.

Section 4. [*Criteria for Immediately Accepting a Missing Person Report.*] A law enforcement agency shall accept immediately a report made in person concerning a missing person, including if one or more of the following circumstances apply:

- (1) the missing person is an adult;
- (2) it does not appear that the person's disappearance is the result of a crime;
- (3) it does not appear that the missing person was within the jurisdiction served by the law enforcement agency at the time the person went missing;
- (4) however, the law enforcement agency shall advise the person reporting the missing person to make the report to a law enforcement agency that has jurisdiction in the place that the missing person was last seen, or, if that place is unknown, to a law enforcement agency that has jurisdiction in the place where the missing person resides;
- (5) it appears that the missing person's disappearance may be voluntary;
- (6) the person reporting the missing person is unable to provide all the information requested by the law enforcement agency; or
- (7) the person reporting the missing person does not have a familial relationship with the missing person.

Section 5. [*Means of Accepting a Missing Person Report Other Than A Report Made in Person.*] A law enforcement agency may accept a missing person report that is not made in person, including a report made by telephone, by electronic mail, by means of the Internet, or in another manner, if accepting the report is otherwise consistent with the practices of the law enforcement agency.

Section 6. [*Law Enforcement's Duty to Gather Information About a Missing Person Once a Missing Person Report is Filed.*]

(A) Upon receipt of a report of a missing person, a law enforcement agency shall attempt to gather relevant information that will assist in locating the missing person. This information must include the following, if available:

- (1) the name of the missing person, including any aliases;
- (2) the date of birth of the missing person;
- (3) any identifying marks, such as a birthmark, mole, tattoo, or scar;
- (4) the height and weight of the missing person;
- (5) the gender of the missing person;
- (6) the race of the missing person;
- (7) the color of the missing person's hair at the time of the disappearance, and, if applicable, the natural color of the missing person's hair;
- (8) the eye color of the missing person;
- (9) any prosthetic devices or surgical or cosmetic implants that the missing person may have;
- (10) any physical anomalies of the missing person;
- (11) the blood type of the missing person;
- (12) the driver's license number of the missing person;
- (13) a recent photograph of the missing person;

(14) a description of the clothing that the missing person was wearing when last seen;

(15) a description of any other items, including jewelry or other accessories, that the missing person may have possessed at the time of the disappearance;

(16) contact information for the missing person, including electronic mail addresses and cellular telephone numbers;

(17) why the person submitting the report believes that the missing person is missing;

(18) the name and location of the missing person's school or employer;

(19) the names and locations of the missing person's dentist and physician;

(20) any reason to believe that the missing person's disappearance was not voluntary;

(21) any reason to believe that the missing person may be in danger;

(22) a detailed description of the missing person's vehicle;

(23) information concerning:

 (a) the person with whom the missing person was last seen; or

 (b) a possible abductor;

(24) the date of last contact with the missing person; and

(25) any other information that will assist in locating the missing person.

(B) A law enforcement agency shall determine as soon as possible after receipt of a report of a missing person whether the missing person is a high risk missing person. If a law enforcement agency determines that a missing person is not a high risk missing person and new information suggests that the missing person may be a high risk missing person, the law enforcement agency shall make a new determination as to whether the person is a high risk missing person.

(C) A law enforcement agency that determines after a diligent investigation that a missing person is either voluntarily missing or not missing may stop the investigation.

(D) A law enforcement agency stopping an investigation under subsection (C) must document the investigative steps and the results of the investigation that led to the conclusion that the person reported missing is either voluntarily missing or not missing.

(E) A law enforcement agency that stops an investigation under subsection (C) may not disclose the location of the missing person to the person who made the missing person report if the missing person requests that the information not be disclosed.

Section 7. [*Law Enforcement's Duty to Inform People about General Procedures to Handle Missing Person Cases.*] If requested by the person making a report of a missing person, a law enforcement agency shall inform the person making the report, a family member of the missing person, and any other person whom the law enforcement agency believes may be helpful in locating the missing person of the following:

(1) the general procedure for handling missing person cases;

(2) the approach the law enforcement agency intends to pursue in the case, if, in the opinion of the law enforcement agency, disclosure would not adversely affect its investigation;

(3) that additional information may be required if the missing person is not promptly located or if additional information is discovered in the course of the investigation;

(4) additional information that may be helpful, if this information is known;

(5) that the National Center for Missing and Exploited Children (if the missing person is a child) or the National Center for Missing Adults (if the missing person is an adult)

may provide additional resources and the law enforcement agency shall provide contact information for the appropriate organization.

Section 8. *[Law Enforcement Requests for Certain Medical Records of a Missing Person.]*

(A) If a missing person has not been located [thirty (30)] days after the date of the missing person report, the law enforcement agency that received the report may obtain, if available, the following information and material:

(1) an authorization from the missing person's family to release dental records or skeletal x-rays of the missing person;

(2) additional photographs that may assist in locating the missing person; and

(3) dental records or skeletal X-rays of the missing person;

(B) A health care provider (as defined in insert citation) that discloses information in good faith under subsection (A) is immune from civil liability for disclosing the information. This subsection does not apply to acts or admissions amounting to gross negligence or willful or wanton misconduct.

(C) A law enforcement agency may obtain the information described in subsection (A) even if [thirty (30)] days have not elapsed from the date of the missing person report.

(D) Notwithstanding subsection (A), this section does not permit a law enforcement agency to obtain information or material without a search warrant or another judicial order that would otherwise be required to obtain the information or material.

Section 9. *[Reporting Information to Violent Criminal Apprehension Program and Releasing Photograph of Missing Person to the Public.]*

(A) Information that is relevant to the Violent Criminal Apprehension Program operated by the Federal Bureau of Investigation shall be reported as soon as possible.

(B) The law enforcement agency may release to the public any photograph of the missing person that will, in the opinion of the law enforcement agency, assist in the location of the missing person. A law enforcement agency that releases a photograph under this subsection in good faith is not required to obtain written authorization for the release.

Section 10. *[Notifying Other Law Enforcement Agencies of High Risk Missing Person Reports.]*

(A) A law enforcement agency that is not the [state police department] that receives a report of a high risk missing person may notify the [state police department] of the high risk missing person and request the assistance of the [state police department] in locating the high risk missing person.

(B) The law enforcement agency that receives a report of a high risk missing person shall inform every appropriate law enforcement agency in this state of the high risk missing person. In addition, the law enforcement agency that receives a report of a high risk missing person may notify a law enforcement agency in another state if the [state police department] believes that the notification will assist in the location of the high risk missing person.

(C) The law enforcement agency that receives a report of a high risk missing person shall do the following:

(1) enter information that relates to a missing person report for a high risk missing person into the National Crime Information Center (NCIC) data base not more than [two (2) hours] after the information is received and any other appropriate data base not more than [one (1)] day after the information is received; and

(2) ensure that a person who enters data relating to medical or dental records in a data base has the appropriate training to understand and correctly enter the information.

(D) The law enforcement agency that receives a report of a high risk missing person may consult with a coroner, a pathologist, or another medical professional to ensure the accuracy of the medical or dental information.

(E) A law enforcement agency that receives a report of a high risk missing person under this section shall immediately instruct the agency's officers to be alert for the missing person, and a person who may have abducted the missing person, if applicable; and enter all collected information related to the missing person case into appropriate state or federal data bases.

Section 11. [*Entering Information about Human Remains in Missing Person Data Bases.*]

(A) A coroner shall make all reasonable attempts to promptly identify human remains, including taking the following steps:

(1) photograph the human remains before an autopsy is conducted;

(2) X-ray the human remains;

(3) photograph items found with the human remains;

(4) fingerprint the remains, if possible;

(5) obtain tissue, bone, or hair samples suitable for DNA typing, if possible; and

(6) collect any other information relevant to identification efforts.

(B) A coroner may not dispose of unidentified human remains or take any other action that will materially affect the condition of the remains until the coroner has taken the steps described in subsection (A).

(C) If human remains have not been identified after [thirty (30)] days, the coroner or other person having custody of the remains shall request the [state police] to do the following:

(1) enter information that may assist in the identification of the remains into the National Crime Information Center (NCIC) data base and any other appropriate data base;

(2) upload relevant DNA profiles from the remains to the [missing persons database of the state DNA Index System (SDIS)] and the National DNA Index System (NDIS) after completion of the DNA analysis and other procedures required for data base entry; and

(3) ensure that a person who enters data relating to medical or dental records in a data base has the appropriate training to understand and correctly enter the information.

(D) If unidentified human remains are identified as belonging to a missing person, the coroner shall notify the law enforcement agency handling the missing persons case that the missing person is deceased and instruct the law enforcement agency to make documented efforts to contact family members of the missing person.

(E) No person may order the cremation of unidentified human remains.

Section 12. [*Making a False Missing Person Report.*] A person who makes a false report concerning a missing child as defined in [insert citation] or missing endangered adult as defined in [insert citation] or gives false information in the official investigation of a missing child or missing endangered adult knowing the report or information to be false; or makes a false report of a missing person, knowing the report or information is false; commits false informing, a [Class B misdemeanor]. However, the offense is a [Class A misdemeanor] if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

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

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

224

225

Section 15. [*Effective Date.*] [Insert effective date.]

Missing Persons

This SSL draft was originally based on legislation proposed by the National Institute of Justice. The bill outlines protocols law enforcement can adopt to handle missing person cases, identify human remains, and provide timely information to families of missing persons about the progress of their family members' cases.

Submitted as:

New Jersey

P.L. 2007, Chapter 279

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Missing Persons Act.”

2

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

4 (1) “High risk missing person” means a person whose whereabouts are not currently
5 known and the circumstances of the person’s disappearance suggest that the person may be at
6 imminent or likely risk of injury or death.

7 (2) The circumstances that indicate that a person is a high risk missing person shall
8 include, but not be limited to:

9 (a) the person is missing as a result of a confirmed abduction or under
10 circumstances that indicate that the person’s disappearance was not voluntary;

11 (b) the person is missing under known dangerous circumstances;

12 (c) the person is missing more than [30] days;

13 (d) there is evidence that the person is at risk because:

14 (I) the person missing is in need of medical attention or prescription
15 medication such that it will have a serious adverse effect on the person’s health if he or she does
16 not receive the needed care or medication;

17 (II) the person missing does not have a pattern of running away or
18 disappearing;

19 (III) the person missing may have been abducted by a non-custodial
20 parent;

21 (IV) the person missing is mentally impaired;

22 (V) the person missing is a person over the age of [13] and under the age
23 of [21] years and any other risk factor is known; or

24 (VI) the person missing has been the subject of past threats or acts of
25 violence; and

26 (e) any other factor that may indicate, in the judgment of the lead law
27 enforcement agency, that the missing person may be at risk.

28 (3) “Law enforcement agency” means a department, division, bureau, commission,
29 board, or other authority of the State or of any political subdivision thereof which employs law
30 enforcement officers.

(4) “Law enforcement officer” means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

(5) “Lead law enforcement agency” means the law enforcement agency with primary responsibility for investigating a missing person case.

(6) “Missing child” means a person [13] years of age or younger whose whereabouts are not currently known.

(7) “Missing Persons Unit” means the [Missing Persons Unit in the Division of State Police in the Department of Law and Public Safety] established pursuant to [insert citation].

Section 3. [*Acceptance of Report of Missing Person Without Delay.*]

(A) A law enforcement agency shall accept without delay any report of a missing person.

(B) No law enforcement agency may refuse to accept a missing person report on the basis that:

- (1) the missing person is an adult;
- (2) the circumstances do not indicate foul play;
- (3) the person has been missing for a short period of time;
- (4) the person has been missing for a long period of time;
- (5) there is no indication that the missing person was in the jurisdiction served by the law enforcement agency at the time of the disappearance;
- (6) the circumstances suggest that the disappearance may be voluntary;
- (7) the reporting person does not have personal knowledge of the facts;
- (8) the reporting person cannot provide all of the information requested by the law enforcement agency;
- (9) the reporting person lacks a familial or other relationship with the missing person; or
- (10) for any other reason, except in cases where the law enforcement agency has direct knowledge that the person is, in fact, not missing and the exact whereabouts and welfare of the person are known to the agency at the time the report is being made.

(C) The law enforcement agency that receives a report of a missing person shall be the lead law enforcement agency in charge of the missing person investigation, and shall continue in that capacity unless another law enforcement agency assumes primary responsibility over the investigation.

(D) The lead law enforcement agency shall be entitled to the cooperation of any other law enforcement agency in the state.

Section 4. [*Information about the Missing Person for Record.*]

(A) At the time a missing person report is filed, the law enforcement agency shall seek to ascertain and record the following information about the missing person:

- (1) the name of the missing person, including any aliases;
- (2) date of birth;
- (3) identifying marks, such as birthmarks, moles, tattoos, and scars;
- (4) height and weight;
- (5) gender;
- (6) race;
- (7) current hair color and true or natural hair color;
- (8) eye color;
- (9) prosthetics, surgical implants, or cosmetic implants;

- (10) physical anomalies;
- (11) blood type, if known;
- (12) any medications the missing person is taking or needs to take;
- (13) driver's license number, if known;
- (14) Social Security number, if known;
- (15) a recent photograph of the missing person, if available;
- (16) a description of the clothing the missing person was believed to be wearing at the time of disappearance;
- (17) a description of notable items that the missing person may be carrying and wearing;
- (18) information regarding the missing person's electronic communications devices, such as a cell phone number or e-mail address;
- (19) the reasons why the reporting person believes that the person is missing;
- (20) the name and location of the missing person's school or employer, if known;
- (21) the name and location of the missing person's dentist and primary care physician, if known;
- (22) any circumstances that may indicate that the disappearance was not voluntary;
- (23) any circumstances that indicate that the missing person may be at risk of injury or death;
- (24) a description of the possible means of transportation of the missing person, such as the make, model, color, license, and Vehicle Identification Number (VIN) of a motor vehicle;
- (25) any identifying information about a known or possible abductor or the person last seen with the missing person including:
- (a) name;
 - (b) physical description;
 - (c) date of birth;
 - (d) identifying marks;
 - (e) description of possible means of transportation, such as the make, model, color, license, and Vehicle Identification Number (VIN) of a motor vehicle; and
 - (f) known associates;
- (26) any other information that can aid in locating the missing person; and
- (27) date of last contact.

Section 5. *[Information Provided to Person Making Report or Family Member.]*

(A) The law enforcement agency shall notify the person making the report, a family member, or any other person in a position to assist the law enforcement agency in its efforts to locate the missing person by providing to that person or family member:

(1) general information about the handling of the missing person case or about intended efforts in the case to the extent that the law enforcement agency determines that disclosure would not adversely affect its ability to locate or protect the missing person, to apprehend or to prosecute any persons criminally involved in the disappearance;

(2) information advising the person making the report and other involved persons that if the missing person remains missing, they should contact the law enforcement agency to provide additional information and materials that will aid in locating the missing person, such as any credit or debit cards the missing person has access to, other banking or financial information and any records of cell phone use;

(3) In those cases where DNA samples are requested, the law enforcement agency shall notify the person or family member that all such DNA samples are provided on a voluntary basis and shall be used solely to help locate or identify the missing person and shall not be used for any other purpose; and

(4) the law enforcement agency, upon acceptance of a missing person report, shall inform the person filing the report that there are two clearing houses for missing person's information.

(B) If the person reported missing is age 17 or under, the person filing the report shall be provided with contact information for the National Center for Missing and Exploited Children.

(C) If the person reported missing is age 18 or older, the person filing the report shall be provided with contact information for the National Center for Missing Adults.

(D) If the person identified in the missing person report remains missing for [30] days, and the additional information and materials specified below have not been received, the law enforcement agency shall attempt to obtain:

(1) DNA samples from family members and, if possible, from the missing person along with any needed documentation, including any consent forms, required for the use of state or federal DNA databases;

(2) dental information and X-rays, and an authorization to release dental or skeletal X-rays of the missing person;

(3) any additional photographs of the missing person that may aid the investigation or an identification; and

(4) fingerprints.

(E) The law enforcement agency shall not be required to obtain written authorization before it releases publicly any photograph that would aid in the investigation or identification of the missing person

(F) All DNA samples obtained in missing persons cases shall be immediately forwarded to the state [Forensic DNA Laboratory] for analysis. The laboratory shall establish procedures for determining how to prioritize analysis of the samples relating to missing persons cases.

(G) Information relevant to the Federal Bureau of Investigation's Violent Criminal Apprehension Program shall be entered as soon as possible.

(H) Nothing in this section shall be construed to preclude a law enforcement agency from obtaining any of the materials identified in this section before the [30th] day following the filing of the missing person report.

Section 6. *[Determination of Designation as High Risk Missing Person.]*

(A) Upon the initial receipt of a missing person report, a law enforcement agency shall seek to determine whether the person reported missing is to be designated a high risk missing person.

(B) If the initial determination of a person reported missing does not warrant designation of that person as high risk, it shall not preclude a later determination, based on further investigation or the discovery of additional information, that the missing person is high risk.

Section 7. *[Actions Relative to High Risk Missing Person or Child.]*

(A) Upon a determination that a missing person investigation involves a high risk missing person or a missing child, the lead law enforcement agency shall take such actions as are specified in the [Uniform Investigative Standards for a High Risk Missing Person or a Missing Child], as the case may be, as set forth in the protocol developed pursuant to [insert citation], and also may contact the [Missing Persons Unit] and request assistance. The [Missing Persons Unit],

in consultation with the lead law enforcement agency, shall determine whether the circumstances warrant a cooperative investigative effort. If the determination is made that a cooperative effort is warranted, then the [Missing Persons Unit] shall coordinate the deployment of additional [State Police] resources in support of the investigation.

(B) The lead law enforcement agency shall promptly notify all law enforcement agencies within the State and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of the information that may aid in the prompt location and safe return of the high risk missing person.

(C) Local law enforcement agencies that receive notification from the lead law enforcement agency pursuant to subsection (B) of this section shall forward that information immediately to their officers and members.

(D) The lead law enforcement agency shall, as expeditiously as possible, prepare and disseminate a photographic information bulletin utilizing the Missing Child Alert System, or any successor law enforcement notification system the State may employ.

(E) The lead law enforcement agency shall, as appropriate, enter all collected information relating to the missing person case to applicable federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases, as follows:

(1) a missing person report, and relevant information, in a high risk missing person case shall be entered in the National Crime Information Center database immediately, but in no case no more than [two] hours after the determination that the missing person is a high risk missing person;

(2) a missing person report, and relevant information, in a case not involving a high risk missing person shall be entered within [24] hours of the initial filing of the missing person report;

(3) all DNA profiles shall be uploaded into the missing persons databases of the [state Forensic DNA Laboratory] and all appropriate and suitable federal database systems;

(4) information relevant to the Federal Bureau of Investigation's Violent Criminal Apprehension Program shall be entered as soon as practicable;

(5) all due care shall be given to insure that the data, particularly medical and dental records, entered in state and federal database systems is accurate and, to the greatest extent possible, complete; and

(6) the [State Police] shall, when deemed appropriate and likely to facilitate a resolution to a particular missing person report, activate the Amber Alert program for the state.

(F) If, after the dissemination of a photographic information bulletin utilizing the Missing Child Alert System information, the missing person is found, the lead law enforcement agency shall promptly disseminate an additional bulletin on the Missing Child Alert System indicating that the person was found.

Section 8. *[Practices, Protocol for Death Scene Investigations.]*

(A) The [Attorney General] shall provide information to local law enforcement agencies about best practices and protocols for handling death scene investigations.

(B) The [Attorney General] shall identify any publications or training opportunities that may be available to local law enforcement officers concerning the handling of death scene investigations.

Section 9. *[Custody of Human Remains, Notification If Remains Unidentified.]*

(A) After performing any death scene investigation, as deemed appropriate under the circumstances, the official with custody of the human remains shall ensure that the human remains are delivered to the appropriate county medical examiner.

(B) Any county medical examiner with custody of human remains that are not identified within [24] hours of discovery shall promptly notify the [Missing Persons Unit] of the location of those remains.

(C) If the county medical examiner with custody of remains cannot determine whether or not the remains found are human, the medical examiner shall so notify the [Missing Persons Unit].

Section 10. *[Responsibilities of County Medical Examiner.]*

(A) If the official with custody of the human remains is not a medical examiner, the official shall promptly transfer the unidentified remains to the appropriate county medical examiner.

(B) The county medical examiner shall make reasonable attempts to promptly identify human remains. These actions may include but are not limited to obtaining:

- (1) photographs of the human remains;
- (2) dental or skeletal X-rays;
- (3) photographs of items found with the human remains;
- (4) fingerprints from the remains, if possible;
- (5) samples of tissue suitable for DNA typing, if possible;
- (6) samples of whole bone or hair suitable for DNA typing; and
- (7) any other information that may support identification efforts.

(C) No medical examiner or any other person shall dispose of, or engage in actions that will materially affect the unidentified human remains before the county medical examiner obtains:

- (1) samples suitable for DNA identification archiving;
- (2) photographs of the unidentified human remains; and
- (3) all other appropriate steps for identification have been exhausted.

(D) Unidentified human remains shall not be cremated.

(E) The county medical examiner shall make reasonable efforts to obtain prompt DNA analysis of biological samples if the human remains have not been identified by other means within [30] days.

(F) The medical examiner shall seek support from appropriate State and federal agencies to assist in the identification of unidentified human remains. Such assistance may include, but not be limited to, available mitochondrial or nuclear DNA testing, federal grants for DNA testing, or federal grants for crime laboratory or medical examiner office improvement.

(G) The county medical examiner shall seek support from appropriate federal and State agency representatives to have information promptly entered in federal and State databases by those representatives that can aid in the identification of a missing person. Information shall be entered into federal databases as follows:

- (1) information for the National Crime Information Center within [24] hours;
- (2) DNA profiles and information shall be entered into the National DNA Index System (NDIS) within [five] business days after the completion of the DNA analysis and procedures necessary for the entry of the DNA profile; and
- (3) information sought by the Violent Criminal Apprehension Program database as soon as practicable.

(H) Nothing in this Act shall be construed to preclude any medical examiner office, the [State Police] or any local law enforcement agency from other actions to facilitate the identification of unidentified human remains including efforts to publicize information, descriptions, or photographs that may aid in the identification of the unidentified remains, including allowing family members to identify a missing person; provided that in taking these actions, all due consideration is given to protect the dignity and well-being of the missing person and the family of the missing person.

(I) Agencies handling the remains of a missing person who is deceased shall notify the law enforcement agency handling the missing person's case. Documented efforts shall be made to locate family members of the deceased person to inform them of the death and location of the remains of their family member.

Section 11. [*Development, Dissemination of Best Practices Protocol to Law Enforcement.*] In implementing the provisions of this Act and prior to the effective date, the [Superintendent of State Police] shall develop and disseminate to all law enforcement agencies in the State a best practices protocol for State and local law enforcement agencies to follow when addressing reports of missing persons, which protocol shall set forth uniform investigative standards for missing persons cases and any other procedures, practices and standards that the superintendent deems appropriate for handling missing person cases. The protocol shall include specific procedures, practices and standards applicable to cases involving high risk missing persons or missing children. The [Superintendent of State Police] shall develop and make available to each law enforcement agency in this State a training program on the procedures, practices and standards for the handling of high risk missing persons, missing children and missing persons cases set forth in the protocol adopted pursuant to and consistent with this Act and section. Each law enforcement agency in this State shall comply with this protocol when the agency is notified of a missing person. To assess the effectiveness of this protocol, the [Missing Persons Unit] annually shall review a sample of open missing persons cases from the immediately preceding year. Based upon its assessment, the [Missing Persons Unit] may recommend to the [superintendent] that the protocol be revised or amended and whether the training programs currently available to law enforcement agencies are adequate.

Section 12. [*Severability.*] [Insert severability clause.]

Section 13. [*Repealer.*] [Insert repealer clause.]

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

Nonimmigrant Agricultural Seasonal Worker Pilot Program

This Act creates the “Nonimmigrant Agricultural Seasonal Worker Pilot Program” in the state department of labor. The purpose of the program is to expedite the federal H-2A Visa certification process to enable eligible workers to come to the state legally to meet the staffing needs of farmers and ranchers in the state. The department may retain agents to:

- assist employers with labor certification application materials;
- recruit workers;
- assist workers with their H-2A Visas;
- coordinate medical screening prior to departure to the U.S.; and
- coordinate travel to the state.

The pilot program is limited to 1,000 employees in the first year, with annual increases of 1,000 each year for 4 years.

The Act creates a Nonimmigrant Agricultural Seasonal Worker Pilot Program Advisory Council, made up of legislators, agency executives and stakeholders, to make recommendations for the adoption of rules, determine the availability of health insurance for program participants, and to assist in the preparation of reports to the legislature.

The bill establishes requirements for employers and employees who participate in the program. Employees are required to apply for an identification card within two weeks of arrival in the state. Employers are required to:

- reimburse employees for transportation and subsistence costs from the site of recruitment, and pay return expenses;
- provide free transportation to the worksite, free housing, low-cost meals, and workers’ compensation insurance;
- pay wages in compliance with the Immigration Reform and Control Act of 1986;
- not displace a U.S. worker;
- notify the state department of labor if an employee cannot be located; and
- pay fees associated with the program.

This Act authorizes the department of labor to fine employers up to \$200 per day per violation for failure to report visa violations, and up to \$5,000 for violation of any provision.

Submitted as:

Colorado

HB 08-1325

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Nonimmigrant Agricultural
2 Seasonal Worker Pilot Program Act.”

3

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

5 (1) “Agent” means a person or entity in the business of:

6 (a) developing and submitting appropriate application materials to the [state
7 employment security agency] and the [department responsible for issuing labor certifications for
8 a specific employer and job];

9 (b) coordinating local recruitment with the employer and [state employment
10 security agency];

11 (c) developing appropriate documentation of employer requirements and
12 employment terms for use in selecting foreign workers; and

13 (d) filing for visa petition approval and coordinating visa issuance by the United
14 States Consulate or Embassy in the worker's country of origin.

15 (2) "Commissioner" means the [commissioner of the department of agriculture or his or
16 her designee].

17 (3) "Department" means the [department of labor and employment].

18 (4) "Director" means the [executive director of the department of labor and employment
19 or his or her designee].

20 (5) "Employee" means a person who works for an employer and is an active participant
21 in the program.

22 (6) "Employer" means a person or entity that has applied and been accepted to participate
23 in the program and employs [one or more] employees.

24 (7) (a) "H-2A Visa" means a Temporary Agricultural Nonimmigrant Visa that allows
25 foreign nationals to enter into the United States to perform agricultural labor or services of a
26 temporary or seasonal nature and that is issued pursuant to the federal "Immigration Reform And
27 Control Act of 1986," 8 U.S.C. Sec. 1101 et seq.

28 (b) An H-2A Visa allows for the admission of nonimmigrant foreign workers into
29 the United States to perform agricultural work that is temporary in nature, such as harvesting
30 crops. Nonimmigrants are people legally admitted into the United States for a specific purpose
31 and time period and who do not intend to make the United States their permanent residence. H-
32 2A Visas are administered jointly by the United States Department of Labor and the United
33 States Citizenship and Immigration Services.

34 (8) "Labor certification" means the process by which the United States Department of
35 Labor is permitted to issue certification that there are not sufficient United States workers who
36 are able, willing, and qualified to perform agricultural services on a temporary basis, and that the
37 employment of foreign workers in the labor or services will not adversely affect the wages and
38 working conditions of workers in the United States. Employers who anticipate a shortage of
39 available United States workers needed to perform agricultural labor on a temporary basis may
40 apply to the United States Department of Labor for certification. The application for certification
41 must include a copy of the job offer that will be used by each employer for the recruitment of
42 United States and H-2A workers, the estimated number of workers needed by the employer, and
43 the date by which the workers are needed. Employers are required to apply for certification at
44 least [forty-five] days in advance of their estimated date of need.

45 (9) "Program" means the [Nonimmigrant Agricultural Seasonal Worker Pilot Program]
46 established in section 3 of this Act.

47
48 Section 3. *[Nonimmigrant Agricultural Seasonal Worker Program – Creation.]*

49 (A) There is hereby established in the [department] the Nonimmigrant Agricultural
50 Seasonal Worker Pilot Program. The purpose of the program shall be to expedite the application
51 and approval of the federal H-2A Visa certification process established as part of the federal
52 "Immigration Reform and Control Act of 1986," 8 U.S.C. Sec. 1101 et seq. Upon the

53 promulgation of rules pursuant to section 11 of this Act, the [director or his or her designee], in
54 cooperation with the [commissioner or his or her designee], shall implement the program.

55 (B) The program shall include sectors of the agriculture industry identified by the
56 [director] in cooperation with the [commissioner], shall be limited to [one thousand] employees
57 in the [first] year, and shall increase by [one thousand] additional employees [annually] for [four]
58 years thereafter.

59 (C) The [director and the commissioner], in conjunction with the [director of the
60 governor's office of economic development and international trade], may seek agreements
61 between this state and foreign countries to assist in the recruiting and selection of eligible H-2A
62 workers and in the maintenance of a pool of workers to depart for work in this state upon the
63 approval of the employees' federal H-2A Visas and employer approval for participation in the
64 program. A family member of an employee may participate in the program only if the family
65 member also qualifies for and is issued a current H-2A Visa.

66 (D) There is hereby established the [Nonimmigrant Agricultural Seasonal Worker Pilot
67 Program Advisory Council]. The [advisory council] members shall be the [commissioner of the
68 department of agriculture or his or her designee, the executive director of the department of labor
69 and employment or his or her designee, the chairs of the house business affairs and labor
70 committee and the senate business, labor, and technology committee, the chairs of the house and
71 senate agriculture, livestock, and natural resources committees, or their successor committees,
72 and three appointees of the governor, one who is a representative of the agriculture industry, one
73 who has experience in immigration services, and one who is a representative of a migrant worker
74 advocacy group]. Members of the [advisory council] are entitled to reimbursement for actual and
75 necessary expenses incurred in the performance of their duties. The [advisory council] shall
76 make recommendations for the adoption of rules pursuant to section 11 of this Act and shall
77 assist in the preparation of the report to the [General Assembly] pursuant to section 10 of this
78 Act. The [advisory council] shall consult with health insurance carriers in this state to determine
79 the availability of health insurance plans for employees participating in the program. The
80 [advisory council] shall include in the report to the [General Assembly] any legislative
81 recommendations deemed necessary to make health insurance available to seasonal agricultural
82 workers.

83 84 Section 4. *[Application Process - Screening.]*

85 (A) The [department] shall work with employers participating in the program to expedite
86 the H-2A Visa application, approval, and recruitment process so that the seasonal agricultural
87 needs of the employers are met in a timely manner.

88 (B) The [department] is authorized to charge employers a fee necessary to cover the costs
89 of the program. The fees collected shall be transferred to the [state treasurer] who shall deposit
90 the moneys into the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund]
91 established in section 7 of this Act.

92 (C) The [director] may retain agents to assist identified workers making applications for
93 H-2A Visas through the United States Embassy or Consulate, to coordinate a medical screening
94 of workers prior to their departure to the United States, to coordinate travel to this state, and to
95 document each employee's return to his or her country of origin.

96 (D) The employer shall:

97 (1) reimburse the employee for the costs of transportation and subsistence from
98 the site of recruitment to the place of employment when half of the contract period is complete;

99 (2) provide free transportation to the employee between the employee's local
100 housing and the worksite;

(3) pay for the costs of return transportation and subsistence to the place of recruitment when the contract period is complete;

(4) provide free housing for each employee that meets safety and health standards established by federal law, which shall be subject to inspection by the [department];

(5) provide United States workers and employees the same benefits, wages, and working conditions;

(6) pay the employee wages that are in compliance with the federal requirements established pursuant to the federal "Immigration Reform and Control Act of 1986," 8 U.S.C. Sec. 1101 et seq.;

(7) provide workers' compensation insurance;

(8) provide all tools, supplies, and equipment required to perform the duties assigned, without charge, to the employee;

(9) in compliance with federal law, provide each employee with [three] low-cost meals per day and disclose the cost in the employment contract or provide free cooking and kitchen facilities;

(10) guarantee employment for at least [three-fourths] of the work days during the work contract period;

(11) guarantee that the employee will be paid at least [twice] per month; and

(12) provide to the employee a copy of the work contract between the employer and the employee.

(E) An employer seeking to employ employees through the [program] shall make the following assurances:

(1) that the employer will comply with applicable federal, state, and local employment laws;

(2) that no United States worker will be rejected for or terminated from employment other than for a lawful job-related reason; and

(3) that the employer will, in a timely manner, pay the fees associated with the program.

Section 5. *[Visa Violation Notification - Employee Compliance.]*

(A) Each employer shall notify the [department] within the time period specified in, and in accordance with, section 8 CFR 214.2 (h) (5) (vi) (A) if an employee absconds his or her employment.

(B) If an employer, with reckless disregard, fails to notify the [department] as required in subsection (A) of this section, the [department] may deny the employer future participation in the program or impose a fine on the employer for each violation, not to exceed [two hundred dollars] per day per violation, that shall be deposited into the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund] created in section 7 of this Act.

(C) The [department] shall notify the United States Citizenship and Immigration Services of any known violations of the conditions for the issuance of an H-2A Visa.

(D) An employee who complies with the conditions of the program shall have the opportunity and be given priority to participate in the program the following year.

Section 6. *[Retaliation Prohibited.]* An employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has, with just cause, performed any act enumerated in 20 CFR 655.103 (g).

Section 7. [*Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund.*] There is hereby established the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund] in the [state treasury], referred to in this section as the “fund”. Moneys in the [fund] shall consist of any fees or fines collected pursuant to this Act. The moneys in the [fund] shall be [annually] appropriated to the [department] for the administrative costs associated with the program. Any moneys remaining in the [fund] at the end of any fiscal year shall remain in the [fund] and shall not revert to the [General Fund] or any other fund.

Section 8. [*Identification Cards Issued by Department of Revenue.*] Within [two] weeks after an employee's arrival in this state, the employee shall apply for an identification card issued by the [department of revenue] pursuant to [insert citation]. The employer shall provide free transportation to the employee in order for the employee to meet this requirement.

Section 9. [*Penalties.*]

(A) A person who, with reckless disregard, violates any provisions of this Act, or who, with reckless disregard, causes or induces another to violate any provisions of this Act, may be assessed a fine by the director of not more than [five thousand] dollars. Any moneys collected pursuant to this section shall be transferred to the [state treasurer] who shall deposit the same into the [Nonimmigrant Agricultural Seasonal Worker Pilot Program Cash Fund] established in section 7 of this Act.

(B) The person shall be afforded the opportunity for a hearing upon request to the [director] made within [thirty] days after the date of issuance of the notice of assessment.

(C) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the [department], the [director] shall refer the matter to the state [attorney general], who shall recover the amount assessed by action in the appropriate court of competent jurisdiction. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Section 10. [*Report to General Assembly.*] On or before [February 1, 2010], the [director], in cooperation with the [commissioner], shall report to the [senate business, labor, and technology committee, the senate agriculture, natural resources, and energy committee, the house business affairs and labor committee, and the house agriculture, livestock, and natural resources committee of the General Assembly], or their successor committees, regarding the progress of the [program] created by this Act. The report shall include any recommended legislative changes.

Section 11. [*Rules.*] On or before [January 1, 2009], the [department], in consultation with the [commissioner and the advisory council] created in section 3 of this Act shall promulgate rules as necessary for the delineation of oversight responsibilities to the [department] under, and for the implementation of, this Act.

Section 12. [*Appropriation.*] [Insert appropriation.]

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

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

Section 15. [*Effective Date.*] [Insert effective date.]

Outside the Hospital Do-Not-Resuscitate Order

This Act defines an Outside the Hospital Do-Not-Resuscitate Order and requires a copy of such an order be included as the first page of a patient's medical record. A patient or patient's representative and the patient's attending physician may execute an Outside the Hospital Do-Not-Resuscitate Order. The state department of health and senior services must develop and approve uniform forms and personal identifiers. The identifiers must alert any emergency medical technician, paramedic, first responder, or other health care provider of the existence of the order for the patient.

The bill specifies that the Outside the Hospital Do-Not-Resuscitate Order will only be effective when the patient has not been admitted to or is not being treated within a hospital. These orders and protocols will not authorize the withholding or withdrawal of other medical interventions such as intravenous fluids, oxygen, or therapies other than cardiopulmonary resuscitation. An Outside the Hospital Do-Not-Resuscitate Order will not be in effect when a patient is pregnant or when believing in good faith that a patient is pregnant.

Emergency medical technicians, paramedics, first responders, and other health care providers are required to comply with an Outside the Hospital Do-Not-Resuscitate Order or identifier unless the patient or patient's representative expresses to the personnel in any manner, before or after the onset of a cardiac or respiratory arrest, the desire to be resuscitated. A physician or a health care facility other than a hospital that is unwilling or unable to comply with this order must take all reasonable steps to transfer the patient to another physician or facility where the order will be followed. The bill specifies the people and entities that are exempt from civil or criminal liability for withholding or withdrawing resuscitation pursuant to an order or identifier if the actions were performed in good faith and without gross negligence.

Anyone who knowingly conceals, cancels, defaces, or obliterates an order or identifier without the individual's consent or knowingly falsifies or forges a revocation will be guilty of a class A misdemeanor. Anyone who knowingly executes, falsifies, or forges an order without the individual's consent or knowingly conceals or withholds the knowledge of a revocation of an order will be guilty of a class D felony.

Submitted as:

Missouri

House Bill No. 182 (Truly Agreed and Finally Passed version)

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as the “The Outside the Hospital Do-Not-
2 Resuscitate Act.”

3

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

5 (1) “Attending physician” means:

6 (a) a physician licensed under [insert citation], selected by or assigned to a patient
7 who has primary responsibility for treatment and care of the patient; or

(b) if more than one physician shares responsibility for the treatment and care of a patient, one such physician who has been designated the attending physician, by the patient, or the patient's representative, shall serve as the attending physician;

(2) "Cardiopulmonary resuscitation" or "CPR" means emergency medical treatment administered to a patient in the event of the patient's cardiac or respiratory arrest, and shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation, administration of cardiac resuscitation medications, and related procedures;

(3) "Department" means the [department of health and senior services];

(4) "Emergency medical services personnel" means an aid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency service personnel acting within the ordinary course and scope of their professions, but excluding physicians;

(5) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities and hospitals, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to people. Health care facility includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, infirmaries, renal dialysis centers, long-term care facilities licensed under [insert citation], medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and residential treatment facilities;

(6) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not less than twenty-four consecutive hours in any week of three or more nonrelated people suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide for not less than twenty-four consecutive hours in any week medical or nursing care for three or more nonrelated people. Hospital does not include any long-term care facility licensed under [insert citation];

(7) "Outside the Hospital Do-Not-Resuscitate Identification" or "Outside the Hospital DNR Identification," means a standardized identification card, bracelet, or necklace of a single color, form, and design as described by rule of the [department] that signifies that the patient's attending physician has issued an Outside the Hospital Do-Not-Resuscitate Order for the patient and has documented the grounds for the order in the patient's medical file;

(8) "Outside the Hospital Do-Not-Resuscitate Order" or "Outside the Hospital DNR Order," means a written physician's order signed by the patient and the attending physician, or the patient's representative and the attending physician, in a form promulgated by rule of the [department] which authorizes emergency medical services personnel to withhold or withdraw cardiopulmonary resuscitation from the patient in the event of cardiac or respiratory arrest;

(9) "Outside the Hospital Do-Not-Resuscitate Protocol" or "Outside the Hospital DNR Protocol," means a standardized method or procedure promulgated by rule of the [department] for the withholding or withdrawal of cardiopulmonary resuscitation by emergency medical services personnel from a patient in the event of cardiac or respiratory arrest;

(10) "Patient," means a person [eighteen] years of age or older who is not incapacitated, as defined in [insert citation], and who is otherwise competent to give informed consent to an Outside the Hospital Do-Not-Resuscitate Order at the time such order is issued, and who, with his or her attending physician, has executed an Outside the Hospital Do-Not-Resuscitate Order as defined in this Act. A person who has a patient's representative shall also be a patient for the purposes of this Act if the person or the person's patient's representative has executed an Outside the Hospital Do-Not-Resuscitate Order under this Act;

(11) "Patient's representative" means:
(a) an attorney in fact designated in a Durable Power of Attorney for Health Care for a patient determined to be incapacitated under [insert citation]; or
(b) a guardian or limited guardian appointed under [insert citation] to have responsibility for an incapacitated patient.

Section 3. [*Executing an Outside the Hospital Do-Not-Resuscitate Order.*]
(A) A patient or patient's representative and the patient's attending physician may execute an Outside the Hospital Do-Not-Resuscitate Order. An Outside the Hospital Do-Not-Resuscitate Order shall not be effective unless it is executed by the patient or patient's representative and the patient's attending physician, and it is in the form promulgated by rule of the [department].

(B) If an Outside the Hospital Do-Not-Resuscitate Order has been executed, it shall be maintained as the first page of a patient's medical record in a health care facility unless otherwise specified in the health care facility's policies and procedures.

(C) An Outside the Hospital Do-Not-Resuscitate Order shall be transferred with the patient when the patient is transferred from one health care facility to another health care facility. If the patient is transferred outside of a hospital, the Outside the Hospital DNR form shall be provided to any other facility, person, or agency responsible for the medical care of the patient or to the patient or patient's representative.

Section 4. [*Liability for Acts or Omissions Related to Outside the Hospital Do-Not-Resuscitate Identification.*] The following people and entities shall not be subject to civil, criminal, or administrative liability and are not guilty of unprofessional conduct for the following acts or omissions that follow discovery of an Outside the Hospital Do-Not-Resuscitate Identification upon a patient; provided that the acts or omissions are done in good faith and in accordance with the provisions of this Act and the provisions of an Outside the Hospital Do-Not-Resuscitate Order executed under this Act:

(1) physicians, people under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that cause or participate in the withholding or withdrawal of cardiopulmonary resuscitation from such patient; and

(2) physicians, people under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that provide cardiopulmonary resuscitation to such patient under an oral or written request communicated to them by the patient or the patient's representative.

Section 5. [*Conditions for Operability.*]
(A) An Outside the Hospital Do-Not-Resuscitate Order shall only be effective when the patient has not been admitted to or is not being treated within a hospital. An Outside the Hospital Do-Not-Resuscitate Order and The Outside the Hospital Do-Not-Resuscitate Protocol shall not authorize the withholding or withdrawing of other medical interventions, such as intravenous fluids, oxygen, or therapies other than cardiopulmonary resuscitation.

(B) Outside the Hospital Do-Not-Resuscitate Orders and the Outside the Hospital Do-Not-Resuscitate Protocol shall not authorize the withholding or withdrawing of therapies deemed necessary to provide comfort care or alleviate pain. Any authorization for withholding or withdrawing interventions or therapies that is inconsistent with this Act and is found or included in any Outside the Hospital Do-Not-Resuscitate Order or in the Outside the Hospital Do-Not-Resuscitate Protocol shall be null, void, and of no effect. Nothing in this section shall prejudice any other lawful directives concerning such medical interventions and therapies.

(C) An Outside the Hospital Do-Not-Resuscitate Order shall not be effective during such time as the patient is pregnant; provided, however, that physicians, people under the direction or authorization of a physician, emergency medical services personnel, and health care facilities shall not be subject to civil, criminal, or administrative liability and are not guilty of unprofessional conduct if, while acting in accordance with the provisions of this Act and the provisions of an Outside the Hospital Do-Not-Resuscitate Order executed under this Act, such people and entities:

(1) comply with an Outside the Hospital Do-Not-Resuscitate Order and withdraw or withhold cardiopulmonary resuscitation from a pregnant patient while believing in good faith that the patient is not pregnant; or

(2) despite the presence of an Outside the Hospital Do-Not-Resuscitate Order, provide cardiopulmonary resuscitation to a nonpregnant patient while believing in good faith that the patient is pregnant.

Section 6. [*Compliance by Emergency Services Personnel.*]

(A) Emergency medical services personnel are authorized to comply with the Outside the Hospital Do-Not-Resuscitate Protocol when presented with an Outside the Hospital Do-Not-Resuscitate Identification or an Outside the Hospital Do-Not-Resuscitate Order. However, emergency medical services personnel shall not comply with an Outside the Hospital Do-Not-Resuscitate Order or the Outside the Hospital Do-Not-Resuscitate Protocol when the patient or patient's representative expresses to such personnel in any manner, before or after the onset of a cardiac or respiratory arrest, the desire to be resuscitated.

(B) If a physician or a health care facility other than a hospital admits or receives a patient with an Outside the Hospital Do-Not-Resuscitate Identification or an Outside the Hospital Do-Not-Resuscitate Order, and the patient or patient's representative has not expressed or does not express to the physician or health care facility the desire to be resuscitated, and the physician or health care facility is unwilling or unable to comply with the Outside the Hospital Do-Not-Resuscitate Order, the physician or health care facility shall take all reasonable steps to transfer the patient to another physician or health care facility where the Outside the Hospital Do-Not-Resuscitate Order will be complied with.

Section 7. [*Suicide, Life Insurance and Health Care Services.*]

(A) A patient's death resulting from the withholding or withdrawal in good faith of cardiopulmonary resuscitation under an Outside the Hospital Do-Not-Resuscitate Order is not, for any purpose, a suicide or homicide.

(B) The possession of an Outside the Hospital Do-Not-Resuscitate Identification or execution of an Outside the Hospital Do-Not-Resuscitate Order does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. Notwithstanding any term of a policy to the contrary, a policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of cardiopulmonary resuscitation from an insured patient possessing an Outside the Hospital Do-Not-Resuscitate Identification or Outside the Hospital Do-Not-Resuscitate Order.

(C) A physician, health care facility, or other health care provider or a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not require a patient to possess an Outside the Hospital Do-Not-Resuscitate Identification or execute an Out Of Hospital Do-Not-Resuscitate Order as a condition for being insured for or receiving health care services.

(D) This Act does not prejudice any right that a patient has to effect the obtaining, withholding, or withdrawal of medical care in any lawful manner apart from the Act. In that respect, the rights of patients authorized under this Act are cumulative.

(E) This Act shall not be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to shorten or end life.

Section 8. *[Rules to Relating to Outside the Hospital Do-Not-Resuscitate Protocol, the Outside the Hospital Do-Not-Resuscitate Identification, and the Outside the Hospital Do-Not-Resuscitate Forms.]*

(A) By [insert date], the [department] shall promulgate rules relating to the Outside the Hospital Do-Not-Resuscitate Protocol, the Outside the Hospital Do-Not-Resuscitate Identification, and the Outside the Hospital Do-Not-Resuscitate Forms under this Act.

(B) Any rule or portion of a rule, as that term is defined in [insert citation] that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of [insert citation], are nonseverable and if any of the powers vested with the [General Assembly] pursuant to [insert citation], to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after [date], shall be invalid and void.

Section 9. *[Penalties for Concealing, Destroying, Changing or Forging an Outside the Hospital Do-Not-Resuscitate Order or Outside the Hospital Do-Not-Resuscitate Identification.]*

(A) Any person who knowingly conceals, cancels, defaces, or obliterates the Outside the Hospital Do-Not-Resuscitate Order or the Outside the Hospital Do-Not-Resuscitate Identification of another person without the consent of the other person, or who knowingly falsifies or forges a revocation of the Outside the Hospital Do-Not-Resuscitate Order or the Outside the Hospital Do-Not-Resuscitate Identification of another person, is guilty of a [class A misdemeanor].

(B) Any person who knowingly executes, falsifies, or forges an Outside the Hospital Do-Not-Resuscitate Order or an Outside the Hospital Do-Not-Resuscitate Identification of another person without the consent of the other person, or who knowingly conceals or withholds personal knowledge of a revocation of an Outside the Hospital Do-Not-Resuscitate Order or an Outside the Hospital Do-Not-Resuscitate Identification of another person, is guilty of a [class D felony].

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

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

Section 12. *[Effective Date.]* [Insert effective date.]

Ownership of Subsurface Pore Space

This Act specifies that the owner of a surface estate owns the pore space in all strata below the surface. Pore space is the subsurface space which can be used to store carbon dioxide or other substances. The Act specifies that a conveyance of the surface ownership conveys the pore space unless that ownership interest is severed. Pore space ownership may be conveyed in the same manner as conveyances of mineral interests in real property. The Act also provides specific requirements for pore space ownership transfers.

Submitted as:

Wyoming

Chapter 29 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Ownership of Pore
2 Space Underlying Surfaces.”

3
4 Section 2. [*Legislative Intent.*] It is the intent of the [legislature] to clarify the ownership
5 of pore space underlying the surface of the lands and waters of this state. All conveyances of
6 interests in real property on and after [July 1, 2008] shall be subject to the provisions of this Act.
7 All conveyances of real property made prior to [July 1, 2008] shall be construed in accordance
8 with the provisions of this Act unless a person claiming an ownership interest contrary to the
9 provisions of this Act establishes such ownership by a preponderance of the evidence in an
10 action to establish ownership of such interest.

11
12 Section 3. [*Creation; Conveyance; Acceptance and Duration.*] This Act shall not alter the
13 law of this state regarding the primacy of the mineral estate and any easement created hereunder
14 shall not limit the right of a mineral owner or his lessee to reasonable use of the surface for the
15 purpose of mineral exploration and production unless the owners and lessees of the entire
16 mineral estate and geologic sequestration right are a party to the conservation easement or
17 consent to the conservation easement.

18
19 Section 4. [*Ownership Of Pore Space Underlying Surfaces.*]

20 (a) The ownership of all pore space in all strata below the surface lands and waters of this
21 state is declared to be vested in the several owners of the surface above the strata.

22 (b) A conveyance of the surface ownership of real property shall be a conveyance of the
23 pore space in all strata below the surface of such real property unless the ownership interest in
24 such pore space previously has been severed from the surface ownership or is explicitly excluded
25 in the conveyance. The ownership of pore space in strata may be conveyed in the manner
26 provided by law for the transfer of mineral interests in real property. No agreement conveying
27 mineral or other interests underlying the surface shall act to convey ownership of any pore
28 space in the stratum unless the agreement explicitly conveys that ownership interest.

29 (c) No provision of law, including a lawfully adopted rule or regulation, requiring notice
30 to be given to a surface owner, to an owner of the mineral interest, or to both, shall be construed

31 to require notice to persons holding ownership interest in any pore space in the underlying
32 strata unless the law specifies notice to such persons is required.

33 (d) As used in this section, the term “pore space” is defined to mean subsurface space
34 which can be used as storage space for carbon dioxide or other substances.

35 (e) Nothing in this section shall be construed to change or alter the common law as of
36 [July 1, 2008], as it relates to the rights belonging to, or the dominance of, the mineral estate.

37 (f) All instruments which transfer the rights to pore space under this section shall
38 describe the scope of any right to use the surface estate. The owner of any pore space right shall
39 have no right to use the surface estate beyond that set out in a properly recorded instrument.

40 (g) Transfers of pore space rights made after [July 1, 2008] are null and void at the option
41 of the owner of the surface estate if the transfer instrument does not contain a specific description
42 of the location of the pore space being transferred. The description may include but is not limited
43 to a subsurface geologic or seismic survey or a metes and bounds description of the surface lying
44 over the transferred pore space. In the event a description of the surface is used, the transfer shall
45 be deemed to include pore space at all depths underlying the described surface area unless
46 specifically excluded. The validity of pore space rights under this subsection shall not affect the
47 respective liabilities of any party and such liabilities shall operate in the same manner as if the
48 pore space transfer were valid.

49 (h) Nothing in this section shall alter, amend, diminish or invalidate rights to the use of
50 subsurface pore space that were acquired by contract or lease prior to [July 1, 2008].

51
52 Section 5. [*Severability*.] [Insert severability clause.]

53
54 Section 6. [*Repealer*.] [Insert repealer clause.]

55
56 Section 7. [*Effective Date*.] [Insert effective date.]

Pharmacy Benefits Managers Registration

Pharmacy Benefits Managers (PBMs) are businesses that administer and manage prescription drug benefit plans either through health insurance products or separately. Approximately 95 percent of all patients with prescription drug coverage receive benefits through a PBM. In recent years, concerns have been raised by consumer organizations and states regarding the business practices of PBMs. Some of these business practices, such as switching patients from one brand-name drug to another brand-name drug, led to multistate settlement agreements between PBMs and state attorney generals. Demands for greater transparency in financial relationships between PBMs and drug manufacturers have prompted states to propose regulation of PBM activities.

This draft legislation requires a PBM to register with the state Insurance Commissioner before providing pharmacy benefits management services in the state. Registration is effective for two years and may be renewed for an additional two years. Subject to hearing provisions, the Insurance Commissioner may deny, suspend, revoke, or refuse to renew a registration under specified circumstances. The Insurance Commissioner is authorized to assess a civil penalty of up to \$10,000 against any person that violates the registration requirements or require PBMs that violate the Act to cease and desist; take specific affirmative corrective action; or make restitution of money, property, or other assets. A PBM may not ship, mail, or deliver drugs or devices to a person in the state through a non-resident pharmacy unless the non-resident pharmacy holds a pharmacy permit from the state Board of Pharmacy. A PBM that is operating in the state on October 1, 2008, may continue to operate as a PBM if the PBM registers with the Insurance Commissioner by July 1, 2009, and complies with all other applicable registration provisions.

Submitted as:

Maryland

HB 419 (Chapter 202, 2008)

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “The Pharmacy Benefits Managers
2 Registration Act.”

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

5 (1) “Beneficiary” means an individual who receives prescription drug coverage or
6 benefits from a purchaser.

7 (2) “ERISA” has the meaning stated in [insert citation].

8 (3) “Nonprofit health maintenance organization” has the meaning stated in [insert
9 citation].

10 (4) (a) “Pharmacy benefits management services” means:

11 (i) the procurement of prescription drugs at a negotiated rate for
12 dispensation within the state to beneficiaries;

13 (ii) the administration or management of prescription drug coverage
14 provided by a purchaser for beneficiaries; and

(iii) any of the following services provided with regard to the administration of prescription drug coverage:

- I. mail service pharmacy;
- II. claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;
- III. clinical formulary development and management services;
- IV. rebate contracting and administration;
- V. patient compliance, therapeutic intervention, and generic substitution programs; or
- VI. disease management programs.

(b) "Pharmacy benefits management services" does not include any service provided by a nonprofit health maintenance organization that operates as a group model, provided that the service:

- (i) is provided solely to a member of the nonprofit health maintenance organization; and
- (ii) is furnished through the internal pharmacy operations of the nonprofit health maintenance organization.

(5) "Pharmacy benefits manager" means a person that performs pharmacy benefits management services.

(6) (a) "Purchaser" means the state employee and retiree health and welfare benefits program, an insurer, a nonprofit health service plan, or a health maintenance organization that:

- (i) provides prescription drug coverage or benefits in the state; and
- (ii) enters into an agreement with a pharmacy benefits manager for the provision of pharmacy benefits management services.

(b) "Purchaser" does not include a person that provides prescription drug coverage or benefits through plans subject to ERISA and does not provide prescription drug coverage or benefits through insurance, unless the person is a Multiple Employer Welfare Arrangement as defined in § 514(B)(6)(A)(II) of ERISA.

Section 3. [*Registering Pharmacy Benefits Managers.*]

(A) A pharmacy benefits manager shall register with the [commissioner] as a pharmacy benefits manager before providing pharmacy benefits management services in the state to purchasers.

(B) An applicant for registration shall:

- (1) file with the [commissioner] an application on the form that the [commissioner] provides; and

- (2) pay to the [commissioner] a registration fee set by the [commissioner].

(C) Subject to the provisions of section 5 of this Act, the [commissioner] shall register each pharmacy benefits manager that meets the requirements of this section.

Section 4. [*Renewing a Pharmacy Benefits Manager's Registration*]

(A) A pharmacy benefits manager registration expires on the anniversary date that occurs on the date [2] years following the date the [commissioner] issued the registration, unless it is renewed as provided under this section.

(B) A pharmacy benefits manager may renew its registration for an additional [2-year] term, if the pharmacy benefits manager:

- (1) otherwise is entitled to be registered;

62 (2) files with the [commissioner] a renewal application on the form that the
63 [commissioner] requires; and

64 (3) pays to the [commissioner] a renewal fee set by the [commissioner].

65 (C) An application for renewal of a pharmacy benefits manager registration shall be
66 considered made in a timely manner if it is postmarked on or before the date the pharmacy
67 benefits manager's registration expires.

68 (D) Subject to the provisions of section 5 of this Act, the [commissioner] shall renew the
69 registration of each pharmacy benefits manager that meets the requirements of this section.

70
71 Section 5. *[Denying Registration to a Pharmacy Benefits Manager Applicant.]*

72 (A) Subject to the hearing provisions of [insert citation], the [commissioner] may deny a
73 registration to a pharmacy benefits manager applicant or refuse to renew, suspend, or revoke the
74 registration of a pharmacy benefits manager if the pharmacy benefits manager, or an officer,
75 director, or employee of the pharmacy benefits manager:

76 (1) makes a material misstatement or misrepresentation in an application for
77 registration;

78 (2) fraudulently or deceptively obtains or attempts to obtain a registration;

79 (3) in connection with the administration of pharmacy benefits management
80 services, commits fraud or engages in illegal or dishonest activities; or

81 (4) violates any provision of this Act or a regulation adopted under this Act.

82 (B) This section does not limit any other regulatory authority of the [commissioner]
83 under this Act.

84
85 Section 6. *[Nonresident Pharmacies.]* A pharmacy benefits manager may not ship, mail,
86 or deliver prescription drugs or devices to a person in the state through a nonresident pharmacy
87 unless the nonresident pharmacy holds a permit issued in accordance with the provisions of
88 [insert citation].

89
90 Section 7. *[Auditing Pharmacy Benefits Managers.]*

91 (A) Whenever the [commissioner] considers it advisable, the [commissioner] may
92 examine the affairs, transactions, accounts, and records of a registered pharmacy benefits
93 manager.

94 (B) The examination shall be conducted in accordance with [insert citation].

95 (C) The expense of the examination shall be paid in accordance with [insert citation].

96 (D) The reports of the examination and investigation shall be issued in accordance with
97 [insert citation].

98
99 Section 8. *[Pharmacy Benefits Manager Bookkeeping and Record Keeping.]*

100 (A) A pharmacy benefits manager shall maintain adequate books and records about each
101 purchaser for which the pharmacy benefits manager provides pharmacy benefits management
102 services:

103 (1) in accordance with prudent standards of record keeping;

104 (2) for the duration of the agreement between the pharmacy benefits manager and
105 the purchaser; and

106 (3) for [3] years after the pharmacy benefits manager ceases to provide pharmacy
107 benefits management services for the purchaser.

108
109 Section 9. *[Penalties for Violating this Act.]*

(A) If the [commissioner] determines that a pharmacy benefits manager has violated any provision of this Act or any regulation adopted under this Act the [commissioner] may issue an order that requires the pharmacy benefits manager to:

- (1) cease and desist from the identified violation and further similar violations;
- (2) take specific affirmative action to correct the violation; or
- (3) make restitution of money, property, or other assets to a person that has suffered financial injury because of the violation.

(B) An order of the [commissioner] issued under this section may be served on a pharmacy benefits manager that is registered under this Act in the manner provided in [insert citation].

(C) An order of the [commissioner] issued under this section may be served on a pharmacy benefits manager that is not registered under this Act in the manner provided in [insert citation] for service on an unauthorized insurer that does an act of insurance business in the state.

(D) A request for a hearing on any order issued under this section does not stay that portion of the order that requires the pharmacy benefits manager to cease and desist from conduct identified in the order.

(E) The [commissioner] may file a petition in the [circuit court] of any county to enforce an order issued under this section, whether or not a hearing has been requested or, if requested, whether or not a hearing has been held.

(F) If the [commissioner] prevails in an action brought under this section, the [commissioner] may recover, for the use of the state, reasonable attorney's fees and the costs of the action.

(G) In addition to any other enforcement action taken by the [commissioner] under this section, the [commissioner] may impose a civil penalty not exceeding [\$10,000] for each violation of this Act.

(H) This section does not limit any other regulatory authority of the [commissioner] under this Act.

Section 10. [*Purchasers.*] A purchaser may not enter into an agreement with a pharmacy benefits manager that has not registered with the [commissioner].

Section 11. [*Exceptions to Registering A Pharmacy Benefits Manager.*] A person acting as a pharmacy benefits manager in the state on the effective date of this Act may continue to act as a pharmacy benefits manager in the state without being registered with the [commissioner], as required under this Act, if the person registers with the [commissioner] on or before [insert date]; and complies with all other applicable provisions of this Act.

Section 12. [*Applicability of this Act to Health Maintenance Organizations.*] The provisions of [insert sections] of this Act apply to health maintenance organizations.

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

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

Section 15. [*Effective Date.*] [Insert effective date.]

Physician Orders for Life-Sustaining Treatment

According to the Alzheimer's Association, Physician Orders For Life-Sustaining Treatment (POLST) are forms people complete with their doctor for the purpose of clearly defining which medical treatments are to be given to them at the end of their lives. At least eight states currently recognize POLST forms, including California, Idaho, New York, North Carolina, Oregon, Tennessee, Washington and West Virginia. Although the names may differ slightly by state (such as Idaho's POST program), the forms are essentially the same.

A POLST form is easily recognizable because it is printed on brightly colored paper. It is intended for people with a terminal illness, anyone in a nursing home, or anyone expected to die within the next year. A POLST form offers more choices than a DNR, which typically gives people just two choices if they go into cardiac arrest: resuscitate or do not resuscitate. On a POLST form, people can record their choices about feeding tubes, intubation, mechanical ventilation, IV fluids, comfort measures, or other treatments. The elections in a POLST form constitute a physician's order. While advance directives merely express a person's wishes, a POLST form translates those wishes into medical orders that healthcare professionals such as EMT's and physicians must follow.

POLST forms follow patients across care settings. When someone moves from a nursing home to the hospital or is discharged from the hospital and returns to their home, a DNR or advance directive is not guaranteed to stand in the new setting. With a POLST form, however, the physician's order is enforceable regardless of setting. Most states with POLST programs, such as Idaho, include in their POLST laws that if there is a disagreement between an advance directive or other end-of-life planning document and a POLST form, the POLST form legally trumps the advance directive.

If a person lives at home, their POLST form is usually taped to the refrigerator so it can be located easily in a medical emergency. If the person lives in a long-term care facility, the form goes in their chart. Paramedics in POLST states are trained to check for a POLST form before making treatment decisions. When transporting a person to a hospital, paramedics physically attach the POLST form to the patient, so physicians and other hospital staff can align care with the person's wishes as expressed on the POLST form. Idaho also authorized the development of a standardized piece of POST identification jewelry that people can wear.

Interested readers can find information about state efforts to enable people to use POLST forms at Physician Orders for Life-Sustaining Treatment (POLST) Paradigm Program (<http://www.ohsu.edu/polst/programs/>).

The draft legislation in this SSL volume is based on a 2007 Idaho law about medical care at the end of a person's life. This Act:

- contains provisions about giving consent to one's care to another person;
- contains provisions applicable to a Living Will and Durable Power of Attorney for Health Care;
- provides a duty to inspect certain medical documents;
- contains provisions relating to immunity for actions taken under the Act; and
- incorporates Physician Orders for Scope of Treatment and related protocols into making medical care decisions in advance of dying.

Submitted as:

Idaho

HB119 [Engrossed Bill (Original Bill with Amendment(s) Incorporated)]

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Medical Directives
2 and Physician Orders for Scope of Treatment (POST).”

3
4 Section 2. [*Purposes and Application.*]

5 (A) The primary purposes of this Act are:

6 (1) To codify [state] law concerning consent for the furnishing of hospital,
7 medical, dental or surgical care, treatment or procedures, and concerning what constitutes an
8 informed consent for such care, treatment or procedures; and

9 (2) To provide certainty and clarity in the law of medical consent in the
10 furtherance of high standards of health care and its ready availability in proper cases.

11 (B) Nothing in this Act shall be deemed to amend or repeal the provisions of [insert
12 citation] pertaining to hospitalization of the mentally ill, provision of examinations,
13 prescriptions, devices and informational materials regarding prevention of pregnancy or
14 pertaining to therapeutic abortions and consent to the performance thereof.

15 (C) Nothing in this Act shall be construed to permit or require the provision of health care
16 for a patient in contravention of the patient’s stated or implied objection thereto upon religious
17 grounds nor shall anything in this Act be construed to require the granting of permission for or
18 on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in
19 violation of the religious beliefs of the patient or the patient’s parent or spouse.

20
21 Section 3. [*Definitions.*] As used in this Act:

22 (1) “Artificial life-sustaining procedure” means any medical procedure or intervention
23 that utilizes mechanical means to sustain or supplant a vital function which, when applied to a
24 qualified patient, would serve only to artificially prolong life. “Artificial life-sustaining
25 procedure” does not include the administration of pain management medication or the
26 performance of any medical procedure deemed necessary to provide comfort care or to alleviate
27 pain.

28 (2) “Artificial nutrition and hydration” means supplying food and water through a
29 conduit, such as a tube or intravenous line, where the recipient is not required to chew or
30 swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle
31 feeding.

32 (3) “Attending physician” means the physician licensed by the state board of medicine
33 who is selected by, or assigned to, the patient and who has primary responsibility for the
34 treatment and care of the patient.

35 (4) “Cardiopulmonary resuscitation” or “CPR” means measures to restore cardiac
36 function and/or to support ventilation in the event of cardiac or respiratory arrest.

37 (5) “Comfort care” means treatment and care to provide comfort and cleanliness.
38 “Comfort care” includes:

39 (a) Oral and body hygiene;

40 (b) Reasonable efforts to offer food and fluids orally;

41 (c) Medication, positioning, warmth, appropriate lighting and other measures to
42 relieve pain and suffering; and

43 (d) Privacy and respect for the dignity and humanity of the patient.

44 (6) “Consent to care” includes refusal to consent to care and/or withdrawal of care.

(7) “Directive” or “health care directive” means a document meeting the requirements of [insert citation] and/or a “Physician Orders for Scope of Treatment (POST)” form signed by a physician.

(8) “Emergency medical services personnel” means personnel engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians and paramedics.

(9) “Health care provider” or “provider” means any person or entity licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency or other medical services personnel.

(10) “Persistent vegetative state” means an irreversible state that has been medically confirmed by a neurological specialist who is an expert in the examination of nonresponsive individuals in which the person has intact brain stem function but no higher cortical function and no awareness of self or environment.

(11) “Physician” means a person who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in this state and is in good standing with no restriction upon or actions taken against his or her license.

(12) “Physician Orders for Scope of Treatment (POST) form” means a standardized form containing orders by a physician that states a person's treatment wishes.

(13) “Physician Orders for Scope of Treatment (POST) Identification Device” means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the [department of health and welfare].

(14) “Terminal condition” means an incurable or irreversible condition which, without the administration of life-sustaining procedures, will, in the opinion of a physician, result in death if it runs its usual course.

Section 4. [*People Who May Consent to Their Own Care.*] Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite intelligence and awareness at the time of giving the consent.

Section 5. [*People Who May Give Consent to Care for Others.*]

(A) Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures to any person who is not then capable of giving such consent as provided in this Act or who is a minor or incompetent person, may be given or refused in the order of priority set forth hereafter unless the patient is a competent person who has refused to give such consent, and provided further that this subsection shall not be deemed to authorize any person to override the express refusal by a competent patient to give such consent himself:

(1) The legal guardian of such person;

(2) The person named in a “Living Will and Durable Power of Attorney for Health Care” pursuant to [insert citation], or a similar document authorized by this Act;

(3) If married, the spouse of such person;

(4) A parent of such person;

(5) Any relative representing himself or herself to be an appropriate, responsible person to act under the circumstances;

92 (6) Any other competent individual representing himself or herself to be
93 responsible for the health care of such person; or

94 (7) If the subject person presents a medical emergency or there is a substantial
95 likelihood of his or her life or health being seriously endangered by withholding or delay in the
96 rendering of such hospital, medical, dental or surgical care to such patient and the subject person
97 has not communicated and is unable to communicate his or her treatment wishes, the attending
98 physician or dentist may, in his or her discretion, authorize and/or provide such care, treatment or
99 procedure as he or she deems appropriate, and all persons, agencies and institutions thereafter
100 furnishing the same, including such physician or dentist, may proceed as if informed, valid
101 consent therefore had been otherwise duly given.

102 (B) No person who, in good faith, gives consent or authorization for the provision of
103 hospital, medical, dental or surgical care, treatment or procedures to another as provided by this
104 Act shall be subject to civil liability therefor.

105 (C) No health care provider who, in good faith, obtains consent from a person pursuant to
106 either section 4 of this Act or paragraph (A) of this section, shall be subject to civil liability
107 therefor.

108 109 Section 5. [*Blood Testing.*]

110 (A) A physician may consent to ordering tests of a patient's or a deceased person's blood
111 or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or
112 diseases without the prior consent of the patient if:

113 (1) There has been or is likely to be a significant exposure to the patient's or a
114 deceased person's blood or body fluids by a person providing emergency or medical services to
115 such patient which may result in the transmittal of a virus or disease; and

116 (2) The patient is unconscious or incapable of giving informed consent and the
117 physician is unable to obtain consent pursuant to section 4 of this Act.

118 (B) The [department of health and welfare] shall promulgate rules identifying the blood-
119 transmitted or body fluid-transmitted viruses or diseases for which blood tests or body fluid tests
120 can be ordered under this section and defining the term "significant exposure" as provided in this
121 section.

122 (C) Results of tests conducted under this section which confirm the presence of a blood-
123 transmitted or body fluid-transmitted virus or disease shall be reported to the director of the
124 [department of health and welfare] in the name of the patient or deceased person. The
125 [department] records containing such test results shall be used only by public health officials
126 who must conduct investigations. The exposed person shall only be informed of the results of the
127 test and shall not be informed of the name of the patient or deceased person. Protocols shall be
128 established by hospitals to maintain confidentiality while disseminating the necessary test result
129 information to persons who may have a significant exposure to blood or other body fluids and to
130 maintain records of such tests to preserve the confidentiality of the test results.

131 (D) Any person who willfully or maliciously discloses the results of a test conducted
132 under this section, except pursuant to a written authorization by the person whose blood was
133 tested or by such person's authorized representative, or as otherwise authorized by law, shall be
134 guilty of a [misdemeanor].

135
136 Section 6. [*Sufficiency of Consent.*] Consent, or refusal to consent, for the furnishing of
137 hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if
138 the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the
139 need for, the nature of, and the significant risks ordinarily attendant upon, such a patient

receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

Section 7. [*Form of Consent.*] It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other specific form of expression; provided however, when the giving of such consent is recited or documented in writing and expressly authorizes the care, treatment or procedures to be furnished, and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care, treatment or procedures, and the advice and disclosures of the attending physician or dentist, as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.

Section 8. [*Responsibility for Consent and Documentation.*] Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure; provided however, a licensed hospital and any medical or dental office employee, acting with the approval of such an attending or other physician or dentist, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the patient. In performing such a ministerial act, the hospital or medical or dental office employee shall not be deemed to have engaged in the practice of medicine or dentistry.

Section 9. [*Statement of Policy -- Definition.*] For purposes of [section 9 of this Act through the end of this Act]:

(1) The [legislature] recognizes the established common law and the fundamental right of adults to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The [legislature] further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The [legislature] further finds that patients are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing medically necessary or beneficial to the patient because of the patient's inability to communicate with the physician.

(2) In recognition of the dignity and privacy which patients have a right to expect, the [legislature] hereby declares that the laws of this state shall recognize the right of a competent person to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the physician.

(3) It is the intent of the [legislature] to establish an effective means for such communication. It is not the intent of the [legislature] that the procedures described in [sections 9 of this Act through the end of this Act], are the only effective means of such communication, and

nothing in [sections 9 of this Act through the end of this Act] shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. Any authentic expression of a person's wishes with respect to health care should be honored.

(4) "Competent person" means any emancipated minor or person [eighteen (18)] or more years of age who is of sound mind.

Section 10. [*Living Will and Durable Power of Attorney for Health Care.*]

(A) Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this Act. Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive

Name of person executing Directive

Address of person executing Directive

A LIVING WILL

A Directive to Withhold or to Provide Treatment

1. I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

a. I have an incurable or irreversible injury, disease, illness or condition, and a medical doctors who has examined me has certified:

1. That such injury, disease, illness or condition is terminal; and

2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and

3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

Check one box and initial the line after such box:

..... I direct that all medical treatment, care and procedures necessary to restore my health and sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

..... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

A. Only hydration of any nature, whether artificial or nonartificial, shall be administered;

B. Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;

C. Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

..... I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

3. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

4. Check one box and initial the line after such box:

..... I have discussed these decisions with my physician and have also completed a Physician Orders for Scope of Treatment (POST) Form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if fully set forth.

OR

..... I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST form is later signed by my physician, then this Living Will shall be deemed modified to be compatible with the terms of the POST form.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this

Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent:

Address of Health Care Agent:

Telephone Number of Health Care Agent:

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a Durable Power of Attorney for Health Care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a Living Will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning artificial life-sustaining care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for

you, except to the extent that there are limits provided by law.) In exercising the authority under this Durable Power of Attorney for Health Care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in my Physician Orders for Scope of Treatment (POST) form, a Living Will, or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations ... (You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 “Statement of Desires, Special Provisions, and Limitations” above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a “Refusal to Permit Treatment” and/or a “Leaving Hospital Against Medical Advice”; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS.

1. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an

alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. First Alternate Agent:

Name

Address

Telephone Number

B. Second Alternate Agent:

Name

Address

Telephone Number

C. Third Alternate Agent:

Name

Address

Telephone Number

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior Durable Power of Attorney for Health Care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this form at

..... (City, State)

Signature

Section 11. [*Registering Health Care Directives.*] A health care directive meeting the requirements of [this Act] may be registered with the [secretary of state] pursuant to [insert citation]. Failure to register the health care directive shall not affect the validity of the health care directive.

Section 12. [*Revocation.*]

(A) A "Living Will and Durable Power of Attorney for Health Care" or Physician Orders for Scope of Treatment (POST) form may be revoked at any time by the maker thereof by any of the following methods:

(1) By being canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

427 (2) By a written, signed revocation of the maker thereof expressing his intent to
428 revoke; or

429 (3) By an oral expression by the maker thereof expressing his intent to revoke.

430 (B) The maker of the revoked Living Will and Durable Power of Attorney For Health
431 Care is responsible for notifying his physician of the revocation.

432 (C) There shall be no criminal or civil liability on the part of any person for the failure to
433 act upon a revocation of a "Living Will and Durable Power of Attorney for Health Care" or
434 Physician Orders for Scope of Treatment (POST) form made pursuant to [this Act] unless that
435 person has actual knowledge of the revocation.

436
437 Section 13. [*Physician Orders for Scope of Treatment (POST).*]

438 (A) A Physician Orders for Scope of Treatment (POST) form is appropriate in cases
439 where a patient has an incurable or irreversible injury, disease, illness or condition, or where a
440 patient is in a persistent vegetative state. A POST form is also appropriate if such conditions are
441 anticipated.

442 (B) The POST form shall be effective from the date of execution unless otherwise
443 revoked. If there is a conflict between the person's expressed directives, the POST form, and the
444 decisions of the Durable Power of Attorney representative or surrogate, the orders contained in
445 the POST form shall be followed.

446 (C) The attending physician shall, upon request of the patient, provide the patient with a
447 copy of the POST form, discuss with the patient the form's content and ramifications and
448 treatment options, and assist the patient in the completion of the form.

449 (D) The attending physician shall review the POST form:

450 (1) Each time the physician examines the patient, or at least every [seven (7)]
451 days, for patients who are hospitalized; and

452 (2) Each time the patient is transferred from one care setting or care level to
453 another; and

454 (3) Any time there is a substantial change in the patient's health status; and

455 (4) Any time the patient's treatment preferences change.

456 Failure to meet these review requirements does not affect the POST form's validity or
457 enforceability. As conditions warrant, the physician may issue a superseding POST form. The
458 physician shall, whenever practical, consult with the patient or the patient's agent.

459 (E) A patient who has completed a POST form signed by a physician may wear a POST
460 Identification Device as provided in section 3 (13) of this Act.

461 (F) The [department of health and welfare] shall develop the POST Form.

462
463 Section 14. [*Adherence to Physician Orders for Scope of Treatment (POST) Protocol.*]

464 (A) Health care providers and emergency medical services personnel shall comply with a
465 patient's Physician Orders for Scope of Treatment (POST) instruction when presented with a
466 completed POST form signed by a physician or when a patient is wearing a proper POST
467 Identification Device pursuant to section 3 (13) of this Act.

468 (B) A completed POST form is deemed to meet the requirements of "Do Not Resuscitate
469 (DNR)" forms of all [state] health care facilities. Health care providers and emergency medical
470 services personnel shall not require the completion of other forms in order for the patient's
471 wishes to be respected.

472
473 Section 15. [*Duty To Inspect.*] Health care providers and emergency medical services
474 personnel shall make reasonable efforts to inquire as to whether the patient has completed a

Physician Orders for Scope of Treatment (POST) form and inspect the patient for a POST Identification Device when presented with a situation calling for artificial life-sustaining treatment not caused by severe trauma or involving mass casualties and with no indication of homicide or suicide.

Section 16. *[Immunity.]*

(A) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form or Living Will or by the holder of a facially valid Durable Power of Attorney or directive for health care.

(B) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient as expressed by the procedures set forth in this chapter may withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the patient in obtaining the services of another physician or other health care provider who is willing to provide care for the patient in accordance with the patient's expressed or documented wishes.

(C) No person who exercises the responsibilities of a Durable Power of Attorney for Health Care in good faith shall be subject to civil or criminal liability as a result.

(D) Neither the registration of a health care directive in the health care directive registry under [insert citation], nor the revocation of such a directive requires a health care provider to request information from that registry. The decision of a health care provider to request or not to request a health care directive document from the registry shall be immune from civil or criminal liability. A health care provider who in good faith acts in reliance on a facially valid health care directive received from the health care directive registry shall be immune from civil or criminal liability for those acts done in such reliance.

(E) Health care providers and emergency medical services personnel may disregard the POST form or a POST Identification Device:

- (1) If they believe in good faith that the order has been revoked; or
- (2) To avoid oral or physical confrontation; or
- (3) If ordered to do so by the attending physician.

Section 17. *[General Provisions.]*

(A) Application. This Act shall have no effect or be in any manner construed to apply to people not executing a "Living Will and Durable Power of Attorney for Health Care" or POST form pursuant to this Act nor shall it in any manner affect the rights of any such people or of others acting for or on behalf of such people to give or refuse to give consent or withhold consent for any medical care, neither shall this Act be construed to affect [insert citation] in any manner.

(B) Euthanasia, mercy killing, or assisted suicide. This Act does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

(C) Comfort care. People who are taking care of a patient for whom artificial life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide comfort care as defined in section 3 of this Act.

(D) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless:

(1) A completed Living Will for that person is in effect, pursuant to section 10 of this Act, and the person is in a terminal condition or persistent vegetative state; or

(2) A completed Durable Power of Attorney for Health Care for that person is in effect, pursuant to section 10 of this Act, in which the person has indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her representative has determined that the person would not wish to receive cardiopulmonary resuscitation; or

(3) The patient has a completed Physician Orders for Scope of Treatment (POST) form indicating otherwise and/or proper POST identification pursuant to this Act.

(E) Futile care. Nothing in this Act shall be construed to require medical treatment that is medically inappropriate or futile.

(F) Existing directives and directives from other states. A Health Care Directive executed prior to [July 1, 2007], but which was in the Living Will, Durable Power of Attorney for Health Care, DNR, or POST form pursuant to prior [state] law at the time of execution, or in another form that contained the elements set forth in this Act at the time of execution, shall be deemed to be in compliance with this Act. Health Care Directives or similar documents executed in another state that substantially comply with this Act shall be deemed to be in compliance with this Act.

(G) Insurance.

(1) The making of a Living Will and/or Durable Power of Attorney for Health Care or Physician Orders for Scope of Treatment (POST) form pursuant to this Act shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured patient, notwithstanding any term of the policy to the contrary.

(2) No physician, health care facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a Living Will and Durable Power of Attorney for Health Care or Physician Orders for Scope of Treatment (POST) form as a condition for being insured for, or receiving, health care services.

(H) Portability and copies.

(1) A completed Physician Orders for Scope of Treatment (POST) form signed by a physician shall be transferred with the patient to, and be effective in, all care settings including, but not limited to, home care, ambulance or other transport, hospital, residential care facility, and hospice care. The POST form shall remain in effect until such time as there is a valid revocation pursuant to section 12 of this Act, or new orders are issued by a physician.

(2) A photostatic, facsimile or electronic copy of a valid Physician Orders for Scope of Treatment (POST) form may be treated as an original by a health care provider or by an institution receiving or treating a patient.

(I) Registration. A directive or the revocation of a directive meeting the requirements of this Act may be registered with the [secretary of state] pursuant to [insert citation]. Failure to register the health care directive shall not affect the validity of the health care directive.

(J) Rulemaking authority.

(1) The [department of health and welfare] shall adopt those rules and protocols necessary to administer the provisions of this Act.

(2) In the adoption of a Physician Orders for Scope of Treatment (POST) or DNR protocol, the [department] shall adopt standardized POST identification to be used statewide.

Section 18. *[Order in Protective Proceedings.]*

(A) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the Uniform Probate Code.

(B) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(C) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(D) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(E) In the event that more than [one (1)] person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the [department] or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.

(F) Subject to the limitations of the provisions of subsection (G) of this section, guardians or conservators may have any of the duties and powers as provided in [insert citation] and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least [annually]. In addition to such other requirements imposed by law or order, the report shall include:

(1) A description of the respondent's current mental, physical and social condition;

(2) The respondent's present address and living arrangement;

(3) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;

(4) A description of services being provided the respondent;

(5) A description of significant actions taken by the guardian or conservator during the reporting period;

(6) Any significant problems relating to the guardianship or conservatorship;

(7) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and

(8) A description of the need for continued guardianship or conservatorship services.

(G) No guardian appointed under this Act shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or

withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 5(A)(7) of this Act.

(H) A guardian may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

(1) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least [one (1)] other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or

(2) Has been diagnosed by the respondent's attending physician and at least [one (1)] other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(I) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such information to [adult protective services] or to the [state protection and advocacy system for people with developmental disabilities], who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided. If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(J) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

(1) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;

(2) Consent to experimental surgery, procedures or medications; or

(3) Delegate the powers granted by the order.

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

Section 20. [*Repealer*.] [Insert repealer clause.]

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

Prescription Drug Marketing Code of Conduct

This Act requires wholesalers and manufacturers who employ a person to sell or market a drug, medicine, chemical, device or appliance in the state to adopt a written marketing code of conduct. This bill also requires a wholesaler or manufacturer to adopt a training program and policies and procedures, identify a compliance officer, conduct an annual audit and submit an annual report certifying the wholesaler's or manufacturer's compliance with the marketing code of conduct.

Submitted as:

Nevada

AB 128

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Adopt a Prescription Drug
2 Marketing Code of Conduct.”

3
4 Section 2. [*Prescription Drug Marketing Code of Conduct.*]

5 (A) A wholesaler or manufacturer who employs a person to sell or market a drug,
6 medicine, chemical, device or appliance in this State shall:

7 (1) Adopt a written marketing code of conduct which establishes the practices and
8 standards that govern the marketing and sale of its products. The marketing code of conduct must
9 be based on applicable legal standards and incorporate principles of health care, including,
10 without limitation, requirements that the activities of the wholesaler or manufacturer be intended
11 to benefit patients, enhance the practice of medicine and not interfere with the independent
12 judgment of health care professionals. Adoption of the most recent version of the Code on
13 Interactions with Healthcare Professionals developed by the Pharmaceutical Research and
14 Manufacturers of America satisfies the requirements of this paragraph.

15 (2) Adopt a training program to provide regular training to appropriate employees,
16 including, without limitation, all sales and marketing staff, on the marketing code of conduct.

17 (3) Conduct annual audits to monitor compliance with the marketing code of
18 conduct.

19 (4) Adopt policies and procedures for investigating instances of noncompliance
20 with the marketing code of conduct, including, without limitation, the maintenance of effective
21 lines of communication for employees to report noncompliance, the investigation of reports of
22 noncompliance, the taking of corrective action in response to noncompliance and the reporting of
23 instances of noncompliance to law enforcement authorities in appropriate circumstances.

24 (5) Identify a compliance officer responsible for developing, operating and
25 monitoring the marketing code of conduct.

26 (B) A wholesaler or manufacturer who employs a person to sell or market a drug,
27 medicine, chemical, device or appliance in this State shall submit to the [Board] [annually]:

28 (1) A copy of its marketing code of conduct;

29 (2) A description of its training program;

30 (3) A description of its investigation policies;

31 (4) The name, title, address, telephone number and electronic mail address of its
32 compliance officer; and

33 (5) Certification that it has conducted its annual audit and is in compliance with
34 its marketing code of conduct.

35 (C) On or before [January 15] of each odd-numbered year, the [Board] shall prepare and
36 submit to the [Governor, and to the Director of the Legislative Counsel Bureau] for transmittal to
37 the [Legislature], a compilation of the information submitted to the [Board] pursuant to this
38 section, other than any information identified as a trade secret in the information submitted to the
39 [Board].

40 (D) The [Board]:

41 (1) Shall adopt regulations providing for the time of the submission and the form
42 of the information required pursuant to this section and defining “compliance” for the purposes
43 of this section.

44 (2) May not require the disclosure of the results of an audit conducted pursuant to
45 this section.

46 (3) Shall post on its Internet website information concerning the compliance of all
47 wholesalers and manufacturers with the requirements of this section.

48 (4) Shall not disclose any proprietary or confidential business information that it
49 receives pursuant to this section.

50
51 Section 3. [*Severability.*] [Insert severability clause.]

52
53 Section 4. [*Repealer.*] [Insert repealer clause.]

54
55 Section 5. [*Effective Date.*] [Insert effective date.]

Preserving Right to Keep and Bear Arms in Motor Vehicles

This Act:

- prohibits a public or private employer from prohibiting a customer, employee, or invitee from possessing any legally owned firearm that is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot;
- prohibits a public or private employer from violating the privacy rights of a customer, employee, or invitee by verbal or written inquiry regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or by the search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle;
- prohibits actions by a public or private employer against a customer, employee, or invitee based upon verbal or written statements concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes;
- provides conditions under which a search of a private motor vehicle in the parking lot of a public or private employer may be conducted;
- prohibits a public or private employer from conditioning employment upon specified licensure status or upon a specified agreement;
- prohibits a public or private employer from attempting to prevent or prohibiting any customer, employee, or invitee from entering the parking lot of the employer's place of business because the customer's, employee's, or invitee's private motor vehicle contains a legal firearm;
- prohibits public or private employers from terminating the employment of or otherwise discriminating against an employee, or expelling a customer or invitee, for exercising his or her constitutional right to keep and bear arms or for exercising the right of self defense;
- provides a condition to the prohibition;
- provides that such prohibitions apply to all public-sector employers;
- provides that, when subject to the prohibitions imposed by the Act, a public or private employer has no duty of care related to the actions prohibited thereunder;
- provides specified immunity from liability for public and private employers;
- provides nonapplicability of such immunity;
- provides for the award of reasonable personal costs and losses;
- provides for the award of court costs and attorney's fees;
- provides exceptions to the prohibitions under the Act; and
- provides applicability.

Submitted as:

Florida

Chapter 2008-7

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Preserve the Right to Keep
2 and Bear Arms in Motor Vehicles.”
3

4 Section 2. [*Legislative Intent.*] This Act is intended to codify the long-standing legislative
5 policy of the state that individual citizens have a constitutional right to keep and bear arms, that
6 they have a constitutional right to possess and keep legally owned firearms within their motor
7 vehicles for self-defense and other lawful purposes, and that these rights are not abrogated by
8 virtue of a citizen becoming a customer, employee, or invitee of a business entity. It is the
9 finding of the [Legislature] that a citizen’s lawful possession, transportation, and secure keeping
10 of firearms and ammunition within his or her motor vehicle is essential to the exercise of the
11 fundamental constitutional right to keep and bear arms and the constitutional right of self-
12 defense. The [Legislature] finds that protecting and preserving these rights is essential to the
13 exercise of freedom and individual responsibility. The [Legislature] further finds that no citizen
14 can or should be required to waive or abrogate his or her right to possess and securely keep
15 firearms and ammunition locked within his or her motor vehicle by virtue of becoming a
16 customer, employee, or invitee of any employer or business establishment within the state, unless
17 specifically required by state or federal law.
18

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

20 (1) “Employee” means any person who possesses a valid license issued pursuant to
21 [insert citation] and:

22 (a) Works for salary, wages, or other remuneration;

23 (b) Is an independent contractor; or

24 (c) Is a volunteer, intern, or other similar individual for an employer.

25 (2) “Employer” means any business that is a sole proprietorship, partnership, corporation,
26 limited liability company, professional association, cooperative, joint venture, trust, firm,
27 institution, or association, or public-sector entity, that has employees.

28 (3) “Firearm” includes ammunition and accoutrements attendant to the lawful possession
29 and use of a firearm.

30 (4) “Invitee” means any business invitee, including a customer or visitor, who is lawfully
31 on the premises of a public or private employer.

32 (5) “Motor vehicle” means any automobile, truck, minivan, sports utility vehicle, motor
33 home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads
34 of this state and required to be registered under state law.

35 (6) “Parking lot” means any property that is used for parking motor vehicles and is
36 available to customers, employees, or invitees for temporary or long-term parking or storage of
37 motor vehicles.
38

39 Section 4. [*Prohibited Acts.*] No public or private employer may violate the constitutional
40 rights of any customer, employee, or invitee as provided in paragraphs (1) through (5) of this
41 section:

42 (1) No public or private employer may prohibit any customer, employee, or invitee from
43 possessing any legally owned firearm when such firearm is lawfully possessed and locked inside
44 or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee
45 is lawfully in such area.

46 (2) No public or private employer may violate the privacy rights of a customer,
47 employee, or invitee by verbal or written inquiry regarding the presence of a firearm inside or
48 locked to a private motor vehicle in a parking lot or by an actual search of a private motor

49 vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. Further, no
50 public or private employer may take any action against a customer, employee, or invitee based
51 upon verbal or written statements of any party concerning possession of a firearm stored inside a
52 private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in
53 the parking lot of a public or private employer to ascertain the presence of a firearm within the
54 vehicle may only be conducted by on-duty law enforcement personnel, based upon due process
55 and must comply with constitutional protections.

56 (3) No public or private employer shall condition employment upon either:

57 (a) The fact that an employee or prospective employee holds or does not hold a
58 license issued pursuant to [insert citation]; or

59 (b) Any agreement by an employee or a prospective employee that prohibits an
60 employee from keeping a legal firearm locked inside or locked to a private motor vehicle in a
61 parking lot when such firearm is kept for lawful purposes.

62 (4) No public or private employer shall prohibit or attempt to prevent any customer,
63 employee, or invitee from entering the parking lot of the employer's place of business because
64 the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being
65 carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's
66 private motor vehicle.

67 (5) No public or private employer may terminate the employment of or otherwise
68 discriminate against an employee, or expel a customer or invitee for exercising his or her
69 constitutional right to keep and bear arms or for exercising the right of self-defense as long as a
70 firearm is never exhibited on company property for any reason other than lawful defensive
71 purposes. This subsection applies to all public-sector employers, including those already
72 prohibited from regulating firearms under the provisions of [insert citation].

73
74 Section 5. *[Duty of Care of Public and Private Employers; Immunity From Liability.]*

75 (A) When subject to the provisions of Section (4) of this Act, a public or private
76 employer has no duty of care related to the actions prohibited under such subsection.

77 (B) A public or private employer is not liable in a civil action based on actions or
78 inactions taken in compliance with this section. The immunity provided in this subsection does
79 not apply to civil actions based on actions or inactions of public or private employers that are
80 unrelated to compliance with this section.

81 (C) Nothing contained in this section shall be interpreted to expand any existing duty, or
82 create any additional duty, on the part of a public or private employer, property owner, or
83 property owner's agent.

84
85 Section 6. *[Enforcement.]* The [Attorney General] shall enforce the protections of this Act
86 on behalf of any customer, employee, or invitee aggrieved under this Act. If there is reasonable
87 cause to believe that the aggrieved person's rights under this Act have been violated by a public
88 or private employer, the [Attorney General] shall commence a civil or administrative action for
89 damages, injunctive relief and civil penalties, and such other relief as may be appropriate under
90 the provisions of [insert citation], or may negotiate a settlement with any employer on behalf of
91 any person aggrieved under the Act. However, nothing in this Act shall prohibit the right of a
92 person aggrieved under this Act to bring a civil action for violation of rights protected under the
93 Act. In any successful action brought by a customer, employee, or invitee aggrieved under this
94 Act, the court shall award all reasonable personal costs and losses suffered by the aggrieved
95 person as a result of the violation of rights under this Act. In any action brought pursuant to this
96 Act, the court shall award all court costs and attorney's fees to the prevailing party.

97
98 Section 7. [*Exceptions.*] The prohibitions in Section (4) of this Act do not apply to:
99 (1) Any school property as defined and regulated under [insert citation].
100 (2) Any correctional institution regulated under [insert citation].
101 (3) Any property where a nuclear-powered electricity generation facility is located.
102 (4) Property owned or leased by a public or private employer or the landlord of a public
103 or private employer upon which are conducted substantial activities involving national defense,
104 aerospace, or homeland security.
105 (5) Property owned or leased by a public or private employer or the landlord of a public
106 or private employer upon which the primary business conducted is the manufacture, use, storage,
107 or transportation of combustible or explosive materials regulated under state or federal law, or
108 property owned or leased by an employer who has obtained a permit required under 18 U.S.C. §
109 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on
110 such property.
111 (6) A motor vehicle owned, leased, or rented by a public or private employer or the
112 landlord of a public or private employer.
113 (7) Any other property owned or leased by a public or private employer or the landlord of
114 a public or private employer upon which possession of a firearm or other legal product by a
115 customer, employee, or invitee is prohibited pursuant to any federal law, contract with a federal
116 government entity, or general law of this state.
117
118 Section 8. [*Severability.*] [Insert severability clause.]
119
120 Section 9. [*Repealer.*] [Insert repealer clause.]
121
122 Section 10. [*Effective Date.*] [Insert effective date.]

Promise Zones

This draft bill combines two Michigan laws enacted in 2009. This legislation permits cities, townships, counties, school districts, or intermediate school districts in areas where the percentage of families with children living at or below the Federal poverty rate is higher than the state average to establish “Promise Zones” to provide financial assistance to postsecondary education to students who graduate from a public or nonpublic high school within that zone. The bill requires the governing bodies of such entities to apply to state department of treasury for approval to establish promise zones.

This bill permits that if the state department of treasury certifies the creation of a promise zone and development plan then the governing body would, by resolution, create a Promise Zone Authority. The Authority is under the control of an 11-member board appointed by the chief executive officer of the eligible entity, with the advice and consent of the governing body. Not more than five members can be government officials. Members serve without compensation but can be reimbursed for actual and necessary expenses. The chair is to be elected by the board.

A Promise Zone Authority Board can:

- prepare an analysis of the postsecondary educational opportunities for the residents of the zone;
- study and analyze the need for financial resources to provide postsecondary educational opportunities for residents of the zone;
- acquire, by purchase or lease, land and other property;
- collect fees, rents, and charges for the use of any facility or property under its control;
- lease, in whole or in part, any facility, building, or property under its control, and
- solicit and accept grants and donations of money, property, labor, or other things of value from a public or private source.

Submitted as:

Michigan

Act 549 of 2008 and Act 550 of 2008

Status: Both bills were signed into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title.*] This Act shall be cited as the “Promise Zone Act.”
- 2
- 3 Section 2. [*Definitions.*] As used in this Act:
- 4 (1) “Authority” means a promise zone authority created under this Act.
- 5 (2) “Board” means the governing body of an authority.
- 6 (3) “Eligible entity” means a city, township, county, local school district, or intermediate
- 7 school district, in which the percentage of families with children under age [18] that are living at
- 8 or below the federal poverty level is greater than or equal to the state average of families with
- 9 children under age [18] living at or below the federal poverty level, as determined by the
- 10 [department of treasury].

(4) “Federal poverty level” means the poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, 42 USC 9902.

(5) “Governing body” means the elected body of an eligible entity having legislative powers.

(6) “Nonpublic high school” means a high school operated by a nonpublic school that includes grades [9 to 12 or 10 to 12] and that awards a high school diploma. Nonpublic high school also includes a General Education Development test.

(7) “Nonpublic school” means that term as defined in [insert citation].

(8) “Promise of financial assistance” means a commitment by an eligible entity to provide financial resources for public or private postsecondary education to eligible students living in a promise zone and who have graduated from a public high school or nonpublic high school located within that promise zone.

(9) “Promise zone” means that area created by a governing body under this Act.

(10) “Promise zone development plan” means that plan developed by an authority under this Act that will ensure that the financial resources are available to adequately fund the promise of financial assistance.

(11) “Public high school” means a public school that includes grades [9 to 12 or 10 to 12] and that awards a high school diploma.

(12) “Public school” means that term as defined in [insert citation].

(13) “School district” means that term as defined in [insert citation].

(14) “State education tax” means the tax levied under [insert citation].

Section 3. [*Establishing Promise Zones.*]

(A) If a governing body determines that it is necessary for the best interests of the public to promote access to postsecondary education, the governing body may, by resolution, declare its intention to establish a promise zone.

(B) The governing body shall set a date for a public hearing on the adoption of a proposed resolution establishing the promise zone. Notice of the public hearing shall be published [twice] in a newspaper of general circulation in the eligible entity, not less than [20 or more than 40] days before the date of the hearing. Notice of the hearing shall be posted in at least [20] conspicuous and public places in the eligible entity not less than [20] days before the hearing. The notice shall state the date, time, and place of the hearing and shall describe the proposed promise zone, the details of the promise of financial assistance, and the criteria for eligibility to receive that financial assistance.

(C) Not less than [30] days after the public hearing, if the governing body of the eligible entity intends to proceed with the establishment of the promise zone, it shall submit an application to the [department of treasury] seeking approval to establish a promise zone.

(D) The [department of treasury] shall review the application submitted under subsection (C) and shall certify that the governing body of the eligible entity is eligible to establish a promise zone under this Act. The [department of treasury] shall review the applications submitted under subsection (C) on a first-come first-served basis and shall not certify more than [10] governing bodies of eligible entities as eligible to establish a promise zone under this Act.

(E) If the [department of treasury] certifies that the governing body of the eligible entity is eligible to create a promise zone, the governing body shall, by resolution, establish a promise zone.

58 (F) Not more than [90] days after the governing body approves a resolution to establish a
59 promise zone, a local school district may by resolution elect not to participate in the
60 establishment of a promise zone by the governing body of the eligible entity in which the local
61 school district is located. The resolution shall include a provision that the local school district
62 will establish a separate promise zone under this Act. If the local school district does not
63 establish a promise zone within a reasonable period of time, the [department of treasury] may
64 include that local school district in the promise zone established by the eligible entity in which
65 the local school district is located.

66 (G) A city, township, county, local school district, or intermediate school district that is
67 not an eligible entity may create a promise zone under this Act, but shall not capture revenue
68 from the [state education tax] under [insert citation]. The governing body of a city, township,
69 county, local school district, or intermediate school district that is not an eligible entity shall not
70 be considered under this section in determining the number of governing bodies of eligible
71 entities eligible to establish a promise zone under this Act.

72 (H) This section shall not prevent an eligible entity located within a city, township,
73 county, local school district, or intermediate school district that is not an eligible entity from
74 creating a promise zone under this Act and capturing revenue from the [state education tax]
75 under [insert citation].

76 (I) The establishment of a promise zone does not create a cause of action in law or in
77 equity against this state or an eligible entity.

78
79 Section 4. [*Promise Zone Authorities and Governing Boards.*]

80 (A) If the [department of treasury] certifies the eligibility of a governing body to establish
81 a promise zone and the governing body, by resolution, establishes a promise zone, the governing
82 body shall, by resolution, create a promise zone authority.

83 (B) An authority is a public body corporate that may sue and be sued in any court of this
84 state. An authority possesses all the powers necessary to carry out its purpose. The enumeration
85 of a power in this Act shall not be construed as a limitation upon the general powers of an
86 authority.

87 (C) An authority shall be under the supervision and control of a board consisting of [11]
88 members. [Nine members shall be appointed by the chief executive officer of the eligible entity
89 with the advice and consent of the governing body. One member shall be appointed by the senate
90 majority leader. One member shall be appointed by the speaker of the house of representatives.
91 Not more than 3 members shall be government officials. One member shall be a representative of
92 the public school community]. Of the members first appointed, an equal number of the members,
93 as near as is practicable, shall be appointed for 1 year, 2 years, 3 years, and 4 years. A member
94 shall hold office until the member's successor is appointed. After the initial appointment, each
95 member shall serve for a term of [4] years. An appointment to fill a vacancy shall be made by the
96 chief executive officer of the eligible entity for the unexpired term only. Members of the board
97 shall serve without compensation, but may be reimbursed for actual and necessary expenses. The
98 chairperson of the board shall be elected by the board. As used in this subsection, for a local
99 school district or an intermediate school district, "chief executive officer" means the
100 superintendent of the local school district or intermediate school district.

101 (D) Before assuming the duties of office, a member shall qualify by taking and
102 subscribing to the constitutional oath of office.

103 (E) The proceedings and rules of the board are subject to [insert citation].

(F) The board shall adopt rules governing its procedure and the holding of regular meetings, subject to the approval of the governing body. Special meetings may be held if called in the manner provided in the rules of the board.

(G) After having been given notice and an opportunity to be heard, a member of the board may be removed for cause by the governing body.

(H) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to [insert citation].

(I) The board may employ and fix the compensation of a director. The director shall serve at the pleasure of the board. A member of the board is not eligible to hold the position of director. Before beginning his or her duties, the director shall take and subscribe to the constitutional oath and furnish bond by posting a bond in the sum determined in the resolution establishing the authority payable to the authority for use and benefit of the authority, approved by the board, and filed with the clerk of the eligible entity. The premium on the bond shall be considered an operating expense of the authority, payable from funds available to the authority for expenses of operation. The director shall be the chief executive officer of the authority.

(J) Subject to the approval of the board, the director shall supervise and be responsible for implementing the promise zone development plan and the performance of the functions of the authority in the manner authorized by this Act. The director shall attend the meetings of the board and shall provide to the board, the governing body, and the chief executive officer of the eligible entity a regular report covering the activities and financial condition of the authority. If the director is absent or disabled, the board may designate a qualified person as acting director to perform the duties of the office. Before beginning his or her duties, the acting director shall take and subscribe to the oath, and furnish bond, as required of the director. The director shall furnish the board with information or reports governing the operation of the authority as the board requires.

(K) The director of the authority shall submit a budget to the board for the operation of the authority for each fiscal year before the beginning of the fiscal year. The budget shall be prepared in the manner and contain the information required of municipal departments. After review by the board, the budget shall be submitted to the governing body. The governing body must approve the budget before the board may adopt the budget. Unless authorized by the governing body, funds of the eligible entity shall not be included in the budget of the authority.

(L) The board may employ and fix the compensation of a treasurer, who shall keep the financial records of the authority and who, together with the director, shall approve all vouchers for the expenditure of funds of the authority. The treasurer shall perform all duties delegated to him or her by the board and shall furnish a bond in an amount prescribed by the board.

(M) The board may employ and fix the compensation of a secretary, who shall maintain custody of the official seal and of records, books, documents, or other papers not required to be maintained by the treasurer. The secretary shall attend meetings of the board and keep a record of its proceedings and shall perform other duties delegated by the board.

(N) The board may retain legal counsel to advise the board in the proper performance of its duties.

(O) The board may employ other personnel considered necessary by the board.

(P) Money received by the authority shall immediately be deposited to the credit of the authority, subject to disbursement under this Act.

(Q) The authority shall not expend more than [15%] of the proposed annual budget for administrative costs.

(R) The board may do any of the following:

(1) Prepare an analysis of the postsecondary educational opportunities for the residents of the promise zone.

(2) Study and analyze the need for financial resources to provide postsecondary educational opportunities for residents of the promise zone.

(3) Acquire by purchase or otherwise, on terms and conditions and in a manner the authority considers proper, or own, convey, or otherwise dispose of, or lease as lessor or lessee, land and other property, real or personal, or rights or interests in the property, that the authority determines is reasonably necessary to achieve the purposes of this Act, and grant or acquire licenses, easements, and options.

(4) Fix, charge, and collect fees, rents, and charges for the use of any facility, building, or property under its control or any part of the facility, building, or property.

(5) Lease, in whole or in part, any facility, building, or property under its control.

(6) Solicit and accept grants and donations of money, property, labor, or other things of value from a public or private source.

165

Section 5. [*Promise Zone Development Plans.*]

(A) A promise zone authority created under section 4 of this Act shall prepare a promise zone development plan.

(B) The promise zone development plan shall include, but is not limited to, all of the following:

(1) A complete description of the proposed promise of financial assistance. The proposed promise of financial assistance shall include, but is not limited to, a promise of financial assistance to all students residing within the promise zone and who graduate from a public high school or nonpublic high school located within that promise zone. The proposed promise of financial assistance shall, at a minimum, provide funding sufficient to provide an eligible student the tuition necessary to obtain an associate degree or its equivalent at a community or junior college in this state or combination of community or junior colleges in this state and, at most, provide funding sufficient to provide an eligible student the tuition necessary to obtain a bachelor's degree or its equivalent at a public postsecondary institution in this state or combination of public postsecondary institutions in this state, subject to any limitations authorized under this section. The proposed promise of financial assistance may also, at most, provide funding for an eligible student to attend a private college in this state in an amount not to exceed the average tuition necessary to obtain a bachelor's degree at all public universities in this state. The proposed promise of financial assistance may also authorize the expenditure of funds for educational improvement activities designed to increase readiness for postsecondary education at public schools located in the promise zone.

(2) A complete description of any limitation on the promise of financial assistance; if the promise of financial assistance will be prorated based on the number of years the student has resided within the promise zone; if the promise of financial assistance will be restricted to students who have resided within or attended a public high school or nonpublic high school within the promise zone for a minimum number of years; if the promise of financial assistance is predicated on the student maintaining a minimum college grade point average and carrying a minimum college credit hour classload; or if the promise of financial assistance is restricted to attendance at [1 or more] public or private postsecondary institutions in this state.

(3) A requirement that graduates of a public high school or nonpublic high school exhaust all other known and available restricted grants for tuition and fees for postsecondary education provided by a federal, state, or local governmental entity, as determined by the board.

(4) How the funds necessary to accomplish the promise of financial assistance will be raised. Any amount received under [insert citation] shall not be included as a method of raising the necessary funds. The promise zone development plan shall be financed from [1 or more] of the following sources:

- (a) Donations.
- (b) Revenues.
- (c) Money obtained from other sources approved by the governing body or otherwise authorized by law.

(5) An actuarial model of how much the proposed plan is estimated to cost, based on actuarial formulas developed by the [department of treasury].

(C) The proposed promise of financial assistance under subsection (B) shall not include funding for attendance at a public or private postsecondary institution not located in this state.

(D) The board shall submit the promise zone development plan to the [department of treasury] promptly after its adoption. The promise zone development plan shall be published on the website of the eligible entity that established the promise zone.

(E) The [department of treasury] shall review the promise zone development plan submitted under subsection (D). Not more than [60] days after receipt of a promise zone development plan submitted under subsection (D), the [department of treasury] shall either approve the promise zone development plan or provide a written notice of deficiencies. If the [department of treasury] does not approve a promise zone development plan submitted under subsection (D) or provide a written notice of deficiencies within [60] days, the promise zone development plan shall be considered approved. If a promise zone development plan is approved, the [department of treasury] shall certify that the promise zone development plan meets all requirements under this Act and is sustainable.

(F) The [department of treasury] shall review any proposed amendments to a promise zone development plan. Not more than [60] days after receipt of proposed amendments to a promise zone development plan, the [department of treasury] shall either approve the proposed amendments or provide a written notice of deficiencies. If the [department of treasury] does not approve proposed amendments or provide a written notice of deficiencies within [60] days, the proposed amendments shall be considered approved. If proposed amendments are approved, the [department of treasury] shall certify that the amendments meet all requirements under this Act.

(G) The establishment of a promise zone development plan does not create a cause of action in law or in equity against this state, an eligible entity, or a promise zone authority, if the proposed promise of financial assistance set forth in the promise zone development plan is not paid to an eligible student.

Section 6. *[Using Proceeds from the State Education Tax to Pay Tuition in Accordance with this Promise Zones Act.]*

(A) The authority shall determine the base year for calculating the amount of incremental growth for the capture of the [state education tax] as provided in this section. The base year is the amount of revenue received from the collection of the [state education tax] in the promise zone in the year immediately preceding the year in which an authority makes its initial tuition payment in accordance with the promise of financial assistance or the amount of revenue received from the collection of the state education tax in the promise zone in [any 1 of the 3 immediately succeeding years, whichever is less].

(B) If the authority continues to make annual payments in accordance with the promise of financial assistance, in the year immediately succeeding the base year determined in subsection (A) and each year thereafter, this state shall capture [1/2 of the increase] in revenue, if any, from

the collection of the [state education tax]. This state shall not capture any revenue from the collection of the [state education tax] under this Act if that revenue is subject to capture under any other law of this state. Proceeds from the capture of the [state education tax] under this section shall be deposited in the [state treasury] and credited to a restricted fund to be used solely for the purposes of this Act.

(C) If the authority continues to make annual tuition payments in accordance with the promise of financial assistance, [2] years after the authority's initial payment of financial assistance and each year thereafter, this state shall pay to the authority the [state education tax] captured under subsection (B). If the boundaries of [2] or more promise zones created under this Act overlap, payments under this section shall only be made to the first authority eligible for payment under this subsection.

(D) If at any time the authority does not make annual tuition payments in accordance with the promise for financial assistance, any amount captured from that promise zone in the restricted fund created under subsection (B) shall be paid into the [school aid fund] established under [insert citation].

(E) For purposes of this section, payments under this section shall not be included in determining payments for financial assistance in the immediately preceding year.

Section 7. [*Overseeing Promise Zone Authority Operations.*]

(A) The [department of treasury] shall oversee the operations of any promise zone authority or board created under this Act. If the [department of treasury] determines that the actions of a promise zone authority or board are not in accordance with the promise zone development plan, the [department of treasury] may assume operational control of that promise zone authority or board.

(B) An authority that has completed the purposes for which it was organized shall be dissolved by resolution of the governing body. The property and assets of the authority remaining after the satisfaction of the obligations of the authority belong to the eligible entity.

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

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

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

Promoting Energy Efficiency Statement

Kentucky legislative staff report that over the past few years, the Kentucky General Assembly has made great strides in formulating and enacting a comprehensive energy policy for Kentucky that focuses on reducing dependence on foreign oil by encouraging the development of alternative energy resources, and by encouraging energy conservation through the implementation of strategies focused on reducing energy demand. The policy has been formulated through the enactment of three separate pieces of legislation by the Kentucky General Assembly.

2006 House Bill 299 (hereafter “HB 299”) provided the initial impetus for the development of a comprehensive energy policy by requiring the Governor’s Office of Energy Policy (GOEP) to develop and implement a strategy to promote the production of transportation fuels and synthetic natural gas from fossil energy resources and biomass resources. HB 299 also encouraged energy efficiency measures in state construction projects. HB 299 prompted the establishment of the Commonwealth’s Energy Policy Task Force, and the publication of the state’s first comprehensive energy strategy, “Kentucky’s Energy - Opportunities for Our Future - A Comprehensive Energy Strategy” in February of 2005. A status report and update was published in 2007.

2006 HB 299 was followed in the summer of 2007 by 2007 SS 2 House Bill 1 (hereafter “HB 1”), enacted during a special legislative session. HB 1 included several policy initiatives focusing on encouraging the production of alternative transportation fuels, encouraging the development of alternative uses for coal, and encouraging energy efficiency in state government. HB 1 also included small incentives for demand side improvements made in manufacturing plants. At the time HB 1 was enacted, it was acknowledged by the Kentucky Legislature that Kentucky still needed to focus on the demand side of the energy equation by encouraging the use of renewable energy resources, and energy conservation if Kentucky was to have a comprehensive energy policy. Kentucky HB 1 is summarized in the 2008 *SSL Energy Supplement*.

To address the demand side issues identified but not addressed in 2007, the Kentucky General Assembly enacted 2008 HB 2 (hereafter “HB 2”) during the 2008 regular session of the General Assembly. The provisions of HB 2 focus primarily on providing incentives to encourage the development of renewable energy resources, to encourage the construction of energy efficient buildings, to encourage the purchase and installation of energy efficient insulation, doors, windows and heating and air conditioning units, and to encourage the use of solar and wind power. In addition, HB 2 established a program to help finance public sector and private sector green building initiatives to reduce energy consumption. The SSL Committee voted to include information about HB 2 in this 2010 *SSL Volume*.

Incentives provided as part of Kentucky’s energy policy can be summarized as follows:

Supply Side Incentives

Alternative and Renewable Facility Development

Tax incentives are available to encourage the development of the following alternative energy facilities (all incentives in this category were enacted as part of HB 1 unless otherwise noted):

Qualifying Facilities:

Alternative Fuel Facilities - Any facility that produces alternative transportation fuels. Alternative transportation fuels are defined as transportation fuels produced by processes that convert coal, waste coal, or biomass resources or extract oil from oil shale to produce fuel for powering vehicles, aircraft and machinery.

Minimum Required Investment

- Coal as the primary feedstock - \$100 million
- Biomass resources as the primary feedstock \$25 million.

Gasification Facilities - Any facility that converts carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen, and that produces alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks or liquid fuels.

Minimum Required Investment

- Coal as the primary feedstock - \$100 million
- Biomass resources as the primary feedstock \$25 million

Renewable Energy Facilities - Any facility that utilizes wind power, biomass resources, landfill methane gas, hydropower or other similar renewable resources to generate electricity in excess of 1 megawatt for sale to unrelated entities, or any facility that uses solar power to generate electricity in excess of 50 kilowatts for sale to unrelated entities.

Minimum Required Investment - \$1 million

Incentives Available:

Maximum Recovery - 50% of the capital investment.

Maximum Length For Recovery - 25 years.

Possible Incentives - Incentives are negotiated - the amounts set forth below are the maximum amounts available:

- Up to 100% of the taxes paid on purchases of property used to construct, upgrade or retrofit a facility;
 - Up to 80% of the severance taxes paid on the purchase or severance of coal subject to the severance tax in Kentucky that is used as feedstock for an eligible project;
 - Up to 100% of the Kentucky income tax and limited liability entity tax related to tax liabilities arising out of the project;
 - A wage assessment of up to 4% of the gross wages of each employee employed at the facility (the company basically withholds the amount from the employee's pay and the employee gets credit on his or her income tax return as if he or she had paid Kentucky income taxes in the amount withheld); and
 - To allow for some incentives up front, qualified companies can receive a portion of the incentives during the construction period based on the estimated labor component of the total capital investment and the utilization of Kentucky residents during the construction phase.
- Funding - Bond authorization in the amount of \$100 million was provided to support the up-front incentives available under this program.

Biodiesel and Ethanol Production Incentives

Biodiesel Incentives - A credit against the income tax and the limited liability entity tax is available for producers and blenders of biodiesel in the amount of \$1 per gallon produced or \$1

per gallon of biodiesel used in the blending process. The credit for biodiesel existed previously, however HB 1 expanded the exemption to include the production or blending of renewable diesel, and the cap amount was increased beginning January 1, 2008 from \$1.5 million to \$5 million per year, and beginning January 1, 2009, to \$10 million per year.

Cellulosic Ethanol Production Incentive - A credit against the income tax and the limited liability entity tax is available for producers of ethanol and cellulosic ethanol. The credit cap for cellulosic ethanol was established at \$5 million, and the ethanol credit cap was established at \$5 million, with the ability to shift the caps between the two types of ethanol.

Demand Side Incentives

Manufacturing Incentives - HB 1 provided sales tax incentives for the purchase of machinery or equipment that reduces energy consumption in an entire manufacturing process by at least 15%.

Residential and Commercial Incentives

(The credits in this section were all enacted as part of HB 2 unless otherwise noted)

Residential Credits

- Effective dates - January 1, 2009 - December 31, 2016
- Credit amounts: 30% of the installed cost of upgraded insulation (up to \$100), energy efficient windows and storm doors (up to \$250), and qualified energy property (up to \$250), with an overall cap of \$500 per taxpayer.

Commercial Credits

- Effective dates - January 1, 2009 - December 31, 2016
- Credit amounts: 30% of the installed cost of energy efficient interior lighting systems (not to exceed \$500), or energy efficient heating, cooling, ventilation or hot water systems (not to exceed \$1,000).

Residential and Commercial Credits – Solar and Wind

- Effective dates - January 1, 2009 - December 31, 2016
- Credit amounts: 30% of the installed cost of an active or passive solar space heating system, a combined active solar space-heating and water-heating system a solar water heating system, a wind turbine or wind machine, or \$3 per watt direct current of rated capacity of a solar photovoltaic system. The maximum credit is \$500 if installed on an owner occupied dwelling unit or a single family rental unit, or \$1,000 for a multifamily residential unit or commercial building.

Credits for Home Builders and Sellers of Manufactured Homes - The credit is available for builders who build a new ENERGY STAR home or sellers of new manufactured ENERGY STAR homes.

- Effective dates - January 1, 2009 - December 31, 2016
- Credit amounts: The credit is \$800 for home builders, and \$400 for sellers of manufactured homes.
- ENERGY STAR homes in Kentucky - As of February 27, 2008, there were 1,550 ENERGY STAR homes in Kentucky (GOEP website, accessed 6/2/08).

NOTES FOR ALL CREDITS - The credits available may be taken only once by one individual or entity, even if more than one individual or entity qualifies under the terms of the credit (for example the builder and the purchaser). Credits for a purchase may be taken under only one incentive even if the purchase qualifies for more than one credit.

Public/Governmental Initiatives

Use of LEED or Green Globes rating systems and ENERGY STAR products

- HB 1 includes language encouraging the Finance and Administration Cabinet to utilize the LEED or Green Globes rating systems to promote the design, construction and operation of energy efficient buildings, and to incorporate ENERGY STAR qualified products in state agency procurements.

Development of ENERGY STAR and LEED Certified Buildings in Kentucky

- According to the GOEP Website, as of January 30, 2008 there were 22 ENERGY STAR labeled buildings in Kentucky, and 12 of those buildings are K-12 public schools.
- The GOEP website lists 10 buildings in Kentucky as LEED certified, with one listed as platinum (the Bernheim Visitor's Center), 7 listed as silver, and 2 listed as certified. (site accessed on 6/2/08). LEED certification is determined on a point system. Projects earn points for meeting specifically identified criteria during the design, construction and implementation phases. The highest certification is the platinum certification, and the lowest is "LEED certified."

Establishment of High Performance Building Standards

HB 2:

- Establishes the High Performance Buildings Advisory Committee consisting of 15 members to assist in recommending standards high performance building standards, reviewing projects and conducting professional development.
- Requires the establishment of high performance building standards by the Finance and Administration Cabinet
- Beginning July 1, 2009, requires all construction or renovation of public buildings (includes those managed by the Finance and Administration Cabinet and public universities) for which 50% or more of the total capital cost is paid by the Commonwealth be designed and constructed or renovated to meet the high performance building standards.
- Requires all leased buildings to meet high performance building standards after July 1, 2018, and establishes a preference for buildings meeting the standards prior to that date.

NOTE: Kentucky law, prior to the passage of HB 1 and HB 2 included an energy efficiency program for state government buildings, including the use of guaranteed energy savings performance contracts. The law also requires the Finance and Administration Cabinet and GOEP to institute an energy audit training program within state government, and requires persons submitting bids or plans for state-owned buildings to be constructed or renovated on or after July 15, 1996 to include a life cycle energy cost analysis.

Public Energy Usage - HB 1 requires all agencies responsible for managing state-owned property to review utility usage and to cooperate with the Finance and Administration Cabinet to determine which properties are good candidates for guaranteed energy savings performance contracts. A guaranteed energy savings performance contract is a contract for evaluating and

recommending energy conservation measures and for implementing one or more of the identified measures. Basically Energy Service Companies guarantee that savings realized from energy conservation measures will pay for the energy improvements.

State Vehicle Fleet - HB 1 requires the Finance and Administration Cabinet to develop a strategy to replace at least 50% of the state owned passenger and light duty trucks with more efficient vehicles and to increase the use of ethanol, biodiesel and other alternative transportation fuels if possible. Requires annual reports beginning December 1, 2007 and each year thereafter.

The Kentucky River Authority and Hydroelectric Power - The Kentucky River Authority is encouraged to promote private investment in the installation of hydroelectric generating units on all existing Kentucky River dams under the jurisdiction of the authority.

Mandated Enrollment of Schools in the Kentucky Energy Efficiency Program - HB 2 requires all school districts, on or before January 1, 2010, to enroll in the Kentucky Energy Efficiency Program offered by the Kentucky Pollution Prevention Center at the University of Louisville.

The Bluegrass Turns Green Demand Side Energy Program for Public Buildings - See discussion under “public and private funding opportunities”.

Establishment of the Center for Renewable Energy and Environmental Stewardship - HB 1 required recommendations regarding the establishment of a center for renewable energy and environmental stewardship, and HB 2 established the center attached to the GOEP. Services and support for the center are to be provided by the GOEP staff until the center is operational on its own. A 13 member board of directors is established to provide policy direction, establish a strategic research agenda and operating policies, and to provide financial and operational oversight for the center. NOTE: No separate funding was provided to support the center.

Public and Private Funding Opportunities

Seed Funding to support research and development and commercialization initiatives in alternative fuels and renewable energy (2007 SS2 HB 1).

Establishment of the “Kentucky Alternative Fuel and Renewable Energy Fund” and Program - The purpose of this fund and program is to provide seed money to support research, development and commercialization in the areas of alternative fuel and renewable energy.

- Administration of the Program - The Cabinet for Economic Development has an agreement with the Kentucky Science and Technology Corporation (KSTC) to administer the program. The program was modeled after an existing program administered by the KSTC that encourages collaboration between business and Kentucky academic institutions to engage in research and development and to foster commercialization of new ideas and processes.

- Program Details - The program is competitive and operates based on an application process. Matching funds are required for the grant program on a one-to-one basis, and the KSTC often takes an equity position in companies that receive funding.

- Funding - Bond funds in an amount up to \$5 million is provided to support this program.

Funding to support energy efficient renovations and upgrades - Establishment of the “Bluegrass Turn Green” program (2008 HB 2)

- Focus of the Program - The program is focused on encouraging implementation of demand side management in public and private buildings.
- Public Sector - Public sector program funds must be used to provide grants to the public sector for engineered demand side management projects within public buildings. Eligible projects require an investment of between \$5,000 and \$1,500,000, and require a simple payback period of 5 years if prior to July 1, 2013, and if after, can have a payback period of up to 12 years.
- Private Sector - The private sector program fund must be used to provide low interest loans (prime minus one percent) to the private sector for engineered demand side management projects in private sector buildings. Engineered demand side management projects are projects undertaken to reduce the amount of energy consumed in an existing structure. Investment levels and payback periods are the same as in the public sector program.
- Funding: The program is funded with \$50 million in bond proceeds to support public demand side management projects, and with \$30 million in bond funds to support the private sector loan fund for demand side management projects.
- Reporting - Reports are required beginning November 1, 2009 and each November thereafter.

Research, Exploration and Studies Required

PSC Study on Demand Side Initiatives and Energy Portfolio Standards (HB 1) - The PSC is directed, by July 1, 2008, to make recommendations to the Legislative Research Commission regarding the following issues:

- Eliminating impediments to the consideration and adoption by utilities of cost-effective demand-management strategies for addressing future demand prior to Commission consideration of any proposal for increasing generating capacity;
- Encouraging diversification of utility energy portfolios through the use of renewables, and distributed generation;
- Incorporating full-cost accounting that considers and requires comparison of life-cycle energy, economic, public health, and environmental costs of various strategies for meeting future energy demand; and
- Modifying rate structures and cost recovery to better align the financial interests of the utility with the goals of achieving energy efficiency and lowest life-cycle energy costs to all classes of ratepayers.

LRC Study Relating to Energy Efficient Buildings and Construction Practices (HB 1)

- The LRC is directed to review current building practices that promote energy efficiency and the current structure of tax incentives relative to energy efficiency in construction and building operating systems.
- The study is to be completed by November 1, 2008 and a written report presented to the Interim Joint Committee on Appropriations and Revenue and the Special Subcommittee on Energy by December 1, 2008.

Carbon Management Report (HB1)

- The GOEP, Center for Applied Energy Research (CAER), the Geological Survey and the PSC were directed to produce a report and recommendations to the Legislative Research Commission on or before November 20, 2007.
- Status - The report was produced as directed
- Significant Recommendations
 - Provide incentives or grants to encourage public/private partnerships to site large scale carbon capture technology.
 - Encourage, through additional funding, the further development of large scale carbon dioxide storage demonstration projects.
 - Develop mechanisms whereby the Commonwealth can provide some liability protection for demonstration projects for carbon capture and storage.
 - Fund public outreach and education programs to help the public understand more about carbon capture and storage.
 - Provide the PSC with the tools necessary to encourage utilities to adopt and implement new technologies to reduce or capture carbon dioxide.
 - Amend economic development incentives to help energy-intensive industries make modifications to remain viable in a higher rate environment.
 - Establish an informal Carbon Dioxide Working Group.
 - Encourage the federal congressional delegation to increase funding and to work for reasonable regulations on carbon emissions.

Geological Survey Carbon Sequestration and Enhanced Oil and Gas Recovery Research and Funding - Funding was provided in HB 1 in the amount of \$5 million for the Kentucky Geological Survey to conduct research, either itself or in collaboration or under contract with other entities, to quantify the potential for enhanced oil and gas recovery, enhanced and coal bed methane recovery using carbon dioxide, and permanent storage or sequestration of carbon dioxide. The statute requires the research to include the drilling of deep wells in both the Illinois and Appalachian coal fields. A status report was filed with regard to this research on December 1, 2007. The status report indicated that the agreement between GOEP and the Kentucky Geological Survey was effective on October 1, 2007.

Center for Applied Energy Research (CAER) Funding

- Initial Funding - Funding was provided in HB 1 for CAER in the amount of \$2 million to develop the fundamental knowledge, applied science, and engineering necessary to allow industry to rapidly incorporate alternative fuel production technologies into plant design and construction. CAER is encouraged to use the funds to match available federal and private funds. The General Assembly also expressed its intent to provide additional funding of at least \$2 million annually for CAER to continue this research.
- 2008-2010 Follow Up Funding - The General Assembly provided funding to CAER in the 2008-2010 budget in the amount of \$1 million in each year to support research and development activities directed toward the development and demonstration of technologies for carbon management. The authorizing language includes a provision that prevents the expenditure of the funds if they are not matched with federal or private funds.

Governor's Office of Energy Policy Report Relating to Renewable Energy HB 2 requires GOEP to issue a report and recommendations required from by November 30, 2008 addressing the following:

- Adoption of a renewable-energy and energy-efficiency portfolio standard for all suppliers of retail electric power requiring that a percentage of the retail electric sales be provided from renewable resources (solar, water, solar thermal, solar photovoltaics, wind power, hydropower, methane digesters and biomass resources) and from energy efficiency technologies, including:
 - Recommended target percentages of sales by suppliers of retail electric power from renewable resources, a timetable for compliance, and incremental requirements and percentages that will best achieve the goals of diversification of the energy supply and encouraging private investment in renewable energy and energy efficiency;
 - Recommended set-asides for different types of renewable-energy sources and the effect of the use of set-asides on accelerating the development of those energy sources; and
 - The percentage of the target that can be met through investment in energy-efficiency technologies, including environmentally beneficial cogeneration systems using renewable or nonrenewable fuels; and
- Funding mechanisms for financing incentives for energy efficiency and renewables, including evaluation of public or system benefit funds utilized by other states, the programs funded by such funds, the costs and benefits of such funding mechanisms to ratepayers and taxpayers, and the impact of those incentives in assisting in greater adoption of renewable-energy and energy-efficiency measures.
- The GOEP is required to actively solicit input and participation from electric utilities and suppliers of retail electric power, environmental and conservation groups, representatives of industrial, commercial, institutional, and residential consumers, the PSC and the Office of the Attorney General, in the scoping and development of the report. The GOEP is also required to list the individuals and entities who provided input and were participants in the process, and the nature of the input and participation.

Miscellaneous Educational and Employment Initiatives

Student Loan Forgiveness Program - 2007 SS 2 HB 1 established a student loan forgiveness program for individuals who receive a bachelor's degree or graduate degree from a Kentucky college or university who are employed in an energy-related field as engineers, engineering technologists, chemists, geologists, or hydrologists in Kentucky.

Energy Technology Career Track Program - 2007 SS 2 HB 1 requires the Kentucky Department of Education and the Department of Workforce Development to establish an energy technology career track program if funding is available. The amount of \$300,000 was appropriated FY 2007-08. The purpose of the program is to provide grants to school districts to develop and implement an energy technology engineering career track across middle and high schools within a district.

Other Efforts and Initiatives Relating to Energy In Kentucky

The Kentucky Pollution Prevention Center (KPPC) - Housed at the University of Louisville – serves as a source for technical information and assistance to improve environmental performance (<http://louisville.edu/kppc/>). Services and programs provided by KPPC include on-site pollution prevention and energy efficiency assessments, the Kentucky Energy Efficiency Program For Schools (KEEPS), and the Kentucky Rural Energy Consortium (see below).

The Kentucky Rural Energy Consortium (KREC) - The Kentucky Rural Energy Consortium has developed a plan, called the “25 x ‘25 Action Plan: Charting America’s Future.” The plan is a renewable energy initiative. The purpose of the plan is to use renewable energy and energy efficiency as a means to get at least 25 percent of the energy used in the state from improved technology and renewable resources by the year 2025.

Submitted as:

Kentucky

HB 2 (enrolled version)

Status: Enacted into law in 2008.

Pursuing and Controlling Child Predators Statement

NetChoice is “A coalition of trade associations, ecommerce businesses, and online consumers, all of whom share the goal of promoting convenience, choice and commerce on the Net.” (see <http://www.netchoice.org/about/>). NetChoice developed a model law in 2008 based upon compilation of sections from legislation that has been passed in Colorado, Georgia, Indiana, Louisiana, Missouri and Virginia to empower parents, educate children and catch and control sexual predators on the Internet. The model Act is designed to create a comprehensive approach for empowering parents, protecting children and pursuing and controlling child predators on the Internet.

The model Act:

- requires Internet access providers to make available to subscribers a product or service that controls a child’s use of the Internet. [see Georgia O.C.G.A. 39-5-2 (2008) and Louisiana law R.S. 51:1426 (2008).]
- requires teaching online safety in the classroom. [see Georgia O.C.G.A. 20-2-149 (2008), Indiana IC 20-30-5.5 (2006), Louisiana R.S. 17:280 (2008), and Virginia § 22.1-70.2 (2006).]
- increases post-conviction controls on convicted sex offenders. [see Georgia O.C.G.A. 42-8-35 (2008), Indiana IC 11-13-3-4 (2008), and Louisiana R.S. 15:561.5 (2008).]
- requires sex offenders to register their usernames used on interactive online forums. [see Georgia O.C.G.A. 39-5-3 (2008), Indiana IC 11-8-8-11(2008), and Louisiana R.S. 15:549 (2008).]
- requires online services to preserve and disclose customer information pursuant to law enforcement requests. [see Louisiana R.S. 15:545.1 (2008).]
- expands child porn reporting obligations. [see Georgia OCGA 39-5-4 (2008) and Louisiana R.S. 15:545.1 (2008).]
- criminalizes Internet sexual exploitation.[see Colorado 18-3-405.4 (2007).]
- criminalizes the luring of a child. [see Colorado 18-3-306 (2007).]
- criminalizes age misrepresentation with intent to solicit a child. [see Missouri Title 38, Section 566.153 (2008).]

Submitted as:

MODEL

NetChoice

Status: Interested parties should contact NetChoice to get an update about state actions on this model.

Registering Consent to an Adopted Child's Request for Identifying Information Statement

In 1984 New York established a state Adoption Information Registry within the state department of health to enable adopted children to get identifying information about their biological parents. New York Chapter 435 of 2008 enhances awareness of that Registry by directing that a biological parent be given an Adoption Information Registry Birth Parent Registration Consent form at the time they surrender their child for adoption. Parents may give their consent at the time of surrender, to the child's receiving identifying information upon such child's voluntary registration on or after turning 18 years old. The form advises parents that the decision regarding consent can be made at any time and that once consent is given, can be revoked. The parent is also advised that it is their responsibility to update the Registry. This is especially important because the health of an adopted child may depend on having information about hereditary illnesses and/or biological predispositions within their biological family which were unknown at the time they were surrendered for adoption.

Submitted as:

New York

Chapter 435 of 2008

Status: Enacted into law in 2008.

Residential Mortgage Loans: Foreclosure Procedures

This Act requires a mortgagee, trustee, beneficiary, or authorized agent to wait 30 days after contact is made with the borrower, or 30 days after satisfying due diligence requirements to contact the borrower, as specified, before filing a notice of default. The bill requires contact with the borrower to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The Act requires the mortgagee, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency.

This Act requires a notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this legislation, the bill instead requires the mortgagee, trustee, beneficiary, or authorized agent, as part of the notice of sale, to include a specified declaration regarding contact with the borrower. The bill authorizes a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property or the borrower has contracted with an organization, as specified. The Act also requires specified mailings to the resident of a property that is the subject of a notice of sale, as specified. The legislation makes it a crime to tear down the notice of sale posted on a property within 72 hours of posting.

This Act requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. The bill requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

This bill gives a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property.

Submitted as:

California

Chapter 69 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Foreclosing
2 Residential Mortgage Loans.”

3

4 Section 2. [*Restricting Filing Notices of Default.*]

(A) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to [insert citation] until [30] days after contact is made as required by paragraph (2) or [30] days after satisfying the due diligence requirements as described in subdivision (G).

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within [14] days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(B) A notice of default filed pursuant to [insert citation] shall include a declaration from the mortgagee, beneficiary, or authorized agent that it has contacted the borrower, tried with due diligence to contact the borrower as required by this section, or the borrower has surrendered the property to the mortgagee, trustee, beneficiary, or authorized agent.

(C) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to [insert citation], include a declaration that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.

(D) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(E) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(F) A borrower may designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (A). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.

(G) A notice of default may be filed pursuant to [insert citation] when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (A) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following:

(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (a) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least [three] times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(b) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is

answered, the call is connected to a live representative of the mortgagee, beneficiary, or authorized agent.

(c) A mortgagee, beneficiary, or authorized agent satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower's primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within [two weeks] after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested.

(4) The mortgagee, beneficiary, or authorized agent shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(a) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(b) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(c) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(d) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(H) Subdivisions (A), (C), and (G) shall not apply if any of the following occurs:

(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(3) The borrower has filed for bankruptcy, and the proceedings have not been finalized.

(I) This section shall apply only to loans made from [January 1, 2003, to December 31, 2007], inclusive, that are secured by residential real property and are for owner-occupied residences. For purposes of this subdivision, "owner-occupied" means that the residence is the principal residence of the borrower.

(J) This section shall remain in effect only until [January 1, 2013], and as of that date is repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or extends that date.

Section 3. *[Loan Modifications and Workout Plans.]*

(A) The [Legislature] finds and declares that any duty servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, not to any particular parties, and that a servicer acts in the best interests of all parties if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(B) It is the intent of the [Legislature] that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(C) This section shall remain in effect only until [January 1, 2013], and as of that date is repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or extends that date.

Section 4. *[Notices to Residents of Properties Subject to Foreclosure.]*

(A) Upon posting a notice of sale pursuant to [insert citation], a trustee or authorized agent shall also post the following notice, in the manner required for posting the notice of sale on the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent shall mail, at the same time in an envelope addressed to the “Resident of property subject to foreclosure sale” the following notice in English and the languages described in [insert citation]:

“Foreclosure process has begun on this property, which may affect your right to continue to live in this property. [Twenty days] or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a [60-day] eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.”

(B) It shall be an infraction to tear down the notice described in subdivision (A) within [72] hours of posting. Violators shall be subject to a fine of [one hundred dollars (\$100)].

(C) A state government entity shall make available translations of the notice described in subdivision (A) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.

(D) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

(E) This section shall remain in effect only until [January 1, 2013], and as of that date is repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or extends that date.

Section 5. *[Requiring Legal Owners to Maintain Vacant Residential Property Purchased at a Foreclosure Sale.]*

(A) (1) A legal owner shall maintain vacant residential property purchased by that owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. A governmental entity may impose a civil fine of up to [one thousand dollars (\$1,000)] per day for a violation. If the governmental entity chooses to impose a fine pursuant to this section, it shall give notice of the alleged violation, including a description of the conditions that gave rise to the allegation, and notice of the entity’s intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than [14] days and completed within a period of not less than [30] days. The notice shall be mailed to the address provided in the deed or other instrument as specified in [insert citation], or, if none, to the return address provided on the deed or other instrument.

148 (2) The governmental entity shall provide a period of not less than [30] days for
149 the legal owner to remedy the violation prior to imposing a civil fine and shall allow for a
150 hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the
151 governmental entity shall take into consideration any timely and good faith efforts by the legal
152 owner to remedy the violation. The maximum civil fine authorized by this section is [one
153 thousand dollars (\$1,000)] for each day that the owner fails to maintain the property,
154 commencing on the day following the expiration of the period to remedy the violation
155 established by the governmental entity.

156 (3) Subject to the provisions of this section, a governmental entity may establish
157 different compliance periods for different conditions on the same property in the notice of
158 alleged violation mailed to the legal owner.

159 (B) For purposes of this section, “failure to maintain” means failure to care for the
160 exterior of the property, including, but not limited to, permitting excessive foliage growth that
161 diminishes the value of surrounding properties, failing to take action to prevent trespassers or
162 squatters from remaining on the property, or failing to take action to prevent mosquito larvae
163 from growing in standing water or other conditions that create a public nuisance.

164 (C) Notwithstanding subdivisions (A) and (B), a governmental entity may provide less
165 than [30] days’ notice to remedy a condition before imposing a civil fine if the entity determines
166 that a specific condition of the property threatens public health or safety and provided that notice
167 of that determination and time for compliance is given.

168 (D) Fines and penalties collected pursuant to this section shall be directed to local
169 nuisance abatement programs.

170 (E) A governmental entity may not impose fines on a legal owner under both this section
171 and a local ordinance.

172 (F) These provisions shall not preempt any local ordinance.

173 (G) This section shall only apply to residential real property.

174 (H) The rights and remedies provided in this section are cumulative and in addition to
175 any other rights and remedies provided by law.

176 (I) This section shall remain in effect only until [January 1, 2013], and as of that date is
177 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
178 extends that date.

179
180 Section 6. *[Notice to Quit to Tenants or Subtenants in Possession of Rental Housing*
181 *That is Sold in Foreclosure.]*

182 (A) Notwithstanding [insert citation], a tenant or subtenant in possession of a rental
183 housing unit at the time the property is sold in foreclosure shall be given [60] days’ written
184 notice to quit pursuant to [insert citation] before the tenant or subtenant may be removed from
185 the property as prescribed in this Act.

186 (B) This section shall not apply if any party to the note remains in the property as a
187 tenant, subtenant, or occupant.

188 (C) This section shall remain in effect only until [January 1, 2013], and as of that date is
189 repealed, unless a later enacted statute, that is enacted before [January 1, 2013], deletes or
190 extends that date.

191
192 Section 7. *[Impact on Local Eviction Ordinances.]* Nothing in this Act is intended to
193 affect any local just-cause eviction ordinance. This Act does not, and shall not be construed to,
194 affect the authority of a public entity that otherwise exists to regulate or monitor the basis for
195 eviction.

196	
197	Section 8. [<i>Severability</i> .] [Insert severability clause.]
198	
199	Section 9. [<i>Repealer</i> .] [Insert repealer clause.]
200	
201	Section 10. [<i>Effective Date</i> .] [Insert effective date.]

School District Virtual Instruction Programs

This Act authorizes school districts to offer Virtual School Programs. Each district program may consist of district-operated or contracted virtual schools. Districts may administer their programs individually, through regional consortiums, or through multi-district contracts.

Submitted as:

Florida

Chapter 2008-147

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit School District
2 Virtual Instruction Programs.”

3
4 Section 2. [*School District Virtual Instruction Programs.*]

5 (A) Beginning with the [2009-2010] school year, each school district shall provide
6 eligible students within its boundaries the option of participating in a virtual instruction program.
7 The purpose of the program is to make instruction available to students using online and distance
8 learning technology in the nontraditional classroom. The program shall provide virtual
9 instruction to full-time students enrolled in full-time virtual courses in kindergarten through
10 grade 8 or in full-time or part-time virtual courses in grades 9 through 12 as authorized in
11 Section 6 (D) of this Act.

12 (B) Each school district’s virtual instruction program may consist of one or more schools
13 that are operated by the district or by contracted providers approved by the [department of
14 education] under Section (3). School districts may participate in multi-district contractual
15 arrangements, which may include contracts executed by a regional consortium for its member
16 districts, to provide such programs.

17 (C) A charter school may enter into a joint agreement with the school district in which it
18 is located for the charter school’s students to participate in an approved district virtual instruction
19 program.

20 (D) Parents of public school students may seek school district virtual instruction
21 programs if that is a public school choice option applicable to their students and is available to
22 students in their school district.

23 (E) Each district school board shall annually report the number of students applying for
24 and attending virtual instruction programs according to rules adopted by the [state board of
25 education].

26
27 Section 3. [*Virtual Instruction Provider Qualifications.*]

28 (A) On or before [March 1, 2009], and annually thereafter, the [department of education]
29 shall provide school districts with a list of providers approved to offer virtual instruction. To be
30 approved by the [department of education], a contract provider must [annually] document that it:

31 (1) is nonsectarian in its programs, admission policies, employment practices, and
32 operations;

33 (2) complies with the antidiscrimination provisions of [insert citation];

(3) locates an administrative office or offices in this state, requires its administrative staff to be state residents, and requires all instructional staff members to be [state-certified] teachers;

(4) possesses prior, successful experience offering online courses to elementary, middle, or high school students;

(5) uses an instructional model that relies on certified teachers, not parents, to provide at least [85 percent] of the instruction to the student;

(6) is accredited by the [Commission on Colleges of the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, or the New England Association of Colleges and Schools]; and

(7) complies with all requirements under this section.

(B) Notwithstanding this subsection, approved providers of virtual instruction shall include providers that operate under [insert citation].

Section 4. [*School District Virtual Instruction Program Requirements.*] Each virtual instruction program operated or contracted by a school district must:

(1) require all instructional staff to be certified professional educators under [insert citation];

(2) conduct a background screening of all employees or contracted personnel, as required by [insert citation], using state and national criminal history records;

(3) align virtual course curriculum and course content to state standards under [insert citation];

(4) offer instruction that is designed to enable a student to gain proficiency in each virtually delivered course of study;

(5) provide each student enrolled in the program with all the necessary instructional materials;

(6) provide, when appropriate, each household having a full-time student enrolled in the program with:

(a) all equipment necessary for participants in the school district virtual instruction program, including, but not limited to, a computer, computer monitor, and printer; and

(b) access to or reimbursement for all internet services necessary for online delivery of instruction; and

(7) not require tuition or student registration fees.

Section 5. [*Student Eligibility and Participation.*]

(A) Enrollment in a school district virtual instruction program is open to any student residing within the district's attendance area if the student meets at least one of the following conditions:

(1) the student has spent the prior school year in attendance at a public school in this state and was enrolled and reported by a public school district for funding during the preceding October and February;

(2) the student is a dependent child of a member of the United States Armed Forces who was transferred within the last [12] months to this state from another state or from a foreign country pursuant to the parent's permanent change of station orders; or

(3) the student was enrolled during the prior school year in a school district virtual instruction program under [insert citation].

(B) Each student enrolled in a school district virtual instruction program must:

- (1) comply with the compulsory attendance requirements of [insert citation]. Student attendance must be verified by the school district; and
- (2) take state assessment tests within the school district in which such student resides, which must provide the student with access to the district's testing facilities.

(C) Beginning with the [2010-2011] school year, a school district may not increase the enrollment for its full-time virtual instruction program in excess of its prior school year enrollment unless the program for the previous school year is designated with a grade of "C," making satisfactory progress, or better under the school grading system provided in [insert citation].

Section 6. *[Funding.]*

(A) For purposes of a district virtual instruction program, "full-time equivalent student" means:

- (1) a full-time equivalent student for students in grades K-8 in a school district virtual instruction program shall consist of a student who has successfully completed a basic program listed in [insert citation], and who is promoted to a higher grade level; or
- (2) a full-time equivalent student for students in grades 9-12 in a school district virtual instruction program as provided in [insert citation] shall consist of six full credit completions in programs listed in [insert citation]. Credit completions can be a combination of either full credits or half credits.

(B) The school district shall report full-time equivalent students for the school district virtual instruction program and for a charter school's students who participate under Section 2 (C) of this Act to the [department of education] in a manner prescribed by the [department of education], and funding shall be provided through the [Education Finance Program] established under [insert citation].

(C) Full-time or part-time school district virtual instruction program courses provided under this section for students in grades 9 through 12 are limited to [Department of Juvenile Justice] programs, dropout prevention programs, and career and vocational programs.

Section 7. *[Assessment and Accountability.]*

(A) Each school district virtual instruction program must:

- (1) participate in the statewide assessment program under [insert citation] and in the state's education performance accountability system under [insert citation].
- (2) receive a school grade as provided in [insert citation].

(B) A school district virtual instruction program shall be considered a school under [insert citation] for purposes of this section, regardless of the number of individual providers participating in the district's program.

(C) The performance of part-time students under paragraph (6)(C) shall not be included for purposes of school grading under subparagraph (A)(2). However, their performance shall be included for school grading purposes by the nonvirtual school providing the student's primary instruction.

(D) A program that is designated with a grade of "D," making less than satisfactory progress, or "F," failing to make adequate progress, must file a school improvement plan with the [department of education] for consultation to determine the causes for low performance and to develop a plan for correction and improvement.

(E) The school district shall terminate its program, including all contracts with providers for such program, if the program receives a grade of "D," making less than satisfactory progress,

or “F,” failing to make adequate progress, for [2 years during any consecutive 4-year period]. If a contract is not renewed or is terminated, the contracted provider is responsible for all debts of the program or school operated by the provider.

(F) A school district that terminates its program under paragraph (E) shall contract with a provider selected and approved by the [department] for the provision of virtual instruction until the school district receives approval from the [department] to operate a new school district virtual instruction program.

Section 8. [*Exceptions.*] A provider of digital or online content or curriculum that is used to supplement the instruction of students who are not enrolled in a virtual instruction program under this section is not required to meet the requirements of this Act.

Section 9. [*Rules.*] The [state board of education] shall adopt rules necessary to administer this Act, including rules that prescribe school district and charter school reporting requirements.

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

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

Section 12. [*Effective Date.*] [Insert effective date.]

School Support Organization Financial Accountability

This Act prohibits school boards, school employees, or officials from authorizing any group or organization to use a school district's or school's name, mascot, logos, property, or facilities for the purpose of raising money until the local board of education adopts a policy concerning local school support groups. A local school support group is any PTA, PTO, or parent teacher support association, or any other foundation, booster club, or other nongovernmental organization whose primary purpose is to collect or receive money to support a school district, school, school club, or any athletic, performing arts, or academic activity related to a public school.

This Act specifies several requirements for any local school support group policy, including:

- the group must provide a copy of its bylaws and proof of recognition as a nonprofit organization before initiating support, assistance or raising money;
- the group must operate within the applicable guidelines and standards set by any related state association;
- the group must obtain pre-approval from the director of schools for any fundraisers;
- the group must keep financial records for at least three years;
- school employees are not permitted to act as treasurer for a group; and
- a majority of the voting members of any group's board must not be school employees.

This bill prohibits a local school support group from:

- using the school's or school district's sales tax exemption to purchase items;
- representing that its activities or financial commitments are made on behalf of or binding upon any school or school district;
- using school support group funds for a purpose other than ones related to supporting a school district, school, school club or school athletic, performing arts or academic activity; or
- maintaining a bank account that bears the employer identification number of a board of education, school board, school, or any other governmental entity.

This bill requires any local school support group or any group or organization that raises money and represents itself as a school support group to be subject to audit by the office of the comptroller of the treasury.

Submitted as:

Tennessee

Public Chapter No. 326

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Short Title*.] This Act shall be cited as “The School Support Organization
- 2 Financial Accountability Act.”
- 3

4 Section 2. [*Legislative Findings.*] The [general assembly] recognizes the importance of
5 school support organizations in providing financial support to help carry out academic, arts,
6 athletic, and social programs to further educational opportunities for the children of this state.
7 The [general assembly] also recognizes concerns that parents and other people who support these
8 organizations have in ensuring that money raised by these organizations is safeguarded by them
9 and used to further the activities for which such money is raised. It is, therefore, the intent of the
10 [general assembly] to ensure the continued support of academic, arts, athletic and social
11 programs, which help to educate the children of this state, while also ensuring fiscal
12 accountability of school support organizations.

13
14 Section 3. [*Definitions.*] As used in this Act:

15 (1) “Donation” means any gift or contribution of money, materials, property or securities
16 from any nongovernmental source received by a school official or employee for the benefit of a
17 school district, school, school club, or academic, arts, athletic, or social activity related to a
18 school;

19 (2) “Internal school funds” mean any and all money received and accounted for at
20 individual schools and specifically include, but are not limited to:

21 (a) Any donation or grant made to the school, a school club, or any academic,
22 arts, athletic, or social activity related to a school;

23 (b) Funds for cafeteria services operated at the school;

24 (c) Fees collected by the school;

25 (d) Funds transferred to the local school from the school board which are to be
26 accounted for at the local school level;

27 (e) Funds raised through cooperative agreements with outside organizations;

28 (f) Rental fees charged outside entities for use of school facilities; and

29 (g) Student activity funds;

30 (3) “School support organization” means a booster club, foundation, parent teacher
31 association, parent teacher organization, parent teacher support association, or any other
32 nongovernmental organization or group of persons whose primary purpose is to support a school
33 district, school, school club, or academic, arts, athletic, or social activities related to a school
34 which collects or receives money, materials, property or securities from students, parents, or
35 members of the general public. For the purposes of this part, a group of people who merely
36 request that students, parents, or members of the general public make donations to a school
37 district, school, school club, or academic, arts, athletic, or social activity related to a school shall
38 not be considered a school support organization;

39 (4) “School representative” means:

40 (a) When a school support organization’s primary purpose is to support a school
41 system or an individual school:

42 (I) A school board member;

43 (II) The director of schools;

44 (III) A principal; and

45 (IV) Any individual who is primarily responsible for accounting for school
46 system funds or the funds of an individual school.

47 (b) When a school support organization’s primary purpose is to support a local
48 school club or academic, arts, athletic, or social activity related to a school:

49 (I) A school board member;

50 (II) The director of schools;

51 (III) A principal;

(IV) Any individual who is primarily responsible for accounting for school system funds or the funds of an individual school; and

(V) Any individual who works for the school system and who as a school system employee is charged with directing or assisting in directing the related school club or activity. "School representative" shall specifically include, but shall not be limited to, coaches, assistant coaches, band directors, or any other school sponsor of a related club or activity.

(5) "School support organization funds" include all money, materials, property or securities raised by a school support organization or any organization which represents itself to students, parents or members of the general public to be a school support organization; and

(6) "Student activity funds" include all money received from any source for student activities or events held at or in connection with a school and specifically include, but are not limited to, any money:

- (a) Derived from an academic, art, athletic, or social event involving students;
- (b) Raised by clubs involving students;
- (c) Raised by fundraisers involving students which are under the supervision of a school employee;
- (d) Received from a commission for the direct sale of items to students pursuant to a cooperative agreement between the school and an outside organization;
- (e) Received for the direct sale of items to students from a bookstore located on school grounds;
- (f) Raised from fees charged students;
- (g) Obtained from interest from any account which contains student activity funds; or
- (h) Obtained from any related school activity which involves the use of school personnel, students, and property during the school day. For the purpose of this section the school day shall be defined as the regular hours of operation of the school during which classes are conducted.

Section 4. *[Requiring a Policy About Using a School Name, Property or Facilities for Fundraising.]*

(A) A school board, director of schools, school principal, or other school official or employee may not authorize a group or organization to use a school district's or school's name, mascot or logos, property or facilities for the raising of money, materials, property or securities until a policy has been adopted concerning cooperative agreements, school support organizations, and the use of school facilities for fundraising purposes.

(B) The policy that a school board shall adopt pursuant to the provisions of subsection (A) shall at a minimum include, in substance, the following provisions:

(1) Prior to soliciting, raising, or collecting money, materials, property or securities to support a school district, school, school club, or any academic, arts, athletic, or social activity or event related to a school, a school support organization shall submit to the director of schools or the director's designee a form which at a minimum documents the following:

- (a) The organization's status as a nonprofit organization, foundation, or a chartered member of a nonprofit organization or foundation;
- (b) The goals and objectives of the organization; and
- (c) The telephone number, address, and position of each officer of the organization;

(2) A school support organization shall [annually], at a time designated before the beginning of the school year, submit a form to the director of schools or the director's designee which verifies its continual recognition as a nonprofit entity or foundation and the current telephone number, address, and position of each officer of the organization;

(3) A school support organization shall [annually], at a time designated after the end of the school year, provide at a minimum a detailed statement of receipts and disbursements to the applicable school principal;

(4) The school support organization shall maintain a copy of its charter, bylaws, minutes, and documentation of its recognition as a nonprofit organization. Also, a school support organization shall maintain financial records for a period of at least [four (4)] years;

(5) A school support organization shall operate within the applicable standards and guidelines set by a related state association, if applicable, and shall not promote, encourage or acquiesce in any violation of student or team eligibility requirements, conduct codes or sportsmanship standards;

(6) A school support organization's officers shall ensure that school support organization funds are safeguarded and are spent only for purposes related to the goals and objectives of the organization. The organization shall adopt and maintain a written policy which specifies reasonable procedures for accounting, controlling and safeguarding any money, materials, property or securities collected or disbursed by it;

(7) The approval of the [director of schools or the director's designee] shall be required before a school support organization undertakes any fundraising activity. This provision shall also specify the extent to which such approval is required. This provision is to assure that scheduling of fundraisers does not conflict with the school district's or school's fundraising efforts and that the fundraising process is consistent with the goals and mission of the school or school district. All fundraising activities shall comply with state and federal law;

(8) A school support organization shall provide upon request to officials of the local school board, local school principal, or auditors of the [office of the comptroller of the treasury] access to all books, records, and bank account information for the organization; and

(9) A school representative may not act as a treasurer or bookkeeper for a school support organization. A school representative may not be a signatory on the checks for a school support organization. A majority of the voting members of any school support organization board should not be composed of school representatives.

(C) A local board of education may adopt a policy which is more restrictive than the requirements of subsection (B).

(D) As a result of this policy, the local board of education, [director of schools], local school principal or any other school official shall not incur any liability for the failure of a school support organization to safeguard school support organizations funds.

Section 5. *[Publicizing Recognized School Support Organizations.]*

(A) The [director of schools or the director's designee] shall [annually] post or publish a list of organizations that are recognized as school support organizations. This posting or publication may be made by written or electronic means. The school board shall determine the appropriate method of posting or publishing this information.

(B) Any local board of education is authorized to develop a process to certify that an organization has been recognized as a school support organization.

(C) Any forms, annual reports, or financial statements required to be submitted according to the policy adopted by the board pursuant to the provisions of Section 4(B) of this Act to the [director of schools] or the local school principal shall be open to public inspection.

Section 6. *[Proper Handling of Student Activity and Other Internal School Funds and Donations.]*

(A) Any individual who collects or receives any student activity or other internal school funds, shall turn over to the properly designated school official or employee all student activity or other internal school funds. Such funds shall be considered student activity or other internal school funds for the purpose of [insert citation]. That a member of a school support organization or a person claiming to be a member of a school support organization collected the money is immaterial to the determination as to its status as student activity or other internal school funds.

(B) A local board of education may grant the principal of a school the authority to enter into an agreement with a school support organization to operate and collect money for a concession stand or parking at a related school academic, arts, athletic, or social event on school property where any money it collects or any portion designated by the agreement shall be considered as school support group funds and not as student activity funds; provided, that:

(1) The board has adopted a policy concerning school support organizations pursuant to the provisions of Section 4(B) of this Act; and

(2) The school support organization provides the school with the relevant collection documentation which would have been required pursuant to the provisions of the manual produced under [insert citation] for student activity funds.

(C) Nothing in this subsection shall diminish the authority of a local board of education to enter into an agreement with a civic organization for the operation of concessions or parking at school sponsored events. Such civic organization shall not be subject to the provisions of this Act.

(D) Donations to a board of education shall be received and disbursed in accordance with the provisions of [insert citation].

(E) In addition to any requirements established by the provisions of [insert citation], the following specific conditions shall apply:

(1) Any donation made by a school support organization to a board of education or school shall be disbursed only in accordance with any written conditions that the school support organization may place upon the disbursement of the funds and shall be in accordance with the goals and objectives of the school support organization;

(2) School support organization funds that are donated to an individual school shall not be considered as student activity funds. These funds shall be considered instead as internal school funds from the point of their donation to the respective school; and

(3) Any disbursements of donated funds by a school official or employee shall be made in accordance with any relevant federal, state, or local government laws, including any relevant purchasing laws or requirements of the accounting policy manual produced according to [insert citation].

Section 7. *[Restricting Using School or School District Tax Exemptions.]* A nongovernmental group or organization including all school support organizations may not:

(1) Use the school's or school district's sales tax exemption to purchase items;

(2) Represent or imply that its activities, contracts, purchases, or financial commitments are made on behalf of or binding upon any school or school district;

(3) Use school support organization funds for a purpose other than ones related to the goals and objectives of the school support organization which shall relate to supporting a school district, school, school club or school academic, arts, athletic, or social activity; or

(4) Maintain or operate a bank account that bears the employer identification number of a school board, school, or any other school related governmental entity. From [July 1, 2007], any funds deposited into such an account shall be presumed to be a donation to the entity whose employer identification number is used and shall be treated as student activity funds.

Section 8. [*School Support Organizations Subject to Audit.*] A school support organization or any group or organization which collects and raises money, materials, property or securities while representing itself to be a school support organization shall be subject to audit by the [office of the comptroller of the treasury].

Section 9. [*Model School Support Organization Financial Policy.*] The [office of the comptroller of the treasury] is authorized to adopt a model financial policy for school support organizations.

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

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

Section 12. [*Effective Date.*] [Insert effective date.]

State GIS Officer/GIS Data

This Act creates the position of state Geographic Information Systems (GIS) officer. The Act:

- requires the state GIS officer to adopt or veto the GIS data standards and a statewide data integration plan;
- provides that the state data center of the state library shall be the state's depository for GIS data;
- assigns duties to the state GIS officer and the state data center in implementing and enforcing the state GIS data standards;
- provides that a political subdivision maintains the right to control the sale, exchange, and distribution of any GIS data or framework data provided by the political subdivision to the state;
- provides that the state GIS officer may require, as a condition of a data exchange agreement, that a political subdivision follow the GIS data standards and the statewide data integration plan when the political subdivision makes use of the GIS data or framework data provided by the state;
- prohibits the state GIS officer or the state data center from recommending or restricting standards for GIS hardware or software that a proprietary vendor provides to a political subdivision; and
- provides that in-state buying preferences shall be observed in all procurement decisions related to the state GIS data standards.

Submitted as:

Indiana

Senate Enrolled Act No. 461

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be called "An Act to Address Geographic
2 Information Systems."

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

5 (1) "Data exchange agreement" means an agreement concerning the exchange of any
6 GIS data or framework data.

7 (2) "Electronic map" has the meaning set forth in [insert citation].

8 (3) "Framework data" means common electronic map information for a geographic area,
9 including the following:

- 10 (a) Digital orthophotography.
11 (b) Digital cadastre.
12 (c) Public land survey system.
13 (d) Elevation.
14 (e) Geodetic control.
15 (f) Governmental boundary units.

16 (g) Water features.
 17 (h) Addresses.
 18 (i) Streets.
 19 (4) "Fund" refers to the [Mapping Data And Standards Fund] established by Section 4
 20 of this Act.
 21 (5) "GIS" refers to geographic information systems.
 22 (6) "IGIC" refers to the nonprofit entity known as the [(State) Geographic Information
 23 Council] established under [insert citation], or its successor organization.
 24 (7) "Political subdivision" has the meaning set forth in [insert citation].
 25 (8) "State agency" has the meaning set forth in [insert citation].
 26 (9) "State data center" refers to the state data center established under [insert citation].
 27 (10) "State GIS officer" refers to the individual appointed under Section 3 of this Act.
 28 (11) "Statewide base map" means an electronic map of this state consisting of framework
 29 data for this state.
 30 (12) "Statewide data integration plan" means a plan to integrate GIS data and framework
 31 data developed and maintained by different units of the federal, state, and local government into
 32 statewide coverage of framework data and that includes details for:
 33 (a) an inventory of existing data;
 34 (b) stakeholder data requirements;
 35 (c) identification of data stewards;
 36 (d) data standards and schema, costs, work flow, data transfer mechanisms,
 37 update frequency, and maintenance; and
 38 (e) identification of appropriate data sharing policies and mechanisms to facilitate
 39 intergovernmental data exchange, such as data exchange agreements.
 40
 41 Section 3. *[State GIS Officer.]*
 42 (A) The [governor] shall appoint an individual as the [state GIS officer].
 43 (B) The person appointed by the [governor] must be an experienced geography and
 44 mapping professional who has:
 45 (1) extensive knowledge of the principles, practices, terminology, and trends in
 46 GIS, spatial data, analysis, and related technology; and
 47 (2) experience in administration, project management, policy development,
 48 coordination of services, and planning.
 49 (C) The [state GIS officer] shall:
 50 (1) Function as the chief officer for GIS matters for state agencies.
 51 (2) Review and either veto or adopt both the state's GIS data standards and
 52 statewide data integration plan as recommended by the [IGIC]. If either of the recommendations
 53 is vetoed, the [state GIS officer] shall return the recommendation to the [IGIC] with a message
 54 announcing the veto and stating the reasons for the veto. If the [IGIC] ceases to exist or refuses
 55 to make the recommendations listed in this subsection, the [state GIS officer] may develop and
 56 adopt state GIS data standards and a statewide data integration plan. The standards and the plan
 57 adopted under this subsection must promote interoperability and open use of data with various
 58 GIS software, applications, computer hardware, and computer operating systems.
 59 (3) Act as the administrator of the state standards and policies concerning GIS
 60 data and framework data and the statewide data integration plan.
 61 (4) Enforce the state GIS data standards and execute the statewide data integration
 62 plan adopted under subdivision (2) through the use of GIS policies developed for state agencies;
 63 and data exchange agreements involving an entity other than a state agency.

(5) Coordinate the [state data center's] duties under this Act.

(6) Act as the state's representative for requesting grants available for the acquisition or enhancement of GIS resources and preparing funding proposals for grants to enhance coordination and implementation of GIS.

(7) Review and approve, in accordance with the statewide data integration plan, the procurement of GIS goods and services involving the state data center or a state agency.

(8) Cooperate with the United States Board on Geographic Names established by P.L.80-242 by serving as the chair of a committee formed with the [IGIC] as the state names authority for this state.

(9) Publish a biennial report. The report must include the status and metrics on the progress of the statewide data integration plan.

(10) Represent the state's interest to federal agencies regarding the National Spatial Data Infrastructure.

(11) Serve as the state's primary point of contact for communications and discussions with federal agencies regarding framework data, spatial data exchanges, cost leveraging opportunities, spatial data standards, and other GIS related issues.

(12) Facilitate GIS data cooperation between units of the federal, state, and local governments.

(13) Promote the development and maintenance of statewide GIS data and framework data layers associated with a statewide base map.

(14) Approve and maintain data exchange agreements to which the state data center or a state agency is a party to increase the amount and quality of GIS data and framework data available to the state.

(15) Use personnel made available from state educational institutions to provide technical support to the [state GIS officer] in carrying out the officer's duties under this Act and the [IGIC].

(16) With money from the [Mapping Data And Standards Fund] established under Section 4 of this Act, the [state GIS officer] through the [state data center], the [IGIC], and the other organizations, do the following:

- (a) Ensure that there are adequate depositories of all GIS data and framework data obtained by a state agency.
- (b) Acquire, publish, store, and distribute GIS data and framework data through the computer gateway administered under [insert citation] by the [office of technology] and through the [state data center]. The [state GIS officer] may also provide access through the [IGIC] and other entities as directed by the [state GIS officer].
- (c) Integrate GIS data and framework data developed and maintained by state agencies and political subdivisions into the statewide base map.
- (d) Maintain a state historical archive of GIS data, framework data, and electronic maps.
- (e) Except as otherwise provided in this Act, provide public access to GIS data and framework data in locations throughout this state.
- (f) Provide assistance to state agencies and political subdivisions regarding public access to GIS data and framework data so that information is available to the public while confidentiality is protected for certain data from electronic maps.
- (g) Develop and maintain statewide framework data layers associated with a statewide base map or electronic map.
- (h) Publish and distribute the state GIS data standards and the statewide data integration plan adopted under subsection (2) of this subsection (C) of this Act.

(i) Subject to Section 5 of this Act, make GIS data, framework data, and electronic maps available for use by the state [Business Research Center] established under [insert citation].

(17) Coordinate with state educational institutions to:

(a) Promote formal GIS education opportunities for full-time and part-time students.

(b) Provide informal GIS learning opportunities through a series of seminars and noncredit concentrated classes provided throughout this state.

(c) Coordinate research assets for the benefit of this state by maintaining inventories of the universities' academic and technical GIS experts, data and technology resources as provided by the universities, and research interests for collaboration to pursue research grant opportunities.

(d) Implement an outreach network to political subdivisions within this state to enhance communication and data sharing among state government, political subdivisions, and the business community.

Section 4. *[Mapping Data and Standards Fund.]*

(A) A [state] [Mapping Data And Standards Fund] is established for the following purposes:

(1) Funding GIS grants.

(2) Administering this Act.

(B) The fund consists of the following:

(1) Appropriations made to the [fund] by the [general assembly].

(2) Gifts, grants, or other money received by the state for GIS purposes.

(C) The [state GIS officer] shall administer the [fund].

(D) The expenses of administering the [fund] shall be paid from money in the [fund].

(E) The [treasurer of state] shall invest the money in the [fund] not currently needed to meet the obligations of the [fund] in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the [fund].

(F) Money in the [fund] at the end of a state fiscal year does not revert to the [state general fund].

Section 5. *[Political Subdivision Control Over GIS Data Provided to the State Through a Data Exchange Agreement.]*

(A) Except as provided in subsections (B), (C), and (D), a political subdivision maintains the right to control the sale, exchange, and distribution of any GIS data or framework data provided by the political subdivision to the state through a data exchange agreement entered into under this Act.

(B) A political subdivision may agree, through a provision in a data exchange agreement, to allow the sale, exchange, or distribution of GIS data or framework data provided to the state.

(C) Subsection (A) does not apply to data that is otherwise required by state or federal law to be provided by a political subdivision to the state or federal government.

(D) As a condition in a data exchange agreement for providing state GIS data or framework data to a political subdivision, the [state GIS officer] may require the political subdivision to follow the state GIS data standards and the statewide data integration plan when the political subdivision makes use of the GIS data or framework data as provided by the state.

Section 6. [*Prohibiting State Education Institutions from Providing Photogrammetry Services or Framework Layer Data Conversion Services to State Agencies or Political Subdivisions.*]

(A) Except as provided in subsection (B), a state educational institution may not bid on contracts to provide photogrammetry services or framework layer data conversion services for the benefit of a state agency or political subdivision. This section shall not be construed to prohibit the purchase of any of the following by a state agency or political subdivision from a state educational institution:

(1) GIS data or framework data.

(2) Data previously created by the state educational institution as part of the educational, research, or service mission of the state educational institution.

(B) If there is a lack of qualified bids on contracts referred to in subsection (A) by entities other than state educational institutions, the state agency or political subdivision may, with the advice of the [state GIS officer], solicit bids from state educational institutions.

Section 7. [*Restricting Standards for GIS Hardware or Software.*]

(A) Nothing in this Act shall be construed to permit the [IGIC], the [state GIS officer], or the [state data center] to recommend or restrict standards for GIS hardware or software that a proprietary vendor provides to any political subdivision.

(B) It is the intent of the [general assembly] in enacting this Act to promote high technology enterprise and employment within this state. To the extent practicable, the requirement under [insert citation] to buy products and services from vendors located in this state shall be observed with respect to all procurement decisions related to this Act.

Section 8. [*Publication and Access Exemptions.*] The publication and access requirements of this Act do not apply to data that would otherwise be exempt from public disclosure under [insert citation].

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

Section 10. [*Repealer.*] [Insert repealer clause.]

Section 11. [*Effective Date.*] [Insert effective date.]

Student Loan Protection

This Act addresses conflicts of interest between colleges and representatives of financial entities which lend money to students to attend college. For example, under the Act, a lending institution must prohibit an employee or agent of the lending institution from being identified to borrowers or prospective borrowers as a college or university employee. The Act prohibits lending institution employees from staffing the financial aid or financial call center of colleges and universities. The Act also stipulates how colleges and universities list in their financial aid material institutions which offer financial aid.

Submitted as:

Iowa

HF 2690 (Enrolled version)

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Protect Students and
2 Parents from Conflicts of Interest Involving Student Loans.”

3
4 Section 2. [*Definitions.*] As used in this Act, unless otherwise specified:

5 (1) “Borrower” means a student attending a covered institution in this state, or a parent
6 or person in parental relation to such student, who obtains an educational loan from a lending
7 institution to pay for or finance a student's higher education expenses.

8 (2) “Covered institution” means any educational institution that offers a postsecondary
9 educational degree, certificate, or program of study and receives any Title IV funds under the
10 federal Higher Education Act of 1965, as amended, or state funding or assistance. “Covered
11 institution” includes an authorized agent of the educational institution, including an alumni
12 association, booster club, or other organization directly or indirectly associated with or
13 authorized by the institution or an employee of the institution.

14 (3) “Covered institution employee” means any employee, agent, contract employee,
15 director, officer, or trustee of a covered institution.

16 (4) “Educational loan” means any loan that is made, insured, or guaranteed under Title
17 IV of the federal Higher Education Act of 1965, as amended, directly to a borrower solely for
18 educational purposes, or any private educational loan.

19 (5) “Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other
20 item having a monetary value of more than a de minimus amount. “Gift” includes a gift of
21 services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket,
22 payment in advance, or reimbursement after the expense has been incurred. “Gift” does not
23 include any of the following:

24 (a) Standard material, activities, or programs on issues related to a loan, default
25 aversion, default prevention, or financial literacy.

26 (b) Food or refreshments furnished to an officer, employee, or agent of an
27 institution as an integral part of a training session or conference that is designed to contribute to
28 the professional development of the officer, employee, or agent of the institution.

(c) Favorable terms, conditions, and borrower benefits on an educational loan provided to a borrower employed by the covered institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(d) Philanthropic contributions to a covered institution from a lender, guarantor, or servicer of educational loans that are unrelated to educational loans provided, as applicable, that the contributions are disclosed pursuant to section 6 (F) of this Act.

(e) State education grants, scholarships, or financial aid funds administered under [insert citation].

(f) Toll-free telephone numbers for use by covered institutions or other toll-free telephone numbers open to the public to obtain information about loans available under Title IV of the federal Higher Education Act of 1965, as amended, or private educational loans, or free data transmission service for use by a covered institution to electronically submit applicant loan processing information or student status confirmation data for loans available under Title IV of the federal Higher Education Act of 1965.

(g) A reduced origination fee.

(h) A reduced interest rate.

(i) Payment of federal default fees.

(j) Purchase of a loan made by another lender at a premium.

(k) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the attorney general, provided these benefits are not marketed to secure loan applications or loan guarantees.

(l) Items of nominal value to a covered institution, covered institution employee, covered institution-affiliated organization, or borrower that are offered as a form of generalized marketing or advertising, or to create goodwill.

(m) Items of value which are offered to a borrower or to a covered institution employee that are also offered to the general public.

(n) Other services as identified and approved by the [attorney general] through a public announcement, such as a notice on the [attorney general's] web site.

(6) "Lender" or "lending institution" means a creditor as defined in section 103 of the federal Truth in Lending Act, 15 U.S.C. § 1602.

(7) "Postsecondary educational expenses" means any of the expenses that are included as part of a student's cost of attendance as defined in Title IV, part F, of the federal Higher Education Act of 1965, as amended.

(8) "Preferred lender arrangement" means an arrangement or agreement between a lender and a covered institution under which the lender provides or otherwise issues educational loans to borrowers and which relates to the covered institution recommending, promoting, or endorsing the educational loan product of the lender. "Preferred lender arrangement" does not include arrangements or agreements with respect to loans under part D or E of Title IV of the federal Higher Education Act of 1965, as amended.

(9) "Preferred lender list" means a list of at least [three] recommended or suggested, unaffiliated lending institutions that a covered institution makes available for use, in print or any other medium or form, by borrowers, prospective borrowers, or others.

(10) "Private educational loan" means a private loan provided by a lender that is not made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965, as amended, and is issued by a lender solely for postsecondary educational expenses to a borrower, regardless of whether the loan involves enrollment certification by the educational institution that

the student for which the loan is made attends. "Private educational loan" does not include a private educational loan secured by a dwelling or under an open-end credit plan. For purposes of this subsection, "dwelling" and "open-end credit plan" have the meanings given such terms in section 103 of the federal Truth in Lending Act, 15 U.S.C. § 1602.

(11) "Revenue sharing arrangement" means an arrangement between a covered institution and a lender in which the lender provides or issues educational loans to persons attending the institution or on behalf of persons attending the institution and the covered institution recommends the lender or the educational loan products of the lender, in exchange for which the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution or officers, employees, or agents of the institution. "Revenue sharing arrangement" does not include arrangements related solely to products which are not educational loans.

Section 4. *[Code of Conduct.]*

(A) A covered institution shall do the following:

(1) Develop, in consultation with the [college student aid commission], a code of conduct governing educational loan activities with which the covered institution's officers, employees, and agents shall comply.

(2) Publish the code of conduct developed in accordance with paragraph (A) prominently on its Internet site.

(3) Administer and enforce the code of conduct developed in accordance with paragraph (A).

(B) The [college student aid commission] shall provide to covered institutions assistance and guidance relating to the development, administration, and monitoring of a code of conduct governing educational loan activities.

(C) Except as provided in this section, the [college student aid commission] is not subject to the duties, restrictions, prohibitions, and penalties of this Act.

Section 5. *[Educational Loans: Prohibitions.]*

(A) No officer, employee, or agent of a covered institution who is employed in the financial aid office of the institution, or who otherwise has direct responsibilities with respect to educational loans, shall solicit or accept any gift from a lender, guarantor, or servicer of educational loans. The [attorney general] shall investigate any reported violation of this subsection and shall [annually] submit a report to the [general assembly] by [January 15] identifying all substantiated violations of this subsection, including the lenders and covered institutions involved in each such violation, for the preceding year.

(B) For purposes of this section, a gift to a family member of an officer, employee, or agent of a covered institution, or a gift to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if either of the following applies:

(1) The gift is given with the knowledge and acquiescence of the officer, employee, or agent.

(2) The officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(C) An officer, employee, or agent who is employed in the financial aid office of a covered institution, or who otherwise has direct responsibilities with respect to educational loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit including but not limited to the opportunity to purchase stock on other than free market

terms, as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender.

(D) A covered institution shall not enter into any revenue sharing arrangement with any lender.

(E) A covered institution shall not request or accept from any lender any offer of funds, including any opportunity pool, to be used for private educational loans to borrowers in exchange for the covered institution providing concessions or promises to the lender with respect to such institution providing the lender with a specified number of loans, a specified loan volume, or a preferred lender arrangement for any loan made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965, as amended, and a lender shall not make any such offer. For purposes of this subsection, "opportunity pool" means an educational loan made by a private lender to a borrower that is in any manner guaranteed by a covered institution, or that involves a payment, directly or indirectly, by such an institution of points, premiums, payments, additional interest, or other financial support to the lender for the purpose of that lender extending credit to the borrower.

(F) An officer, employee, or agent who is employed in the financial aid office of a covered institution, or who otherwise has direct responsibilities with respect to educational loans, shall not serve on or otherwise participate with advisory councils of lenders or affiliates of lenders. Nothing in this subsection shall prohibit lenders from seeking advice from covered institutions or groups of covered institutions, including through telephonic or electronic means, or a meeting, in order to improve products and services for borrowers, provided there are no gifts or compensation including but not limited to transportation, lodging, or related expenses, provided by lenders in connection with seeking such advice from the institutions. Nothing in this subsection shall prohibit an officer, employee, or agent of a covered institution from serving on the board of directors of a lender if required by law.

(G) (1) Nothing in this section shall be construed as prohibiting any of the following:

(a) An officer, employee, or agent of a covered institution who is not employed in the institution's financial aid office, or who does not otherwise have direct responsibilities with respect to educational loans, from paid or unpaid service on a board of directors of a lender, guarantor, or servicer of educational loans.

(b) An officer, employee, or agent of a covered institution who is not employed in the financial aid office but who has direct responsibility with respect to educational loans as a result of a position held at the covered institution, from paid or unpaid service on a board of directors of a lender, guarantor, or servicer of educational loans, provided that the covered institution has a written conflict of interest policy that clearly sets forth that such an officer, employee, or agent must be recused from participating in any decision of the board with respect to any transaction regarding educational loans.

(c) An officer, employee, or agent of a lender, guarantor, or servicer of educational loans from serving on a board of directors or serving as a trustee of a covered institution, provided that the covered institution has a written conflict of interest policy that clearly sets forth the procedures to be followed in instances where such a board member's or trustee's personal or business interests with respect to educational loans may be advanced by an action of the board of directors or trustees, including a provision that such a board member or trustee may not participate in any decision to approve any transaction where such conflicting interests may be advanced.

(2) Nothing in this Act shall be construed to prohibit a covered institution from lowering educational loan costs for borrowers, including payments made by the covered institution to lending institutions on behalf of borrowers.

Section 6. [*Misleading Identification, Covered Institution, Lending Institutions' Employees.*]

(A) A lending institution shall prohibit an employee or agent of the lending institution from being identified to borrowers or prospective borrowers of a covered institution as an employee, representative, or agent of the covered institution.

(B) A covered institution shall prohibit an employee or agent of a lending institution from being identified as an employee, representative, or agent of the covered institution.

(C) An employee, representative, or agent of a lending institution included on a covered institution's preferred lending list shall not staff a covered institution's financial aid offices or call center and shall not prepare any of the covered institution's materials related to educational loans.

(D) A covered institution that has entered into a preferred lender arrangement with a lender regarding private educational loans shall not agree to the lender's use of the name, emblem, mascot, or logo of the institution, or other words, pictures, or symbols readily identified with the institution, in the marketing of private educational loans to the students attending the institution in any way that implies that the institution endorses the private educational loans offered by the lender. However, the covered institution may allow the use of its name if it is part of the lending institution's legal name.

(E) Nothing in this section shall prohibit a covered institution from requesting or accepting the following assistance from a lender related to any of the following:

(1) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials.

(2) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including state-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the attorney general.

(F) The [attorney general] shall adopt rules providing for the disclosure, for lenders with a preferred lender arrangement, of philanthropic contributions made as specified in section Section 2(4)(d) of this Act.

Section 7. [*Loan Disclosure and Loan Bundling: Prohibitions.*]

(A) A covered institution that has entered into a preferred lender arrangement with a lender regarding private educational loans shall inform the borrower or prospective borrower of all available state education financing options, and financing options under Title IV of the federal Higher Education Act of 1965, as amended, including information on any terms and conditions of available loans under such title that are more favorable to the borrower.

(B) A covered institution shall prohibit the bundling of private educational loans in financial aid packages, unless the borrower is ineligible for financing, is not eligible for any additional funding, or has exhausted the limits of loan eligibility, under Title IV of the federal Higher Education Act of 1965, as amended, or has not filled out a free application for federal student aid, and the bundling of the private educational loans is clearly and conspicuously disclosed to the borrower prior to acceptance of the package by the borrower. The provisions of this subsection shall not apply if the borrower does not desire or refuses to apply for a loan under Title IV of the federal Higher Education Act of 1965.

(C) A lending institution included on a covered institution's preferred lender list shall disclose, clearly and conspicuously, in any application for a private educational loan, all of the following:

(1) The rate of interest or the potential range of rates of interest applicable to the loan and whether such rates are fixed or variable.

(2) Limitations, if any, on interest rate adjustments, both in terms of frequency and amount, or lack thereof.

(3) Co-borrower requirements, including changes in interest rates.

(4) Any fees associated with the loan.

(5) The repayment terms available on the loan.

(6) The opportunity for deferment or forbearance in repayment of the loan, including whether the loan payments can be deferred if the borrower is in school.

(7) Any additional terms and conditions applied to the loan, including any benefits that are contingent on the repayment behavior of the borrower.

(8) Information comparing federal and private educational loans.

(9) An example of the total cost of the educational loan over the life of the loan which shall be calculated using the following:

(a) A principal amount and the maximum rate of interest actually offered by the lender, or, if there is no maximum rate provided under the terms of the loan agreement or applicable state or federal law, a statement to that effect.

(b) Both with and without capitalization of interest, if that is an option for postponing interest payments.

(10) The consequences for the borrower of defaulting on a loan, including any limitations on the discharge of an educational loan in bankruptcy.

(11) Contact information for the lender.

(D) Not later than [January 31, 2009], the [attorney general] shall develop and make available to lenders a model disclosure form that is based on the requirements of subsection (C). Use of the model disclosure form by a lending institution in a manner consistent with this Act shall constitute compliance with subsection (C).

Section 8. [*Standards for Preferred Lender Lists.*]

(A) A covered institution may make available a list of preferred lenders, in print or any other medium or form, for use by the covered institution's students or their parents, provided the list meets the following conditions:

(1) The list is not used to deny or otherwise impede a borrower's choice of lender.

(2) The list contains at least [three] lenders that are not affiliated and will make loans to borrowers or students attending the school. For the purposes of this paragraph, a lender is affiliated with another lender if any of the following applies:

(a) The lenders are under the ownership or control of the same entity or individuals.

(b) The lenders are wholly or partly owned subsidiaries of the same parent company.

(c) The directors, trustees, or general partners, or individuals exercising similar functions, of one of the lenders constitute a majority of the persons holding similar positions with the other lender.

(3) The list does not include lenders that have offered, or have offered in response to a solicitation by the covered institution, financial or other benefits to the covered institution in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the covered institution or its students.

(B) A covered institution that provides or makes available a preferred lender list shall do the following:

(1) Disclose to prospective borrowers, as part of the list, the method and criteria used by the covered institution in selecting any lender that it recommends or suggests.

(2) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders.

(3) Include a prominent statement in any information related to its preferred lender list advising prospective borrowers that the borrowers are not required to use one of the covered institution's recommended or suggested lenders.

(4) For first-time borrowers, refrain from assigning, through award packaging or other methods, a borrower's loan to a particular lender.

(5) Not cause unnecessary certification delays for borrowers who use a lender that is not included on the covered institution's preferred lender list.

(6) Update the preferred lender list and any information accompanying the list at least [annually].

(C) If the servicer of a private educational loan is changed by a lending institution, the lending institution shall disclose the change to the affected borrower.

(D) A lending institution shall not be placed on a covered institution's preferred lender list or in favored placement on a covered institution's preferred lender list for a particular type of loan, in exchange for benefits provided to the covered institution or to the covered institution's students in connection with a different type of loan.

Section 9. [*Disclosure Requirements.*] Except for educational loans made, insured, or guaranteed by the federal government, a lending institution included on a covered institution's preferred lender list shall, upon receiving a request from a borrower, covered institution, or government entity, disclose to the requester in reasonable detail and form, the terms of private educational loans made to borrowers by that lending institution and the rates of interest charged to borrowers for private educational loans in the year preceding the disclosures.

Section 10. [*Penalties.*]

(A) If after providing notice and an opportunity for a hearing the [attorney general] determines that a covered institution or lending institution has violated a provision of this chapter, the covered institution or lending institution may be liable for a civil penalty of up to five thousand dollars per violation. In taking action against a covered institution or lending institution, consideration shall be given to the nature and severity of a violation of this Act.

(B) If after providing notice and an opportunity for a hearing the [attorney general] determines that a covered institution employee has violated a provision of this Act, the covered institution employee may be liable for a civil penalty of up to [two thousand five hundred dollars] per violation. In taking action against a covered institution employee, consideration shall be given to the nature and severity of a violation of this Act.

(C) If after providing notice and an opportunity for a hearing the [attorney general] determines that a lending institution has violated a provision of this Act, such lending institution shall not be placed or remain on any covered institution's preferred lender list unless notice of such violation is provided to all potential borrowers of the covered institution. However, consideration shall be given to the nature and severity of a violation of this Act in determining whether and for how long to ban a lender from a preferred lender list.

(D) Nothing in this section shall prohibit the [attorney general] from reaching a settlement agreement with a covered institution, covered institution employee, or lending institution in order to effectuate the purposes of this section. Provided, however, if such settlement agreement is reached with a covered institution or lending institution, the [attorney

general] shall provide notice of such action to the borrowers in a form and manner prescribed by the [attorney general].

(E) The [attorney general] shall deposit the funds generated pursuant to this section into the Student Lending Education Fund, created in section 12 of this Act.

(F) Each individual incident of a violation of this Act shall be considered a separate violation for the purpose of imposing civil penalties.

Section 11. [*Rules, Investigation Authority, Enforcement.*]

(A) The [attorney general] shall administer this Act and promulgate rules, pursuant to [insert citation], necessary for the implementation of this Act.

(B) The [attorney general] is authorized to conduct an investigation to determine whether to initiate proceedings pursuant to this Act to the same extent as the investigation authority granted the [attorney general] under [insert citation].

Section 12. [*Student Lending Education Fund.*]

(A) There is established in the [state treasury] a [Student Lending Education Fund].

(B) The fund shall consist of all revenues generated pursuant to section 10 of this Act and all other moneys credited or transferred to the fund from any other fund or source pursuant to law.

(C) Moneys in the fund shall be made available to the [attorney general] for the purpose of enforcing this Act.

Section 13. [*Effect on Other Laws or Regulations.*] This Act shall not be interpreted to affect the liability of any person, covered institution, or lending institution under any other state statute or rule.

Section 14. [*Student Loan Secondary Market Investigation Report.*]

(A) The [attorney general] shall submit the findings and recommendations resulting from the investigation of the student loan secondary market and the state [student loan liquidity corporation] to the [general assembly] by [January 15, 2009].

(B) The [attorney general] shall present the findings and recommendations resulting from the investigation of the student loan secondary market and the state [student loan liquidity corporation] to the [legislative government oversight committee] on [insert date].

Section 15. [*Severability.*] [Insert severability clause.]

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

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

Textbook Transparency

This Act requires college textbook publishers to make the price, any substantial content revision between the last two editions, copyright dates, and the variety of formats for a text available, upon request, to faculty members or textbook adopters at public higher education institutions when the publisher provides information about their products. The Act distinguishes between supplemental material and integrated textbooks and requires a publisher to make a textbook and supplemental material available separately when selling the materials bundled together.

The Act directs that when feasible, public institutions of higher education must develop policies allowing students to use financial aid that has not been disbursed for tuition or fees to purchase textbooks at campus bookstores. The Act directs public higher education institutions to encourage the selection of textbooks early enough that the campus bookstore can supply information about textbooks and materials which will promote cost efficiency.

Submitted as:

Missouri

HB 2048 [Truly Agreed to and Finally Passed]

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The “Textbook Transparency Act.”

2

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

4 (1) “Adopter” means any faculty member or academic department at an approved
5 institution of higher education responsible for considering and choosing course materials to be
6 used in connection with the accredited courses taught at the approved institution of higher
7 education;

8 (2) “Approved institution of higher education” means an educational institution located
9 in this state which:

10 (a) is directly controlled or administered by a public agency or political
11 subdivision;

12 (b) receives appropriations directly or indirectly from the [general assembly] for
13 operating expenses;

14 (c) provides a postsecondary course of instruction at least [six] months in length
15 leading to or directly creditable toward a degree or certificate;

16 (d) meets the standards for accreditation as determined by either the [North
17 Central Association of Colleges and Secondary Schools], or if a public junior college created
18 under [insert citation] meets the standards established by the coordinating board for higher
19 education for such public junior colleges, or by other accrediting bodies recognized by the
20 United States Office of Education or by utilizing accreditation standards applicable to the
21 institution as established by the coordinating board for higher education;

22 (e) does not discriminate in the hiring of administrators, faculty and staff or in the

admission of students on the basis of race, color, religion, sex, or national origin and is otherwise in compliance with the federal Civil Rights Acts of 1964 and 1968 and executive orders issued pursuant thereto; and

(f) permits faculty members to select textbooks without influence or pressure by any religious or sectarian source;

(3) "College textbook" means a textbook or a set of textbooks used for a course of postsecondary education at an approved public institution of higher education;

(4) "Integrated textbook" means a college textbook that:

(a) is combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or

(b) includes functionally interdependent course materials designed to be used solely as a single unit and whose separation would substantially degrade the academic content so that it would not be usable to the student;

(5) "Products" means all versions of a college textbook or set of college textbooks, except custom textbooks or special editions of textbooks, available in the subject area for which a prospective purchaser is teaching a course, including supplemental material, both when sold together or separately from a college textbook;

(6) "Supplemental material" means educational material that may accompany a college textbook, including printed materials, computer disks, website access, and electronically distributed materials, that is neither:

(a) bound by third-party contractual agreements to be sold in an integrated textbook; nor

(b) a component of an integrated textbook.

Section 3. *[Information College Textbook Publishers Must Provide to Educational Institutions.]*

(A) To the extent practicable, an approved institution of higher education shall encourage faculty members or adopters to place their initial orders for college textbooks with sufficient time for the campus bookstore to factor such information into student buyback, research the availability of the course material, and exchange, when appropriate, relevant information with faculty to support effective use of course materials such as bundles and to promote cost efficiencies for students.

(B) Each publisher of college textbooks shall provide, upon request, the following information to faculty members or adopters at an approved institution of higher education, whenever the publisher provides a faculty member or adopter with information about the publisher's products:

(1) the price at which the publisher would make the products available to the campus bookstore;

(2) the substantial content revisions for such products made between a current textbook edition and the previous edition, if any;

(3) the copyright dates of all previous editions of such college textbook in the preceding ten years, if any; and

(4) whether the products are available in any other format, including paperback and unbound, and the price at which the publisher would make the products in the other formats available to the campus bookstore.

(C) A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall also make available the college

71 textbook and each supplemental material as separate and unbundled items, each separately
72 priced.

73
74 Section 4. [*Using Undisbursed Financial Aid to Purchase Textbooks.*] Where existing
75 technology and contracts make it feasible, an approved public institution of higher education
76 shall develop a policy that permits students to use financial aid that has not been disbursed for
77 tuition or fees to purchase required textbooks for courses taught at the institution at stores on the
78 campus of the institution.

79
80 Section 5. [*Severability.*] [Insert severability clause.]

81
82 Section 6. [*Repealer.*] [Insert repealer clause.]

83
84 Section 7. [*Effective Date.*] [Insert effective date.]

Timeshare Foreclosure

This Act allows a plaintiff to commence a single judicial foreclosure action, joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, under specified conditions. The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, so long as the plaintiff complies with the provisions of the bill. Each timeshare estate foreclosed shall be subject to a separate foreclosure sale, and any cure or redemption rights shall remain separate.

Submitted as:

Colorado

HB 1365

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act to Permit Single Judicial
2 Foreclosure Actions.”

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

5 (1) “Junior lienor” has the same meaning as set forth in [insert citation].

6 (2) “Obligor” means the person liable for the assessment levied against a time share
7 estate pursuant to [insert citation] or the record owner of the time share estate.

8 (3) “Time share estate” has the same meaning as set forth in [insert citation].
9

10 Section 3. [*Single Judicial Foreclosure Action*.]

11 (A) A plaintiff may commence a single judicial foreclosure action joining as defendants
12 multiple obligors with separate time share estates and the junior lienors thereto, if:

13 (1) the judicial foreclosure action involves a single common interest community;

14 (2) the declaration giving rise to the right of the Association to collect
15 assessments creates default and remedy obligations that are substantially the same for each
16 obligor named as a defendant in the judicial foreclosure action;

17 (3) the action is limited to a claim for judicial foreclosure brought pursuant to
18 [insert citation]; and

19 (4) the plaintiff does not allege, with respect to any obligor, that the Association's
20 lien is prior to any security interest described in [insert citation] even if such a claim could be
21 made pursuant to [insert citation].

22 (B) In a judicial foreclosure action in which multiple obligors with separate time share
23 estates and the junior lienors thereto have been joined as defendants in accordance with this
24 section:

25 (1) in addition to any other circumstances where severance is proper under the
26 [state rules of civil procedure], the court may sever for separate trial any disputed claim or
27 claims;

28 (2) if service by publication of two or more defendants is permitted by law, the
29 plaintiff may publish a single notice for all joined defendants for whom service by publication is
30 permitted, so long as all information that would be required by law to be provided in the

published notice as to each defendant individually is included in the combined published notice, and nothing in this paragraph (2) shall be interpreted to allow service by publication of any defendant if service by publication is not otherwise permitted by law with respect to that defendant.

(3) the action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, notwithstanding any action by the court pursuant to paragraph (1) of this subsection (B), so long as the plaintiff complies with subsection (A) of this section.

(C) Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, unless otherwise ordered by the court, each time share estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate shall remain separate.

(D) The plaintiff in an action brought pursuant to this section is deemed to waive any claims against a defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

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

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

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

Towing and Recovery Operator Law Statement

Virginia Chapter 891 of 2006:

- allows a mechanic's lien for towing, storage, and recovery of vehicles;
- increases to seven days the time garage keepers have to notify owners of towed vehicles that their vehicle has been towed and is being held at their garage; and
- increases the fee for storing a towed vehicle.

The bill revises the procedures by which towing and storage companies may seek to recover their fees and charges for towing away and storing immobilized and abandoned vehicles and provides that, when stolen vehicles are recovered, owners of the recovered vehicles pay the towing and storage charges and can be reimbursed from the appropriation for criminal charges.

The bill establishes a new Board of Towing and Recovery Operators to license and regulate the towing and recovery industry and tow truck drivers. The legislation provides that local towing regulations can be no less restrictive than those imposed by the Board for Towing and Recovery Operators. The measure directs that if a vehicle is towed from one locality to be stored in another, the ordinances of the locality from which the vehicle was towed shall apply.

The bill allows local governments to prohibit storage charges for periods of time when owners cannot reclaim their vehicles because the towing and recovery business is closed and place caps on the charges that these businesses may impose. It requires any such limits be subject to "periodic and timely" adjustments.

The Act prohibits certain relationships between towing and recovery businesses and the agents of property owners from whose property trespassing vehicles are towed by the towing and recovery businesses.

Submitted as:

Virginia

Chapter 891 of 2006

Status: Enacted into law in 2006.

Unclaimed Veterans' Cremains

This Act gives veterans' organizations the right to receive the cremains of a veteran which have not been claimed by a relative or friend of the deceased within a certain time after cremation, and upon certification to the state commissioner of health and senior services that a diligent effort has been made to identify, locate and notify a relative or friend of the deceased within that time. The Act also specifies that veterans organizations receiving the cremains must be 501(c)(3) or 501(c)(19) tax-exempt veterans organizations or federally chartered Veterans Service Organizations. The Act grants immunity from damages arising from civil actions to funeral homes, mortuaries, and qualified veterans organizations for disposing cremains pursuant to the Act unless damages were the result of gross negligence or willful misconduct.

Submitted as:

New Jersey

P.L. 2009, Chapter 14

Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as "The Veterans' Cremains Act."

2

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

4 (1) "Cremains" means that substance which remains after the cremation of a dead body.

5 (2) "Diligent effort" means an effort defined under [insert citation], and includes a
6 certified letter, return receipt requested, mailed to the person who authorizes a cremation.

7 (3) "Funeral director" means a person licensed under [insert citation].

8 (4) "Qualified Veterans' Organization" means a veterans' organization that qualifies as a
9 section 501(c)(3) or 501(c)(19) tax exempt organization under the Internal Revenue Code, or a
10 federally chartered Veterans' Service Organization.

11

12 Section 3. [*Qualified Veterans' Organizations Granted Right to Receive Unclaimed*
13 *Veterans' Cremains.*]

14 (A) A funeral director shall grant a qualified veterans' organization the right to receive
15 the cremains of a veteran which have not been claimed by a relative or friend of the deceased
16 within [one year] after cremation upon certification to the [commissioner of health and senior
17 services] that a diligent effort has been made to identify, locate and notify a relative or friend of
18 the deceased within that [one-year] period.

19 (B) A qualified veterans' organization which takes possession of cremains pursuant to
20 this section shall dispose of the cremains by scattering them at sea or by interring them on land in
21 a dignified manner at the [state-operated veterans' cemetery] if the individual is eligible for
22 interment at that facility.

23 (C) A funeral home or mortuary, or an agent of the funeral home or mortuary, or a
24 funeral director, or qualified veterans' organization, shall not be liable for damages in any civil
25 action arising out of the disposal of cremains pursuant to this section unless the damages are the
26 result of gross negligence or willful misconduct.

27

28 Section 4. [*Severability*.] [Insert severability clause.]
29
30 Section 5. [*Repealer*.] [Insert repealer clause.]
31
32 Section 6. [*Effective Date*.] [Insert effective date.]

Uniform Interstate Depositions and Discovery Act

This Uniform Act generally relating to interstate depositions and discovery:

- establishes procedures for requesting and issuing certain subpoenas;
- provides for the service of certain subpoenas;
- establishing that certain rules apply to certain subpoenas;
- requires an application for a protective order or to enforce, quash, or modify certain subpoenas comply with certain rules and statutes and be filed in a certain court; and
- requires certain consideration to be given in applying and construing this Uniform Act.

Submitted as:

Maryland

Chapter 41 of 2008

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Uniform Interstate Depositions
2 and Discovery Act.”

3

4 Section 2. [*Definitions.*] In this Act:

5 (1) “Foreign jurisdiction” means a state other than this state.

6 (2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a
7 foreign jurisdiction.

8 (3) “Person” means an individual, corporation, business trust, estate, trust, partnership,
9 limited liability company, association, joint venture, public corporation, government,
10 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

11 (4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
12 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
13 the United States.

14 (5) “Subpoena” means a document, however denominated, issued under authority of a
15 court of record requiring a person to:

16 (a) attend and give testimony at a deposition;

17 (b) produce and permit inspection and copying of designated books, documents,
18 records, electronically stored information, or tangible things in the possession, custody, or
19 control of the person; or

20 (c) permit inspection of premises under the control of the person.

21

22 Section 3. [*Issuance of Subpoena.*]

23 (A) (1) To request issuance of a subpoena under this section, a party shall submit a
24 foreign subpoena to a clerk of the circuit court for the county in which discovery is sought to be
25 conducted in this state.

26 (2) A request for the issuance of a subpoena under this Act does not constitute an
27 appearance in the courts of this state.

28 (B) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in
29 accordance with that court's procedure, shall promptly issue a subpoena for service upon the
30 person to which the foreign subpoena is directed.

31 (C) A subpoena under subsection (B) of this section shall:
32 (1) incorporate the terms used in the foreign subpoena; and
33 (2) contain or be accompanied by the names, addresses, and telephone
34 numbers of all counsel of record in the proceeding to which the subpoena relates and of any
35 party not represented by counsel.

36
37 Section 4. [*Service of Subpoena.*] A subpoena issued by a clerk of court under Section 3
38 of this Act shall be served in compliance with [insert citation].

39
40 Section 5. [*Deposition, Production, and Inspection.*] [Insert citation] apply to subpoenas
41 issued under Section 3 of this Act.

42
43 Section 6. [*Application to Court.*] An application to the court for a protective order or to
44 enforce, quash, or modify a subpoena issued by a clerk of court under Section 3 of this Act shall
45 comply with the rules and statutes of this state and be submitted to the circuit court for the
46 county in which discovery is to be conducted.

47
48 Section 7. [*Uniformity of Application and Construction.*] In applying and construing this
49 Uniform Act, consideration shall be given to the need to promote uniformity of the law with
50 respect to its subject matter among states that enact it.

51
52 Section 8. [*Application to Pending Actions.*] This Act applies to requests for discovery in
53 cases pending on the effective date of this Act.

54
55 Section 9. [*Effective Date.*] This Act takes effect [insert date].

Uniform Limited Cooperative Association Act

Statement

According to a NCCUSL summary:

The Uniform Limited Cooperative Association Act (ULCAA) is designed to promote rural development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms. The Act will be equally useful in an urban setting, where the cooperative value of individuals getting together to democratically own, run, and share in the benefit of their business can be combined with modern financing techniques. The ULCAA builds on traditional law governing cooperatives, but recognizes a growing trend toward the “New Generation Cooperative” (NGC), which can include combinations of features not readily available under traditional law, such as legally binding delivery contracts or the opportunity for outside equity investment. This Act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. It is more flexible than most current law, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes.

The cooperative industry includes many interests, including, but not limited to, farmers, consumers, financial groups, and insurance organizations. In the Act, a “cooperative” is defined as an unincorporated association (a “limited cooperative association”) of individuals or businesses that unite to meet their mutual interests by creating and using a jointly owned enterprise. The Act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and worker owned cooperatives. A limited cooperative association under the Act can be organized to pursue any lawful purpose. For example, the Act would allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. It might also be used by an urban food cooperative to attract investment capital to build facilities for the operation of the cooperative’s business.

Key highlights of the ULCAA include:

- Article 1 sets the operating definitions for the Act, and outlines the nature and powers of limited cooperative associations. Article 1 also deals with the effect of organic rules, required record retention, process service, and business dealings between members and the limited cooperative association.
- Article 2 outlines the form for records required to be filed with the state agency that regulates business entities, and the procedures for signing and filing of records with that appropriate agency. Article 2 also provides the form and content of the limited cooperative’s annual report to the responsible agency, and designates the appropriate state law governing filing fees.
- Article 3 governs the formation process for limited cooperative associations under the act, the required contents of articles of organization and bylaws, and the initial organizing directors. Article 14 of the Act governs amendments and restatements (and the requirements for such) to the organic rules of an association.
- Article 4 prescribes the qualifications for membership in a limited cooperative association, and the rights and powers that come with belonging to the organization. The article also addresses the required Annual Meeting of members and procedures for calling special members’ meetings. The article delineates the procedures for providing notices for member

meetings, quorum and voting, the allocation of voting power among patron members, voting by investor members, and action taken without meetings.

- Article 5 states that patron and investor member interests are personal property, and consist of governance rights, financial rights, and the possible right or obligation to do business with the association. The Act defers to the organic rules on transferability of interests and (in some cases) security interests in members' rights and set-offs, but in the event the rules are silent, does not allow transfer or security interests in non-financial rights. Article 5 also allows charging orders against debtor-members or –transferees.

- Article 6 authorizes marketing contracts between the limited cooperative association and third parties (not necessarily patron members). If a marketing contract is for the sale of products, commodities, or goods to an association, then title transfers to the association absolutely upon delivery, or upon a specific time expressly provided for in the contract. The Act also authorizes the association to create an enforceable security interest in the products, commodities, or goods delivered, and to sell such, and pay the sales price on a pooled (or other) basis after deducting selling and processing costs, expenses, overhead, etc. Initially, marketing contracts cannot last longer than 10 years, but they may be made self-renewing for additional 5-year periods.

- Article 7 provides for the directors of the limited cooperative association, their qualifications, and their authority and powers. The article gives procedures for the election of directors and provides a default term of service in the event that the organic rules are silent on term length. In the event of a director's resignation, removal, or suspension from the board, or if a vacancy occurs otherwise, the article sets forth (at a minimum) default provisions on filling the vacancy while permitting a great deal of flexibility to the organic rules to tailor procedures to the association's needs. The article also details meeting and notice procedures for the board, and various rights and standards of conduct for directors, and gives authority for the appointment of association officers. Article 8 establishes the governing law for indemnification of other individuals who incur liability on behalf of the association and grants authority to the association to purchase insurance on these parties' behalf. Article 16 outlines member-approved and non-member-approved disposition of the association's assets.

- Article 9 states that (unless otherwise provided by the association's organic rules), member contributions to a limited cooperative association may consist of tangible or intangible personal property, or any other benefit to the association, including money, labor, services, promissory notes, agreements to contribute, and contracts to be performed. The board may determine the "value" of the contribution for purposes of determining whether a member has met its obligation to contribute. Unless an agreement to make a contribution varies the statutory requirements, Article 9 provides default provisions on contribution agreements and their obligation on members. Profits and losses must be allocated between patron members, unless the organic rules provide otherwise, and the patron membership cannot be allocated any less than 50% of profits even if investor members are allowed. Subject to the rules, before determining the amount of profits, the board may set aside a portion of the profits to create or accumulate: a capital reserve; reasonable reserves for specific purposes, such as expansion or replacement of capital assets, or education, training, and information. Distributions may be made in any form, including cash, capital credits, allocated patronage equities, etc. The interest of patron members in limited cooperative associations under the Act enjoy the same exemption from state securities laws that they would in similar cooperative associations under existing law.

- Articles 10 and 11 deal with the right of a member to dissociate and its effect, and dissolution of the limited cooperative association (judicial, voluntary, and administrative). Article 12 establishes the right of a member to maintain a derivative action to enforce an

association's right where the association fails to will not enforce that right. Article 15 governs the requisite process and filings for conversion of a limited cooperative association to another entity (or vice versa), and the effect of conversion on the rights, duties, liabilities, immunities and debts of the converting entity

- Article 13 allows "foreign" cooperatives to apply for and receive a certificate of authority to transact business in the enacting jurisdiction.

The Uniform Limited Cooperative Association Act offers cooperatives and their members a statutory mechanism that embodies the traditional elements of cooperative associations, and recognizes the changing needs and trends that cooperatives face. It recognizes the varied purposes a cooperative can and should be used for, and provides flexibility in their organization and development. The Act provides an effective vehicle for cooperatives to organize, develop, and thrive, and the Act should be enacted by all states."

Three states enacted The Uniform Limited Cooperative Association Act during the 2007-2008 state legislative session; Nebraska (LB 848), Oklahoma (SB 1708) and Utah (SB 69) .

According to NCCUSL legislative tracking, the ULCAA has been enacted in Nebraska, Utah, and Oklahoma as of June 15, 2009.

The following text is the *Prefatory Note* to the Uniform Limited Cooperative Association Act. by the National Conference of Commissioners on Uniform State Laws.

The Uniform Act (ULCAA) combines an unincorporated and flexible organizational structure with cooperative principles and values in order to obtain increased equity investment opportunity for capital intensive and start-up cooperative enterprises. It encourages equity investment by allowing, but not requiring, a limited cooperative association to have voting investor members in addition to patron members. Giving equity investors even limited voice in operations on an on-going basis is the biggest defining feature distinguishing this Act from other cooperative acts. Nonetheless, it is possible to view the distinction between debt and equity as one of degree rather than of kind. In effect this Act allows a limited cooperative association to substitute equity capital with limited, but real, governance rights for debt capital and lenders, through loan covenants, can control some activities of any kind of entity.

Another defining feature of this Act is that it is based in large part on unincorporated law and entities formed under it are intended to be unincorporated entities for state law purposes in the style of limited liability companies and limited partnerships. This feature may lead to rather sophisticated tax planning flexibility but is important, too, because cooperatives have historically functioned for specific purposes in a way analogous to, and sometimes in fact as, unincorporated associations. On the other hand, the names, but not necessarily the function, of the organic documents of a limited cooperative association are borrowed from corporate law based "traditional" cooperative statutes.

Limited cooperative associations are an alternative to other cooperative and unincorporated structures already available under state law. The Act is a free-standing act separate and apart from current cooperative acts and, therefore, is not a statutory replacement of other law. It is simply another statutory option under which to form an entity.

At the time of the promulgation of this Act, it is possible to qualify as a "cooperative" for some federal purposes without being organized as a cooperative under state law. That is, other forms of business organizations may be used for cooperative purposes. This Act, however, provides an efficient default template that encourages planners to utilize tested cooperative principles that reflect traditional cooperative values at a deeper level than provided in those other

organizational structures. ULCAA may be correctly perceived as protecting cooperative principles within state law in ways not possible under more general organizational statutes.

The Act draws from existing statutes in Minnesota, Tennessee, Iowa, and Wisconsin, and, to a lesser extent, Wyoming which contemplate unincorporated cooperative entities and which encourage a greater use of outside equity furnished by “investors”. These laws began with Wyoming in 2001 and continued from Minnesota in 2003 through Nebraska in 2007. ULCAA seeks to provide a template for uniformity and further evolution in this area of law. In some ways, this Act is more protective of patron members than most of the existing statutes. Even before the enactment of these enabling laws, however, combinations of entities were being used to address equity capital concerns in cooperatives. See, e.g., Michael L. Cooke, Constantine Iliopoulos, *Beginning to Inform the Theory of the Cooperative Firm: Emergence of the New Generation Cooperative* 1999 *Finn. J. Bus. Econ.* 525 (Issue 4).

At the time of the promulgation of this Act, combination entities continue to be used to pair cooperatives with other entities in partnerships and joint ventures. Typically the “other entity” provides financing and the joint venture agreement provides for the allocation of profits and losses between the venturers and for the payment of fees for the provision of necessary inputs such as management services. The use of these multiple entity structures builds on the practical experience of “New Generation” cooperatives. The “New Generation” cooperative model differs from the historical cooperative model because it requires substantial up-front investment by patron members, connects equity investment with the right and obligation to deliver specified quantities of product to the cooperative, and allows patron members to transfer their equity in the cooperative by private sale to another person eligible to become a patron member.

The broad definition of “person” (Section 102(24)), the manner in which a person becomes a member (Section 502), and the flexibility provided by broadly allowing the purpose of a limited cooperative association to encompass activities that may (or may not) be for-profit (Section 105), continue a trend in unincorporated entity law. It is possible for ULCAA limited cooperative associations, therefore, to serve as joint venture conduits between and among for-profit entities, not-for-profit entities, and governmental divisions, if the organic law (and tax law) of those other entities allows them to do so; and, if the other law makes such ventures practicable. This use is consistent with several traditional cooperative values because cooperatives are self-help organizations that in some states are, or may be, formed under not-for-profit statutes. Moreover, the federal income taxation of specific types of cooperatives is based on exempt organization concepts (though it is unlikely a limited cooperative association can comply with that scheme of taxation as currently formulated). If a limited cooperative association is able to navigate regulatory and tax complexity, the limited cooperative association might be an alternative entity for organizations in the growing social sector.

There are two final introductory matters concerning nomenclature and citation in the following comments to ULCAA. Throughout the comments it is necessary or helpful to contrast limited cooperative associations from cooperative organizations formed under other law. A convention adopted for purposes of the comments is that “cooperative organizations formed under other law” are termed “traditional cooperatives”. Reference and citation to frequently cited uniform or model acts are as follows: Revised Uniform Limited Liability Company Act is referenced as RULLCA (2006); Uniform Limited Partnership Act is referenced as ULPA (2001); Revised Uniform Partnership Act is referenced as RUPA (1997); Revised Uniform Limited Partnership Act with 1985 Amendments is referenced as RULPA (1976/1985); Model Entity Transaction Act is referenced as META; Revised Model Business Corporation Act (Model Business Corporation Act) is referenced as RMBCA.

Cooperative Principles

Cooperatives are unique organizations. Israel Packel emphasized the unique nature of the cooperative through four editions of his book on cooperatives from 1940 to 1970. He criticized attempts to interpret cooperatives solely by comparative classification as either “corporations” or “partnerships” by stating:

“Instead of a direct approach as to whether a particular rule, in the light of the reason for the rule, should be applied to cooperatives, courts in the past tended to create the preliminary hurdle of determining whether cooperatives are to be treated as corporations, partnerships, or other joint ventures.” He later discussed *Moore v. Hillsdale County Tel. Co.*, 137 N.W. 241 (Mich. 1912) (categorizing an unincorporated telephone cooperative as a joint venture).]

The uselessness of such an analysis becomes even more apparent when it leads to a statement that cooperatives “are somewhat of a hybrid, partaking both of the nature of a corporation and a partnership” [citing *Philadelphia School Dist. v. Frankford Grocery Co.*, 103 A.2d 738 (Penn. 1954)].

Israel Packel, *The Organization and Operation of Cooperatives* p. 5-6 (4th ed. 1970); contra, David Barton, *What is a Cooperative*, in *Cooperatives in Agriculture*, p. 1 (David Cobia, ed., 1989).

Even so, entity comparisons can be helpful for understanding the limited cooperative association. The basic features of limited cooperative associations formed under this Act (ULCAA) are flexible within bounds and largely based in contract consistent with other cooperative and unincorporated entity law. The organic rules, however, consistent with traditional cooperatives and corporations, are articles and bylaws though the articles are styled articles of organization, a term used in many limited liability company statutes. Member governance rights under the default rules share some aspects similar to those of limited partners in limited partnerships. For example, members do not have agency authority on behalf of the association. The governance structure is centralized with a board of directors like traditional cooperative statutes and, as a necessary result, the Act contains machinery necessary to support representational central authority.

Transferability of members’ interests and entity duration are similar to traditional cooperative and limited liability companies. Members’ liability is limited like both corporate and unincorporated limited liability entities. Allocation and distribution provisions are sui generis to this Act but are consistent with broad unincorporated concepts because they contemplate equity capital accounts in the names of the members.

Mechanical operation aside, the Act reflects cooperative principles except to the extent necessary to accommodate investor members for those limited cooperative associations choosing to have investor members. It is worth repeating that this Act does not require a limited cooperative association to have investor members. The Act results in an entity that is designed to function in close proximity to the way traditional cooperatives function in the absence of investor members.

Cooperative principles have historical roots that can be traced to the pre-revolutionary period in Pennsylvania where Benjamin Franklin helped form “what is considered the first

formal cooperative business in the United States” in 1752. It was a mutual fire insurance company. Gene Ingalsbe & Frank Groves, *Historical Development*, in *Cooperatives in Agriculture*, 106 at 110-11 (David Cobia, ed., 1989).

The Rochdale Society of Equitable Pioneers, Ltd., however, is recognized as having “singular impact” on the cooperative movement. *Id.* at 109. It was a consumer cooperative formed in Rochdale, England, in 1844. The “Rochdale Principles” grew out of the experience of the Rochdale Society and probably “evolved from ‘rules of conduct and points of organization’” published by the Society in 1860. The number of “Rochdale Principles” varies depending on source probably “because the rules enumerated by the Rochdale Society continued to evolve from its founding... up to its publication in 1860 and thereafter.” David Barton, *Principles in Cooperatives in Agriculture* p. 22 (1989).

The number of stated enumerated principles varies between three and fourteen. In 1995, for example, the International Co-operative Alliance (ICA) listed the following seven cooperative principles: (1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training and information for members; (6) cooperation among cooperatives; and, (7) concern for community. The 1995 list varies from ICA’s list promulgated in 1966. The 1995 list deleted “business at cost” and “limited return on capital” but added numbers (3), (4) and (7) as enumerated above. See Barton, *supra*, at pp. 31-2. Packel used the term “characteristics” rather than principles and suggested: “No single characteristic is necessarily all-controlling.” Packel, *supra*, at p. 5.

A frequently quoted passage from a dissent written by Justice Brandeis (and joined by Justice Holmes) concerning whether a stock cooperative was the same as a non-stock cooperative for purposes of an Oklahoma regulatory statute stated:

That no one plan of organization is to be labeled as truly co-operative to the exclusion of others was recognized by Congress in connection with co-operative banks and building and loan associations [citation omitted]. With the expansion of agricultural co-operatives it has been recognized repeatedly.

Frost v. Corporation Comm. (Oklahoma), 278 U.S. 515 at 546 (1929) (Brandeis, J., dissenting).

Justice Brandeis further stated:

And experts in the Department of Agriculture, charged with disseminating information to farmers and Legislatures, have warned against any crystallization of the co-operative plan, so as to exclude any type of co-operation.

Id.

The interpretation of cooperative principles has evolved under other law, too. For example, the Internal Revenue Service changed its interpretation of whether operating on a cooperative basis required more than 50 percent of the cooperative’s business be done with members on a patronage basis to qualify for tax treatment afforded one specific kind of cooperative. Rev. Rul. 93-21, 1993-1 C.B. 188 (stating that the 50 percent threshold is not necessary).

Cooperative principles undergird and animate many of ULCAA’s provisions. As a result, understanding the Act at a fundamental level is aided by an overview of cooperative values and principles.

One of the fulcrums in this Act regarding cooperative values is Section 104 (“Nature of Limited Cooperative Association”). It addresses the values of member economic participation, autonomy, and independence. Autonomy, however, must be placed within the practical context of long-term debt, equity, and the use of combination entities. Voluntary membership remains voluntary in the sense that this Act requires the “consent” of both the person seeking to become a member and the association. See Section 113(a). Open membership has been compromised under existing law establishing entities similar to limited cooperative associations and remains so in ULCAA to allow (but not require) the formation of “closed” cooperatives. Closed cooperative structure assists patron members to share the increased value of the entity they helped build and provides member liquidity.

Section 1004 (“Allocations of Profits and Losses”) expressly provides for the values of member economic participation; education, training and information, and; cooperation among cooperatives. One of the key balancing points of the Act concerns “democratic member control.” Sections 405, 511(a) through 514, 804, and 816(a) (as well as the other voting provisions on fundamental changes) all concern the patron member control principle.

“Concern for community” is directly addressed by Section 820 which varies the law generally applicable to corporate directors, for example, to allow the directors of a limited cooperative association to consider cooperative principles as well as a number of community constituencies in making decisions. See also Section 1004(a)(2).

In sum, the Act expressly considers important traditional cooperative values and provides reasoned departures from those values only where necessary for purposes of reducing the cost of capital to limited cooperative associations in furtherance of the other cooperative principles.

Submitted as:

Utah

SB 69

Status: Enacted into law in 2008.

Uniform Parentage Act Statement

According to the ULC, "In 1973 the Uniform Law Commissioners promulgated the Uniform Parentage Act. In its time it led a revolution in the law of determination of parentage, paternity actions and child support. A child whose mother was not married was an illegitimate child under the common law. The father of an illegitimate child was burdened neither with rights nor obligations. He could be subject to an action for limited damages (the costs of delivering the baby for the most part) in an action that was quasi-criminal, not a civil action. The child had no right of support, but then the unmarried father also had no rights to custody.

The U.S. Supreme Court eliminated illegitimacy as a legal barrier in a number of cases in the 1960's and 70's. The old-fashioned paternity actions simply did not respond to these changes in fundamental law. The 1973 Uniform Parentage Act was law for a new generation. Section 2 of the Uniform Parentage Act confirmed and completed the revolution with very simple language: "The parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parent." The rest of the 1973 Uniform Parentage Act was devoted to a modern civil paternity action in which the sole issue was identifying the natural father of any child. Section 15 of the 1973 Uniform Parentage Act also authorized a support action within the paternity action.

In 1988, the Uniform Law Commissioners promulgated two other Acts that deal with issues of parentage. The Uniform Status of Children of Assisted Conception Act provided rules establishing legal parentage for children conceived other than by sexual intercourse and possibly carried by a woman other than the legal mother. It was a response to the technologies of assisted conception, like in vitro fertilization and artificial insemination. The second was the Uniform Putative and Unknown Fathers Act. It is a procedural Act that allows the identification of putative and unknown fathers and termination of their parental rights.

The new Uniform Parentage Act (revised in 2000 and amended in 2002) continues to serve the purposes of the 1973 Uniform Parentage Act, particularly the purpose of identifying fathers so that child support obligations may be ordered. The two 1988 Acts are, also, incorporated into it and lose their separate existence. There are technological changes that make it necessary to revise the 1973 Uniform Act. New technology in the form of the exact genetic identification was not available in 1973. A statute providing for paternity actions in 2002 must take this technology into account.

There are seven substantive articles: Article 2, Parent-Child Relationship; Article 3, Voluntary Acknowledgment of Paternity; Article 4, Registry of Paternity; Article 5, Genetic Testing; Article 6, Proceeding to Adjudicate Parentage; Article 7, Child of Assisted Conception; and, Article 8, Gestational Agreement. It is not possible in a short summary to cover every provision in the new Uniform Parentage Act. This summary provides some highlights of important provisions.

The original policy of the 1973 Uniform Act that provides a relationship between natural parents and their children notwithstanding the marriage of the parents continues. Legal parenthood, however, is more complicated in than it was in 1973. In Article 2 of the new Uniform Act, a legal mother is one who carries a child to birth (rather than the one whose egg has been fertilized), but may also be one who is adjudicated as the legal mother, who adopts the child (thus expressly recognizing adoption), or who is the legal mother under a gestational agreement. In the last three instances, the woman who carries the child to birth is not the legal mother.

In Article 2, the legal father may be one of the following: an un rebutted presumed father (usually a man married to the birth mother at conception or a man who has lived with a child for

the first two years of the child's life and treated the child as his child), a man who has acknowledged paternity under Article 3, an adjudicated father as the result of a judgment in a paternity action, an adoptive father, a man who consents to an assisted reproduction under Article 7, or an adjudicated father in a proceeding confirming a gestational agreement under Article 8. The genetic father or the presumed genetic father is the legal father in the first three of these categories, but is not necessarily the legal father in the latter three categories.

The 1973 Uniform Act was simpler, identifying the birth mother and the natural (read genetic) father as the legal parents, except for the case of adoption. It did cut-off the legal fatherhood of the genetic sperm donor in an artificial insemination (the first kind of assisted conception), in favor of the consenting husband of the woman artificially inseminated. But the contrast between the 1973 Uniform Act and the 2000 Uniform Act couldn't be more definitive than just on this issue of legal parenthood. Technology has changed the combinations and permutations of the parent-child relationship, and the new Uniform Act simply reflects that fact.

Article 3 of the new Uniform Act provides a non-judicial, consent proceeding for acknowledgment of paternity. The 1973 Uniform Act permits a court to recommend settlement of a paternity action in a pre-trial proceeding (Section 13), upon acknowledgment of paternity and assumption of a child support obligation by the defendant in the action. An agreed settlement becomes a judgment of paternity. The non-judicial acknowledgment of paternity proceeding under Article 3 of the new Uniform Act allows a knowing and voluntary acknowledgment of paternity that is the equivalent of a judgment of paternity for enforcement purposes. An acknowledgment from another state is given the privilege of full faith and credit in a state adopting the new Uniform Act.

Such an acknowledgment is effective so long as there is not another presumed, acknowledged or adjudicated father. There are provisions for rescission, if a proceeding is filed within two years of registration pursuant to Article 4. There is a counterpart denial of paternity by a presumed father that is, also, available and has the effect of a judgment of non-paternity, if another man acknowledged paternity or is adjudicated to be the natural father.

Article 4 provides a specific registry for putative and unknown fathers. The registry permits them to be notified if there is a proceeding for adoption or termination of parental rights. Before a child is one-year-old, there must be a certificate of search presented to the court hearing the adoption or termination of parental rights action. If the certificate shows that no putative or unknown father has registered within 30 days of the birth of the child, parental rights may be terminated without further notice. Once a child has reached the age of one year, however, the registry no longer has any effect. Actual notice is then required before any termination of parental rights may occur.

There are important exclusions from the effect of the registry. No rights of a father who has established a parent-child relationship may be terminated because there was no registration. Therefore, no presumed father, adjudicated father or father by acknowledgment may have his parental rights terminated under Article 4.

Article 5 establishes a separate procedure for genetic testing, so that a court may order testing without a full-blown paternity action. A reasonable probability of sexual contact between the putative father and the mother is enough to initiate the proceeding. A putative father may also initiate the proceeding to obtain the tests to prove that he is not the genetic father. Standards for genetic testing are part of Article 5. The standard for a presumption of paternity as a result of testing is also established by statute. The measure is 99% probability of paternity based on appropriate calculations of "the combined paternity index." The presumption is rebuttable by further genetic evidence that excludes the putative father or that identifies another man as the

genetic father. The standards for admissibility in a paternity proceeding are not contained in Article 5, but are provided in Article 6.

A court may compel genetic testing of a man's blood relatives if he is not available for testing. A child support agency may petition for genetic testing, but only if there is no presumed, acknowledged or adjudicated father. Article 5 also deals with allocation of costs for genetic testing and for confidentiality of results.

The 1973 Uniform Act provided for blood testing in a paternity action. The results were evidence in that action. The "blood" testing of the time could help identify a natural father, but was nowhere as certain and determinative as genetic testing subject to rigorous standards as the new Uniform Act contemplates. Precise genetic testing has changed determination of parentage dramatically.

Article 6 governs the basic proceeding to determine parentage. This was primarily a paternity action under the 1973 Uniform Act, but the new Uniform Act must take into account the need to adjudicate the legal parentage of a woman, also. Who may bring an action is expanded from the 1973 Uniform Act, which favored the mother and the child, but did not generally allow putative fathers to bring actions if a presumed father already existed. Under the new Uniform Act the child, the mother of the child, a man whose paternity is to be adjudicated, a support-enforcement agency, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or an intended parent under a gestational contract have standing.

The objective of this proceeding is to adjudicate parenthood for the alleged father or mother. In a paternity proceeding, rebuttal of a presumption of fatherhood, acknowledged fatherhood or prior adjudicated fatherhood requires genetic information that, within the accepted probabilities, excludes the presumed father from paternity or establishes another man as the father of the child. An un rebutted presumption will ripen into an adjudication of fatherhood in the proceeding.

Jurisdiction to bring an action, generally, is governed by Section 201 of the Uniform Interstate Family Support Act. If there is no presumed, acknowledged or adjudicated father, an action to determine parentage may be brought at any time - no limitation. If there is a presumed father, the statute of limitations for an action is two years from the birth of the child. However, an action to disprove the presumed father's paternity may be brought at any time if the presumed father and mother did not cohabit or have sexual intercourse during the time of conception and the presumed father did not treat the child as his own.

Admission of the results of genetic testing are very important in Article 6. A refusal to submit to genetic testing may, in fact, ripen into an adjudication of paternity for the putative father who refuses. Only genetic evidence overcomes a presumption of fatherhood, as noted above. No child (as a party) is bound by an adjudication of fatherhood unless the "adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown..." The 1973 Uniform Act did not and could not rely upon genetic information in the way the new Uniform Act does.

The section providing for a support action in the 1973 Act is no longer in the new Uniform Parentage Act. Child support actions are covered in other statutes in every state as they were not in 1973.

Article 7 deals with parentage when there is assisted conception and incorporates the earlier Uniform Status of Children of Assisted Conception Act into the 2000 Uniform Parentage Act almost without change. If a couple consents to any sort of assisted conception, and the woman gives birth to the resultant child, they are the legal parents. A donor of either sperm or eggs used in an assisted conception may not be a legal parent under any circumstances.

Article 8 deals with gestational agreements, incorporating parts of the Uniform Status of Children of Assisted Conception Act on this issue. This article is optional to enacting states. Gestational agreements are valid in some states and not in others. They are made an optional part of the new Uniform Act for that reason. Having such provisions available to the states even in optional form is important simply because gestational agreements are being used all the time, and the legal parenthood of children should not be in doubt because such agreements are used.

A gestational agreement occurs between a woman and a couple obligating that woman to carry a child for the intended parents. The conception must be an assisted conception. The woman who carries the child to birth pursuant to a gestational agreement is not the legal mother of that child, an exception to the general rule. If she is a married woman, her husband must consent to the agreement. He then has no parental rights or obligations with respect to the child. The intended parents become the legal parents of the child.

Gestational agreements are carefully controlled under the new Uniform Act. A court must validate such agreements before they are enforceable. The hearing that the court conducts to validate a gestational agreement is analogous to a proceeding for an adoption of a child. The court verifies the birth mother's qualifications to carry the child and the intended parents' qualifications to be parents. The birth mother may be compensated, and has the power to terminate the agreement.

The new Uniform Parentage Act is important to parents and children. We must recognize the obligations of parents in any possible combination and permutation of marriage of the parents, method for conception of the child, and arrangements that intended parents make to have children. Otherwise we have children for whom nobody has responsibility. The new Uniform Parentage Act confronts the complicated issue of establishing legal parentage against the complications that technology provides. It brings genetic testing into modern parentage actions in a manner that is efficient, but that preserves due process rights for all concerned. It is necessary law for the new century.”

The ULC reports nine states have adopted the Act as of February 2009: Alabama, Delaware, North Dakota, Oklahoma, Texas, Utah, Washington and Wyoming.

Submitted as:

Alabama

HB 39 (Enrolled version)

Status: Enacted into law in 2008.

Uniform Unsworn Foreign Declarations Act

According to the Uniform Law Commissioners, prior to the September 11, 2001 terrorist attacks, access to U.S. consular offices was far less restricted and difficult than it is today. Foreign affiants with information relevant to U.S. proceedings or transactions and willing to provide assistance could visit the U.S. consular office to finalize their affidavit or statement, in very similar fashion to a person within the U.S. visiting a notary public at a local bank. Due to increased security measures, this relatively routine process became more burdensome and time consuming. Even greater hurdles exist for persons seeking statements from individuals who do not reside near a U.S. consular office. The American Bar Association (ABA) raised these issues and referred them to the Uniform Law Commission in an official report, adopted by the ABA House of Delegates in 2006. The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state law proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the Act, then the statement may be used as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language: declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)

Several states have procedures for allowing unsworn declarations, but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of UUFDA harmonizes state and federal treatment of unsworn declarations. The Act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing U.S. consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal procedure in U.S. court proceedings.

Submitted as:

Utah

SB122

Status: Enacted into law in 2009.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the "Uniform Unsworn Foreign
2 Declarations Act."

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

5 (1) "Boundaries of the United States" means the geographic boundaries of the United
6 States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession
7 subject to the jurisdiction of the United States.

8 (2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial
9 decision or order, a rule of court, an executive order, and an administrative rule, regulation, or
10 order.

11 (3) "Record" means information that is inscribed on a tangible medium or that is stored in
12 an electronic or other medium and is retrievable in perceivable form.

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

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

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

17 (5) "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 of
19 the United States.

20 (6) "Sworn declaration" means a declaration in a signed record given under oath. The
21 term includes a sworn statement, verification, certificate, and affidavit.

22 (7) "Unsworn declaration" means a declaration in a signed record that is not given under
23 oath, but is given under penalty of perjury.

24
25 Section 3. [*Applicability.*]

26 (1) This chapter applies to an unsworn declaration by a declarant who at the time of
27 making the declaration is physically located outside the boundaries of the United States whether
28 or not the location is subject to the jurisdiction of the United States.

29 (2) This chapter does not apply to a declaration by a declarant who is physically located
30 on property that is within the boundaries of the United States and subject to the jurisdiction of
31 another country or a federally recognized Indian tribe.

32
33 Section 4. [*Validity of Unsworn Declaration.*]

34 (1) Except as otherwise provided in Subsection (2), if a law of this state requires or
35 permits use of a sworn declaration, an unsworn declaration meeting the requirements of this
36 chapter has the same effect as a sworn declaration.

37 (2) This chapter does not apply to:

38 (a) depositions;

39 (b) oaths of office;

40 (c) oaths required to be given before a specified official other than a notary public;

41 (d) declarations to be recorded pursuant to [insert citation (real estate)]; or

42 (e) oaths required by [insert citation].

43
44 Section 5. [*Required Medium.*] If a law of this state requires that a sworn declaration be
45 presented in a particular medium, an unsworn declaration must be presented in that medium.

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47 Section 6. [*Form of Unsworn Declaration.*] An unsworn declaration under this chapter
48 must be in substantially the following form:

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I declare under penalty of perjury under the law of [insert state] that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ____ day of _____, _____, at _____, _____.
(date) (month) (year) (city or other location, and state) (country)

(printed name)

(signature)

Section 7. [*Uniformity of Application and Construction.*] In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 8. [*Relation to Electronic Signatures in Global and National Commerce Act.*] This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

Virtual Charter Schools Statement

2007 Wisconsin Act 222 defines a virtual charter school as a charter school that provides an online learning program. The Act exempts for a limited time people who teach in virtual charter schools from having a teaching license or permit issued by the state department of public instruction. However, it requires that beginning July 1, 2013, no person may teach an online course in a public or charter school unless he or she has completed a professional development program, approved by state department of public instruction, that is designed to prepare a teacher for online teaching.

The Act directs the state department of public instruction to make online courses available for a reasonable fee, through a statewide web academy, to school districts, cooperative educational service agencies, charter schools, and private schools. That department must also establish instructional standards for online courses taken by pupils enrolled in public and charter schools.

The bill directs school boards (or chartering entity, if other than a school board) to do all of the following:

- determine which pupils may enroll in an online course, which online courses are available, and the number of online courses a pupil may take;
- provide a safe and secure online environment, ensure the confidentiality of pupil coursework and records, and verify the authenticity of pupil coursework;
- except for teachers in virtual charter schools in existence on the bill's effective date, assign an appropriately licensed teacher for each online course;
- ensure that pupils enrolled part-time in online courses have direct contact with a teacher, each week school is scheduled, for at least 20 minutes for each online course;
- ensure that elementary school pupils who are enrolled full-time in online courses have direct contact with a teacher for at least two hours each day that school is scheduled;
- ensure that high school pupils enrolled full-time in online courses have direct contact with a teacher for at least 30 minutes each day that school is scheduled;
- determine the average equivalency hours for online courses;
- ensure that only pupils who reside in this state enroll in online courses; and
- limit how many students can enroll in a virtual charter school through an Open Enrollment Program.

Submitted as:

Wisconsin

2007 Wisconsin Act 222

Status: Enacted into law in 2008.

Waste Heat and Carbon Emissions Reduction

This Act is based on California law. Under California law, the State Energy Resources Conservation and Development Commission (Energy Commission) is charged with monitoring trends in the supply and consumption of electricity and other forms of energy in the state and analyzing the social, economic, and environmental consequences of those trends.

Under California law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The PUC is authorized to fix the rates and charges for every public utility, and those rates and charges must be just and reasonable. The PUC must review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The PUC, in consultation with the Independent System Operator, must also establish resource adequacy requirements for all load-serving entities in accordance with specified objectives.

This draft Act authorizes the PUC to require an electrical corporation to purchase excess electricity delivered by a combined heat and power system that complies with certain sizing, energy efficiency, and air pollution control requirements. However, it authorizes the PUC to establish a maximum kilowatt hours limitation on the amount of excess electricity that an electrical corporation is required to purchase if the PUC finds that the anticipated excess electricity generated has an adverse effect on long-term resource planning or the reliable operation of the electricity grid.

The legislation requires the PUC to establish, in consultation with an Independent System Operator, tariff provisions that facilitate the provisions of the Act and the reliable operation of the grid. The bill requires every electrical corporation to file a standard tariff with the PUC for the purchase of excess electricity from an eligible customer-generator and requires the electrical corporation to make the tariff available to eligible customer-generators within the service territory of the electrical corporation upon request. The legislation authorizes the electrical corporation to make the terms of the tariff available in the form of a standard contract.

The Act requires that the costs and benefits associated with any tariff or contract be allocated to benefiting customers. The PUC must establish for each electrical corporation, a pay-as-you-save pilot program, meeting certain goals, for eligible customers to finance all of the upfront costs for the purchase and installation of combined heat and power systems.

The legislation directs the PUC, in approving an electrical corporation's procurement plan, to require the plan to assess the reliability of incorporating combined heat and power solutions to the maximum degree that is cost effective compared to other competing forms of wholesale generation, technologically feasible, and environmentally beneficial, particularly as it pertains to reducing emissions of carbon dioxide and other greenhouse gases. The bill authorizes the PUC to modify or adjust the requirements of the Act for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

This Act requires a local publicly owned electric utility serving retail end-use customers to establish a program that allows retail end-use customers to utilize combined heat and power systems that reduce emissions of greenhouse gases by achieving improved efficiencies utilizing heat that would otherwise be wasted in separate energy applications and that provides a market for the purchase of excess electricity generated by a combined heat and power system, at a just and reasonable rate, to be determined by the governing body of the utility.

This bill requires the Energy Commission, by January 1, 2010 to adopt guidelines that require combined heat and power systems be designed to reduce waste energy, be sized to meet the eligible customer-generator's thermal load, operate continuously in a manner that meets the expected thermal load, optimizes the efficient use of waste heat, are cost effective,

technologically feasible, and environmentally beneficial. The bill authorizes the Energy Commission to adopt temporary guidelines for combined heat and power systems prior to January 1, 2010. The bill requires an eligible customer-generator's combined heat and power system to meet certain efficiency and emissions requirements. It requires an eligible customer-generator to adequately maintain and service the combined heat and power system so that during operation, the system continues to meet or exceed the efficiency and emissions requirements. This bill requires a combined heat and power system comply with greenhouse gases emission performance standard established by the PUC.

This bill calls for reporting to the Governor and the Legislature on the reduction in emissions of greenhouse gases resulting from the increase of new electrical generation that uses excess waste heat through combined heat and power systems and recommend policies that further the goals of the bill.

Submitted as:

California

Chapter 713 of 2007

Status: Enacted into law in 2007.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The Waste Heat and Carbon
2 Emissions Reduction Act.”

3
4 Section 2. [*Legislative Findings and Intent.*] The [Legislature] finds and declares all of
5 the following:

6 (1) Combined heat and power systems produce both electricity and thermal energy from a
7 single fuel input, thus achieving much greater efficiency than the usual separate systems for
8 producing these forms of energy, and reducing consumption of fuel.

9 (2) Combined heat and power systems recover heat that would otherwise be wasted in
10 separate energy applications, and use this heat to avoid consumption of fuel that would otherwise
11 be required to produce heat.

12 (3) Gigawatthours of potential useful electricity and millions of British thermal units of
13 thermal energy could be derived from unused waste heat that is currently being vented into the
14 atmosphere.

15 (4) State policies should dramatically advance the efficiency of the state's use of natural
16 gas by capturing unused waste heat, and in so doing, help offset the growing crisis in electricity
17 supply and transmission congestion in the state.

18 (5) State policies should reduce wasteful consumption of energy through improved
19 residential, commercial, institutional, industrial, and manufacturer utilization of waste heat
20 whenever it is cost effective, technologically feasible, and environmentally beneficial,
21 particularly when this reduces emissions of carbon dioxide and other carbon-based greenhouse
22 gases.

23 (6) The [Legislature] intends to support and facilitate both customer- and utility-owned
24 combined heat and power systems.

(7) This Act does not apply to, and shall not impact, combined heat and power systems in operation prior to [January 1, 2008], or combined heat and power systems with a generating capacity greater than [20] megawatts.

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

(1) “Combined heat and power system” means a system that produces both electricity and thermal energy for heating or cooling from a single fuel input that meets all of the following:

(a) Is interconnected to, and operates in parallel with, the electric transmission and distribution grid.

(b) Is sized to meet the eligible customer-generator's onsite thermal demand.

(c) Meets the efficiency standards of subdivisions (a) and (d), and the greenhouse gases emissions performance standard of subdivision (F) of Section 9 of this Act.

(2) “Commission” means the state Public Utilities Commission (PUC) as defined under [insert citation].

(3) “Eligible customer-generator” means a customer of an electrical corporation that meets both of the following requirements:

(a) Uses a combined heat and power system with a generating capacity of not more than [20] megawatts, that first commences operation on or after [insert date].

(b) Uses a time-of-use meter capable of registering the flow of electricity in two directions. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the electricity flow calculations shall yield a result identical to that of a time-of-use meter.

(4) “Electrical corporation” has the same meaning as defined in [insert citation].

(5) “Energy Commission” means the [State Energy Resources Conservation and Development Commission] as defined in [insert citation].

(6) “Excess electricity” means the net electricity exported to the electrical grid, generated by a combined heat and power system that is in compliance with [insert citation].

(7) “Greenhouse gas” or “greenhouse gases” includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(8) “Independent System Operator” means as defined in [insert citation].

Section 4. *[Combined Heat and Power Systems: Tariffs, Standby Rates, and Purchasing Requirements for Electrical Corporations.]*

(A) The [commission] may require an electrical corporation to purchase from an eligible customer-generator, excess electricity that is delivered to the grid that is generated by a combined heat and power system that is in compliance with Section 9 of this Act. The [commission] may establish a maximum kilowatthours limitation on the amount of excess electricity that an electrical corporation is required to purchase if the [commission] finds that the anticipated excess electricity generated has an adverse effect on long-term resource planning or reliable operation of the grid. The [commission] shall establish, in consultation with the [Independent System Operator], tariff provisions that facilitate both the provisions of this Act and the reliable operation of the grid.

(B) (1) Every electrical corporation shall file with the [commission] a standard tariff for the purchase of excess electricity from an eligible customer-generator.

71 (2) The tariff shall provide for payment for every kilowatthour delivered to the
72 electrical grid by the combined heat and power system at a price determined by the
73 [commission].

74 (3) The tariff shall include flexible rates with options for different durations, not
75 to exceed [10] years, and fixed or variable rates relative to the cost of natural gas.

76 (4) The [commission] shall ensure that ratepayers not utilizing combined heat and
77 power systems are held indifferent to the existence of this tariff.

78 (C) The [commission], in reviewing the tariff filed by an electrical corporation, shall
79 establish time-of-delivery rates that encourage demand management and net generation of
80 electricity during periods of peak system demand.

81 (D) Every electrical corporation shall make the tariff available to eligible customer-
82 generators that own, or lease, and operate a combined heat and power system within the service
83 territory of the electrical corporation, upon request. An electrical corporation may make the
84 terms of the tariff available to an eligible customer in the form of a standard contract.

85 (E) The costs and benefits associated with any tariff or contract entered into by an
86 electrical corporation pursuant to this section shall be allocated to all benefiting customers. For
87 purposes of this section “benefiting customers” may, as determined by the [commission], include
88 bundled service customers of the electrical corporation, customers of the electrical corporation
89 that receive their electric service through a direct transaction, as defined in [insert citation], and
90 customers of an electrical corporation that receive their electric service from a community choice
91 aggregator, as defined in [insert citation].

92 (F) The physical generating capacity of the combined heat and power system shall count
93 toward the resource adequacy requirements of load-serving entities for purposes of [insert
94 citation].

95 (G) The [commission] shall adopt or maintain standby rates or charges for combined heat
96 and power systems that are based only upon assumptions that are supported by factual data, and
97 shall exclude any assumptions that forced outages or other reductions in electricity generation by
98 combined heat and power systems will occur simultaneously on multiple systems, or during
99 periods of peak electrical system demand, or both.

100 (H) The [commission] may modify or adjust the requirements of this Act for any
101 electrical corporation with less than [100,000] service connections, as individual circumstances
102 merit.

103
104 Section 5. *[Local Publicly Owned Electric Utility Serving Retail End-Use Customers to*
105 *Establish a Program to Utilized Combined Heat and Power Systems That Reduce Greenhouse*
106 *Gas Emissions by Utilizing Waste Heat.]* A local publicly owned electric utility serving retail
107 end-use customers shall establish a program that does both of the following:

108 (1) Allows retail end-use customers to utilize combined heat and power systems that
109 reduce emissions of greenhouse gases by achieving improved efficiencies utilizing heat that
110 would otherwise be wasted in separate energy applications.

111 (2) Provides a market for the purchase of excess electricity generated by a combined heat
112 and power system, at a just and reasonable rate, to be determined by the governing body of the
113 utility.

114
115 Section 6. *[Electrical Corporation’s Procurement Plans to Incorporate Combined Heat*
116 *and Power Solutions Shall be Cost Effective Compared to Other Forms of Wholesale Energy*
117 *Generation.]* The [commission], in approving a procurement plan for an electrical corporation
118 pursuant to [insert citation], shall require the electrical corporation's procurement plan

incorporate combined heat and power solutions to the extent that it is cost effective compared to other competing forms of wholesale generation, technologically feasible, and environmentally beneficial, particularly as it pertains to reducing emissions of carbon dioxide and other greenhouse gases.

Section 7. *[Electrical Corporation Planning and Reliability Assessments Shall Promote Combined Heat and Power Systems that are Cost Effective.]* The [commission] shall ensure that an electrical corporation uses long-term planning and a reliability assessment for upgrades to its transmission and distribution systems and that any upgrades are not inconsistent with promoting combined heat and power systems that are cost effective, technologically feasible, and environmentally beneficial, particularly as those combined heat and power systems reduce emissions of greenhouse gases.

Section 8. *[Pay-As-You-Save Pilot Program to Finance Purchasing and Installing Combined Heat and Power Systems.]*

(A) The [commission] shall, for each electrical corporation, establish a pay-as-you-save pilot program for eligible customers.

(B) For the purposes of this section, an “eligible customer” means a customer of an electrical corporation that meets the following criteria:

(1) The customer uses a combined heat and power system with a generating capacity of not more than [20] megawatts that is in compliance with Section 9 of this Act.

(2) The customer is a nonprofit organization described in Section 501(c) (3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c) (3)), that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)).

(C) The pilot program shall enable an eligible customer to finance all of the upfront costs for the purchase and installation of a combined heat and power system by repaying those costs over time through on-bill financing at the difference between what an eligible customer would have paid for electricity and the actual savings derived for a period of up to [10] years.

(D) The [commission] shall ensure that the reasonable costs of the electrical corporation associated with the pilot program are recovered.

(E) All costs of the pay-as-you-save program or financing mechanisms shall be borne solely by the combined heat and power generators that use the program or financing mechanisms, and the [commission] shall ensure that the costs of the program are not shifted to the other customers or classes of customers of the electrical corporation.

(F) Each electric corporation shall make on-bill financing available to eligible customers until the statewide cumulative rated generating capacity from pilot program combined heat and power systems in the service territories of the three largest electrical corporations in the state reaches [100] megawatts. An electrical corporation shall only be required to participate in the pilot program until it meets its proportionate share of the [100-megawatt] limitation, based on the percentage of its peak demand to the total statewide peak demand within the service territories of all electrical corporations.

Section 9. *[Guidelines for Combined Heat and Power Systems.]*

(A) The [Energy Commission] shall, by [January 1, 2010], adopt guidelines that combined heat and power systems subject to this Act shall meet, and shall accomplish all of the following:

(1) Reduce waste energy.

(2) Be sized to meet the eligible customer-generator's thermal load.

167 (3) Operate continuously in a manner that meets the expected thermal load and
168 optimizes the efficient use of waste heat.

169 (4) Are cost effective, technologically feasible, and environmentally beneficial.

170 (B) It is the intent of the [Legislature] that the guidelines do not permit customers to
171 operate as de facto wholesale generators with guaranteed purchasers for their electricity.

172 (C) Notwithstanding any other provisions of law, the guidelines required by this section
173 shall be exempt from the requirements of [insert citation]. The guidelines shall be adopted at a
174 publicly noticed meeting offering all interested parties an opportunity to comment. At least [30]
175 days' public notice shall be given of the meeting required by this section before the [Energy
176 Commission] initially adopts guidelines. Substantive changes to the guidelines shall not be
177 adopted without at least [10] days' written notice to the public.

178 (D) Prior to [January 1, 2010], the [Energy Commission] may adopt temporary guidelines
179 for combined heat and power systems that comply with the parameters set forth in subdivision
180 (A).

181 (E) (1) An eligible customer-generator's combined heat and power system shall meet
182 [an oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a
183 minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as
184 useful energy output divided by fuel input. The efficiency determination shall be based on 100-
185 percent load].

186 (2) An eligible customer-generator's combined heat and power system that meets
187 the [60-percent efficiency standard may take a credit to meet the applicable NOx emissions
188 standard of 0.07 pounds per megawatthour]. Credit shall be at the rate of [one megawatthour for
189 each 3.4 million British thermal units of heat recovered].

190 (F) An eligible customer-generator's combined heat and power system shall comply with
191 the greenhouse gases emission performance standard established by the [commission] pursuant
192 to [insert citation].

193 (G) An eligible customer-generator shall adequately maintain and service the combined
194 heat and power system so that during operation, the system continues to meet or exceed the
195 efficiency and emissions standards established pursuant to subdivisions (A), (D), and (F).

196
197 Section 10. [*Reporting Reductions in Emissions of Greenhouse Gases Resulting From the*
198 *Use of Combined Heat and Power Systems Pursuit to This Act.*] The [State Air Resources Board]
199 shall report to the [Governor and the Legislature] by [December 31, 2011], on the reduction in
200 emissions of greenhouse gases resulting from the increase of new electrical generation that uses
201 excess waste heat through combined heat and power systems and recommend policies that
202 further the goals of this Act.

203
204 Section 11. [*Severability.*] [Insert severability clause.]

205
206 Section 12. [*Repealer.*] [Insert repealer clause.]

207
208 Section 13. [*Effective Date.*] [Insert effective date.]

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