



**SUGGESTED  
STATE  
LEGISLATION  
2011  
Volume 70**

Developed by the  
Committee on Suggested State Legislation

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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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# Foreword

The Council of State Governments (CSG) is pleased to bring to you the **2011 *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

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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, might 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, fax (859) 244-8001, or [ssl@csg.org](mailto:ssl@csg.org).

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](http://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](http://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.]

# Cancellation, Suspension or Revocation of Licenses - Reports by Health Care Providers

This Act enables doctors to report to the state department of motor vehicles patients who have physical or mental conditions which impair the patients' driving skills.

Submitted as:

West Virginia

[Enrolled Committee Substitute for HB4515](#)

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 Enable Health Care  
2 Providers to Report Driving Impaired Patients.”

3  
4           Section 2. [*Cancellation, Suspension or Revocation of Licenses: Reports by Health Care*  
5 *Providers.*]

6           (a) Health care providers licensed and authorized pursuant to [insert citation] to diagnose  
7 or treat diseases, disorders, disabilities or conditions, may notify the [department of motor  
8 vehicles] in writing of the full name, date of birth and address of every person [fifteen years] of  
9 age or older who suffers from a physical or mental disease, disorder, disability, condition or  
10 symptoms that prevents the person from safely operating a motor vehicle, and which is:

11               (1) Uncontrollable (either through medication, therapy, or surgery; or by driving  
12 device or technique);

13               (2) Controllable, but the patient does not comply with the recommendations of the  
14 health care provider for treatment or restricted driving; or

15               (3) Undiagnosed but the extent of driver impairment is potentially significant  
16 based on the patient's symptoms.

17           (b) Reports, recommendations or opinions, findings or advice received or made by the  
18 [department of motor vehicles] for the purpose of determining whether a person is qualified to be  
19 licensed to drive are for the confidential use of the [department of motor vehicles] and exempt  
20 from provisions of [insert citation] and may only be admitted in proceedings to either suspend,  
21 revoke or impose limitations on the use of a driver's license pursuant to [insert citation] or to  
22 reinstate the driver's license.

23           (c) Reports, recommendations, opinions, findings or advice received or made by the  
24 [department of motor vehicles] for the purpose of determining whether a person is qualified to be  
25 licensed to drive may not be used in any proceedings to establish or prove competencies other  
26 than qualifications to operate a vehicle.

27           (d) A health care provider who makes a notification pursuant to subsection (a) shall be  
28 immune from any civil, administrative or criminal liability that otherwise might be incurred or  
29 imposed because of such notification if the health care provider has:

30               (1) Documented in the patient's record the disease, disorder, disability, condition  
31 or symptoms which may impair the patient's ability to drive a motor vehicle to a degree that  
32 precludes the safe operation of a motor vehicle;

33               (2) Informed the patient that their disease, disorder, disability, condition or

34 symptoms may impair the patient's ability to drive a motor vehicle to a degree that precludes the  
35 safe operation of a motor vehicle;

36 (3) Advised the patient that he or she should not operate a motor vehicle; and

37 (4) Disclosed to the patient that the health care provider may notify the  
38 [department of motor vehicles] of the patient's condition and of the patient's inability to safely  
39 operate a motor vehicle.

40 (e) Compliance with or failure to comply with the requirements of this section does not  
41 constitute negligence, nor may compliance or noncompliance with the requirements of this  
42 section be admissible as evidence of negligence in any civil or criminal action.

43  
44 Section 3. [*Severability*.] [Insert severability clause.]

45  
46 Section 4. [*Repealer*.] [Insert repealer clause.]

47  
48 Section 5. [*Effective Date*.] [Insert effective date.]

# Carbon Sequestration

The SSL Committee published a draft of [Wyoming Chapter 30 of 2008](#) about Carbon Sequestration in the 2010 *SSL Volume*. This draft Act expands upon the Wyoming legislation by including eminent domain provisions about construction and operation of such a facility, including installation of pipelines to transport carbon dioxide. This Act also addresses long term liability by transferring ownership of such facilities to the state 10 years (or other time period adopted by rule) after a facility closes. Finally, the Act establishes a Carbon Dioxide Geologic Storage Trust Fund, funded by fees and penalties, to provide for long-term operation and maintenance of facilities.

This draft Act is based on Louisiana Act 517, which, in turn, was based on model legislation proposed by the Interstate Oil and Gas Compact Commission (“IOGCC”), as modified to fit the state’s regulatory structure and other existing legislation. Significant facets of the Act are as follows:

- The Act treats CO<sub>2</sub> not as a waste, but as a commodity;
- The Act is drafted in broad terms and grants the Commissioner of Conservation jurisdiction over “all persons and property necessary to administer and enforce effectively the provisions concerning geologic storage of carbon dioxide;”
- The Act grants permitting authority to the state regulatory agency for the purpose of regulating the facility and protecting against CO<sub>2</sub> pollution or migration; and
- The Act empowers a storage operator, after obtaining approval from the state regulatory agency, to exercise the right of eminent domain in order to acquire all surface and subsurface rights necessary for the operation of the storage facility.

This Act provides for policy and jurisdiction of the commissioner of conservation over the geologic storage and withdrawal of carbon dioxide. The Act authorizes the state commissioner of conservation to do the following:

- regulate the storage of carbon dioxide and the transmission of carbon dioxide to such storage facilities;
- issue certificates of public convenience and necessity for such facilities and associated pipelines;
- adopt rules, regulations, or orders to prevent the escape of carbon dioxide into other strata; to prevent the pollution of fresh water by oil, gas, salt water or carbon dioxide;
- provide for closure of abandoned wells;
- make inquiries, investigations, and inspection and take such actions that are necessary to enforce new law;
- make drilling records;
- take steps to prevent blowouts, caving, and seepage;
- identify ownership of wells used in the storage or transportation of carbon dioxide;
- regulate conversion of recovery operations to storage facilities;
- require the placement of meters to prevent waste;
- require closure of abandoned or unused sites; and
- adopt rules and regulations to collect fees.

This draft legislation provides that only a storage operator is responsible for performance required by the Act. The Act generally provides that the injected carbon dioxide will “at all times be deemed the property of the party that owns such carbon dioxide, whether at the time of injection, or pursuant to a change of ownership by agreement while the carbon dioxide is located in the storage facility...and in no event shall such carbon dioxide be subject to the right of the

owner of the surface of the lands or of any mineral interest therein....” This generally occurs ten years after the cessation of injection operations, unless a different time period is specified in the rules. At such time, the commissioner will issue a certificate of completion of injection operations, upon a showing by the storage operator that the reservoir is reasonably expected to retain mechanical integrity and the carbon dioxide will reasonably remain emplaced. Upon issuance of the certificate, both liability for, and ownership of, the remaining project, including the stored carbon dioxide, transfers to the state.

The legislation provides that prior to using a reservoir and prior to the exercise of eminent domain the commissioner shall have a hearing and find that such use is suitable and feasible; will not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits; and will not endanger lives or property. It provides that no reservoir or any part of which is producing or is capable of producing oil, gas, condensate, or other commercial mineral in paying quantities, shall be subject to such use, unless all owners have agreed to the use. It provides that no reservoir shall be subject to such use unless either the volumes of original reservoir gas and condensate content therein which are capable of being produced in paying quantities have all been produced or such reservoir has a greater value or utility as a reservoir for storage, and at least three-fourths of the owners have consented to such use in writing. If the commissioner finds that a proposed reservoir has not been fully depleted of commercially recoverable hydrocarbons, the commissioner shall determine the amount.

The Act authorizes the commissioner to issue orders to ensure that carbon dioxide reduced to possession and then injected into such a reservoir remains the property of the owner of the carbon dioxide, not the surface or mineral rights owner, and to issue orders to protect the reservoir.

The Act directs the commissioner to issue a compliance order or commence a civil action for violations of the Act. Compliance orders must state with specificity the nature of the violation, a time for compliance and, in the event of noncompliance, assess a civil penalty. The civil penalty may be no more the \$5,000 per day per violation. No penalty may be assessed until the violator has been give notice and an opportunity to respond. The commissioner or, if requested, attorney general shall prosecute all civil cases arising out of a violation of new law.

This Act authorizes the commissioner to issue certificates of public convenience and necessity or certificates of completion of injection operations after a public hearing.

The Act provides that it shall not cause any storage operator or carbon dioxide transmitter to become, or subject to the duties, liabilities, or obligations of, a common carrier or public utility or increase their tax liability absent a change in existing law.

The Act authorizes a storage operator that has been issued a permit and a certificate of public necessity to exercise eminent domain to construct, operate, and modify a storage facility or lay, maintain, and operate pipelines for the transportation of carbon dioxide to storage, “including but not limited to surface and subsurface rights, mineral rights, and other property interests necessary or useful for the purpose of constructing, operating, or modifying a carbon dioxide facility.” However, as a condition precedent, the commissioner, must have determined that the reservoir sought to be used is suitable and feasible for such use and meets all regulatory requirements after public hearing in the parish where the facility is to be located. The eminent domain authority is to be exercised pursuant to the procedures found in existing law. The legislation provides that the commissioner is not a necessary or indispensable party to an eminent domain proceeding and has the right to be dismissed at the expense and cost of the party that named the commissioner.

As mentioned above, this Act provides that after 10 years, or other time established by rule, after cessation of operations the commissioner shall issue a certificate of completion of injection operations by showing the reservoir is expected to retain integrity, at which time



ownership is transferred to the state and the storage operator and all generators of the carbon dioxide shall be released from any and all duties under new law and any and all liability. However, the Act directs that the last operator or owner shall not be released of liability if a Carbon Dioxide Geologic Trust Fund has been depleted. The last operator liability can avoid liability if a Site Specific Trust Fund is established. Such release of liability shall not apply to any such owner, operator, or generator that intentionally and knowingly concealed or misrepresented material facts related to the integrity of the storage facility or composition of any injected carbon dioxide. The legislation directs that after issuance of the certificate of completion of injection operation any performance bonds shall be released and the monitoring or remediation of the site shall become the responsibility of a Carbon Dioxide Geologic Storage Trust Fund.

This Act provides that the state shall not assume or have any liability by the act of assuming ownership of a storage facility after the issuance of the certificate of completion of injection operations. It limits the civil liability of an owner or operator of a storage facility or such transmission pipeline, or generator of the carbon dioxide for non-economic damages to \$250,000 per occurrence; however, in an action for wrongful death, permanent and substantial physical deformity, loss of use of limb or organ systems; or permanent physical or mental injury that prevents independent care and prevents life-sustaining activities non-economic damages shall not exceed \$500,000. If the liability caps provided for in the Act are found unconstitutional, such damages shall not exceed \$1,000,000.

The Act directs the commissioner to levy a per tonnage of carbon dioxide stored fee on operators up to a maximum of \$5,000,000. The rate of collecting the fee shall be determined by the commissioner based on the formula  $F \times 120 < M$ , where "F" is the per unit fee, "120" is the minimum number of months over which the fee is collected, and "M" is the maximum payment of \$5,000,000. The commissioner shall suspend the collection of the fee once the storage operator's balance in the fund equals \$5,000,000 and will resume once the balance falls below that amount. It provides for a regulatory fee payable to the commissioner in the form and schedule set by the commissioner not to exceed \$50,000 for FY 2010-2011 and thereafter. The Act provides for an application fee in the form and schedule set by the commissioner not to exceed 8½% above the amount charged on July 1, 2010.

The Act provides for the following uses of the Fund:

- operational and long-term inspecting, testing, and monitoring of sites;
- remediation of mechanical problems associated with remaining wells and surface infrastructure;
- repairing mechanical leaks;
- administrative cost of the commissioner not to exceed \$750,000 per year;
- payment of fees and cost associated with site specific accounts; and
- payments of fees and cost to acquire insurance

This Act authorizes the commissioner to enter into agreements and contracts for the following purposes:

- research and development in carbon sequestration technology and methods;
- monitor sites;
- remediate mechanical problems;
- repair leaks; and
- contract with a private legal entity.

The legislation directs the commissioner to keep an accurate accounting of the Fund and to report to the legislature about effectiveness of the Fund and the program.

The Act also provides for site-specific accounts that are established for long-term maintenance and restoration when a storage facility is transferred from one party to another.

Submitted as:  
Louisiana  
[Act 517 of 2009](#)  
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 “Geologic Sequestration of Carbon  
2   Dioxide Act.”

3  
4           Section 2. [*Policy and Jurisdiction.*]

5           (A) It is declared to be in the public interest for a public purpose and the policy of [state]  
6   that:

7                   (1) The geologic storage of carbon dioxide will benefit the citizens of the state  
8   and the state's environment by reducing greenhouse gas emissions;

9                   (2) Carbon dioxide is a valuable commodity to the citizens of the state;

10                  (3) Geologic storage of carbon dioxide may allow for the orderly withdrawal as  
11   appropriate or necessary, thereby allowing carbon dioxide to be available for commercial,  
12   industrial, or other uses, including the use of carbon dioxide for enhanced recovery of oil and  
13   gas;

14                  (4) It is the public policy of this state and purpose of this Act to provide for a  
15   coordinated statewide program related to the storage of carbon dioxide and to also fulfill the  
16   state's primary responsibility for assuring compliance with the federal Safe Drinking Water Act,  
17   including any amendments thereto related to the underground injection of carbon dioxide.

18           (B) The [commissioner of conservation] shall have jurisdiction and authority over all  
19   people and property necessary to enforce effectively the provisions of this Act relating to the  
20   geologic storage of carbon dioxide and subsequent withdrawal of stored carbon dioxide.

21  
22           Section 3. [*Definitions.*] Unless the context otherwise requires, the words defined in this  
23   Section have the following meaning when found in this Act:

24                  (1) “Carbon dioxide” means naturally occurring, geologically sourced, or  
25   anthropogenically sourced carbon dioxide including its derivatives and all mixtures,  
26   combinations, and phases, whether liquid or gaseous, stripped, segregated, or divided from any  
27   other fluid stream thereof.

28                  (2) “Commissioner” has the same meaning as provided in [insert citation].

29                  (3) “Gas” has the same meaning as provided in [insert citation].

30                  (4) “Geologic storage” means the long- or short-term underground storage of  
31   carbon dioxide in a reservoir.

32                  (5) “Office” means the [office of conservation, department of natural resources].

33                  (6) “Oil” has the same meaning as provided in [insert citation].

34                  (7) “Person” means any natural person, corporation, association, partnership,  
35   limited liability company, or other entity, receiver, tutor, curator, executor, administrator,  
36   fiduciary, or representative of any kind.

37                  (8) “Reservoir” means that portion of any underground geologic stratum,  
38   formation, aquifer, or cavity or void, whether natural or artificially created, including oil and gas  
39   reservoirs, salt domes or other saline formations, and coal and coalbed methane seams, suitable

for or capable of being made suitable for the injection and storage of carbon dioxide therein.

(9) "Storage facility" means the underground reservoir, carbon dioxide injection wells, monitoring wells, underground equipment, and surface buildings and equipment utilized in the storage operation, including pipelines owned or operated by the storage operator used to transport the carbon dioxide from one or more capture facilities or sources to the storage and injection site. The underground reservoir component of the storage facility includes any necessary and reasonable aerial buffer and subsurface monitoring zones designated by the [commissioner] for the purpose of ensuring the safe and efficient operation of the storage facility for the storage of carbon dioxide and shall be chosen to protect against pollution, and escape or migration of carbon dioxide.

(10) "Storage operator" means the person authorized by the [commissioner] to operate a storage facility. A storage operator can, but need not be, the owner of carbon dioxide injected into a storage facility. Ownership of carbon dioxide and use of geologic storage is a matter of private contract between the storage operator and owner, shipper or generator of carbon dioxide, as applicable.

(11) "Waste" in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the storage industry.

#### Section 4. *[Duties and Powers of the Commissioner; Rules and Regulations; Permits.]*

(A) The [office of conservation's] actions under this Act shall be directed and controlled by the [commissioner]. The [commissioner] shall have authority to:

(1) Regulate the development and operation of storage facilities and pipelines transmitting carbon dioxide to storage facilities, including in accordance with the provisions of Section 7 of this Act, the issuance of certificates of public convenience and necessity for storage facilities and pipelines serving such projects approved hereunder.

(2) Make, after notice and hearings as provided in this Act, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of this Act, including rules, regulations, or orders for the following purposes:

(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of carbon dioxide out of one stratum to another.

(b) To prevent the intrusion of carbon dioxide into oil, gas, salt formation, or other commercial mineral strata.

(c) To prevent the pollution of fresh water supplies by oil, gas, salt water, or carbon dioxide.

(d) To require the plugging of each abandoned well and the closure of associated surface facilities, the removal of equipment, structures, and trash, and to otherwise require a general site cleanup of such abandoned wells.

(3) Make such inquiries as [he] deems proper to determine whether or not waste, over which [he] has jurisdiction, exists or is imminent. In the exercise of this power the [commissioner] has the authority to collect data; to make investigations and inspections; to examine properties, papers, books, and records; to examine, survey, check, test, and gauge injection, withdrawal and other wells used in connection with carbon storage; to examine, survey, check, test, and gauge tanks, and modes of transportation; to hold hearings; to provide for the keeping of records and the making of reports; to require the submission of an emergency phone number by which the operator may be contacted in case of an emergency; and to take any action as reasonably appears to [him] to be necessary to enforce this Act.

(4) Require the making of reports showing the location of all wells used in connection with a storage facility, and the filing of logs, electrical surveys, and other drilling records.

89 (5) Prevent wells from being drilled and operated in a manner which may cause  
90 injury to neighboring leases or property.

91 (6) Prevent blowouts, caving, and seepage in the sense that conditions indicated  
92 by these terms are generally understood in the storage business.

93 (7) Identify the ownership of all wells used in connection with a storage facility,  
94 tanks, plants, structures, and all other storage and transportation equipment and facilities.

95 (8) Approve conversion of an existing enhanced oil or gas recovery operation into  
96 a storage facility, if necessary, taking into consideration prior approvals of the [commissioner]  
97 regarding such enhanced oil recovery operations.

98 (9) Promulgate rules and regulations requiring interested persons to place  
99 monitoring equipment of a type approved by the [commissioner] on all storage facilities, and  
100 ancillary equipment necessary and proper to monitor, verify carbon dioxide injections, and to  
101 prevent waste. It shall be a violation of this Act for any person to refuse to attach or install a  
102 monitor within a reasonable period of time when ordered to do so by the [commissioner], or in  
103 any way to tamper with the monitors so as to produce a false or inaccurate reading.

104 (10) Regulate by rules, the drilling, casing, cementing, injection interval,  
105 monitoring, plugging and permitting of injection, withdrawal and other wells which are used in  
106 connection with a storage facility and to regulate all surface facilities incidental to such storage  
107 operation.

108 (11) Require the plugging of each abandoned well or each well which is of no  
109 further use and the closure of associated surface facilities, the removal of equipment, structures,  
110 and trash, and other general site cleanup of such abandoned or unused well sites.

111 (12) Promulgate rules related to the setting and collection of fees and civil  
112 penalties pursuant to this Act.

113 (B) Only a storage operator as defined in Section 3 (10) of this Act shall be held or  
114 deemed responsible for the performance of any actions required by the [commissioner] under  
115 this Act.

116 (C) Prior to the use of any reservoir for the storage of carbon dioxide and prior to the  
117 exercise of eminent domain by any person, firm, or corporation having such right under laws of  
118 this state, and as a condition precedent to such use or to the exercise of such rights of eminent  
119 domain, the [commissioner], after public hearing pursuant to the provisions of [insert citation],  
120 held in the [parish] where the storage facility is to be located, shall have found all of the  
121 following:

122 (1) That the reservoir sought to be used for the injection, storage, and withdrawal  
123 of carbon dioxide is suitable and feasible for such use, provided no reservoir, any part of which  
124 is producing or is capable of producing oil, gas, condensate, or other commercial mineral in  
125 paying quantities, shall be subject to such use, unless all owners in such reservoir have agreed  
126 thereto. In addition, no reservoir shall be subject to such use unless either:

127 (a) the volumes of original reservoir, oil, gas, condensate, salt, or other  
128 commercial mineral therein which are capable of being produced in paying quantities have all  
129 been produced; or

130 (b) such reservoir has a greater value or utility as a reservoir for carbon  
131 dioxide storage than for the production of the remaining volumes of original reservoir oil, gas,  
132 condensate, or other commercial mineral, and at least three-fourths of the owners, in interest,  
133 exclusive of any "lessor" defined in [insert citation], have consented to such use in writing.

134 (2) That the use of the reservoir for the storage of carbon dioxide will not  
135 contaminate other formations containing fresh water, oil, gas, or other commercial mineral  
136 deposits.

137 (3) That the proposed storage will not endanger human lives or cause a hazardous

condition to property.

(D) The [commissioner] shall determine with respect to any such reservoir proposed to be used as a storage reservoir, whether or not such reservoir is fully depleted of the original commercially recoverable natural gas, condensate, or other commercial mineral therein. If the [commissioner] finds that such reservoir has not been fully depleted, the [commissioner] shall determine the amount of the remaining commercially recoverable natural gas, condensate, or other commercial mineral of such reservoir.

(E) The [commissioner] may issue any necessary order providing that all carbon dioxide which has previously been reduced to possession and which is subsequently injected into a storage reservoir shall at all times be deemed the property of the party that owns such carbon dioxide, whether at the time of injection or pursuant to a change of ownership by agreement while the carbon dioxide is located in the storage facility, [his] successors and assigns; and in no event shall such carbon dioxide be subject to the right of the owner of the surface of the lands or of any mineral interest therein under which such storage reservoir shall lie or be adjacent to or of any person other than the owner, [his] successors, and assigns to produce, take, reduce to possession, waste, or otherwise interfere with or exercise any control there over, provided that the owner, [his] successors, and assigns shall have no right to gas, liquid hydrocarbons, salt, or other commercially recoverable minerals in any stratum or portion thereof not determined by the [commissioner] to constitute an approved storage reservoir. The [commissioner] shall issue such orders, rules, and regulations as may be necessary for the purpose of protecting any such storage reservoir, strata, or formations against pollution or against the escape of carbon dioxide therefrom, including such necessary rules and regulations as may pertain to the drilling into or through such storage reservoir.

(F) Nothing in this Act shall prevent an enhanced oil and gas recovery project utilizing injection of carbon dioxide as approved under [insert citation].

Section 5. *[Hearings; Notice; Rules of Procedures; Emergency; Service of Process; Public Records; Request for Hearings; Orders and Compliance Orders.]*

(A) All public hearings under this Part shall be conducted pursuant to the provisions of [insert citation].

(B) All rules, regulations, and orders made by the [commissioner] under this Act shall be in writing and shall be entered in full by [him] in a book kept for that purpose. This book shall be a public record and shall be open for inspection at all times during reasonable office hours and shall be available on the [department of natural resources] website. A copy of a rule, regulation, or order, certified by the [commissioner], shall be received in evidence in all courts of this state with the same effect as the original.

(C) Any interested person has the right to have the [commissioner] call a hearing for the purpose of taking action in respect to a matter within the jurisdiction of the [commissioner] as provided in this Section by making a request therefor in writing and paying the hearing fee set by the [commissioner], as provided by law for hearing conducted pursuant to [insert citation]. Upon receiving the request and payment of the required fees the [commissioner] shall promptly call a hearing. After the hearing and with all convenient speed and within [thirty days] after the conclusion of the hearing, the [commissioner] shall take whatever action [he] deems appropriate with regard to the subject matter.

Section 6. *[Underground Injection Control.]*

(A) The [commissioner] shall have authority to perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, relating to this state's participation in the underground injection control program established

under that act with respect to the storage and sequestration of carbon dioxide. To that end, the [commissioner] is authorized and empowered to adopt, modify, repeal, and enforce procedural, interpretive, and administrative rules in accordance with the provisions of this Act.

(B) Whenever the [commissioner] or an authorized representative of the [commissioner] determines that a violation of any requirement of this Act has occurred or is about to occur, the [commissioner] or his authorized representative shall either issue an order requiring compliance within a specified time period or shall commence a civil action for appropriate relief, including a temporary or permanent injunction.

(C) Any compliance order issued under this Act shall state with reasonable specificity the nature of the violation and specify a time for compliance and, in the event of noncompliance, assess a civil penalty, if any, which the [commissioner] determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(D) (1) Except as otherwise provided by law, any person to whom a compliance order is issued and who fails to take corrective action within the time specified in the order or any person found by the [commissioner] to be in violation of any requirement of this Section may be liable for a civil penalty to be assessed by the [commissioner] or court, of not more than [five thousand dollars] a day for each day of violation and for each act of violation. The [commissioner] in order to enforce the provisions of this Section may suspend or revoke any permit, compliance order, license, or variance that has been issued to said person in accordance with law.

(2) No penalty shall be assessed until the person charged has been given notice and an opportunity for a hearing on such charge. In determining whether or not a civil penalty is to be assessed and in determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

(E) The [commissioner, or attorney general] if requested by the [commissioner], shall have charge of and shall prosecute all civil cases arising out of violation of any provision of this Section including the recovery of penalties.

(F) Except as otherwise provided herein, the [commissioner] may settle or resolve as [he] may deem advantageous to the state any suits, disputes, or claims for any penalty under any provisions of this Section or the regulations or permit license terms and conditions applicable thereto.

#### Section 7. *[Certificates of Public Convenience and Necessity; Certificate of Completion of Injection Operations.]*

(A) The [commissioner] shall issue a certificate of public convenience and necessity or a certificate of completion of injection operations to each person applying therefor if, after a public hearing pursuant to the provisions of [insert citation], held in the [parish] where the storage facility is to be located, [he] determines that it is required by the present or future public convenience and necessity, and such decision is based upon the following criteria;

(1) the proposed storage facility meets the requirements of Section 4 (C) of the Act; and

(2) the proposed storage facility meets the requirements of any rules adopted under this Act. However, if any person has previously been issued a certificate of public convenience and necessity or a certificate of completion of injection operations by the [commissioner], that certificate continues to remain valid and in force.

(B) The [commissioner] shall issue a certificate of completion of injection operations to the operator applying therefor, if after a public hearing pursuant to [insert citation], it is

determined that such operator has met all of the conditions required for such certificate, including the requirements of Section 9 of this Act.

(C) Anything in this Act, or in any rule, regulation, or order issued by the [commissioner] under this Act to the contrary notwithstanding, accepting or acting pursuant to a certificate of public convenience and necessity or a certificate of completion of injection operations issued under this Act, compliance with the provisions of this Act, or with rules, regulations, or orders issued by the [commissioner] under this Act, or voluntarily performing any act or acts which could be required by the [commissioner] pursuant to this Act, or rules, regulations, or orders issued by the [commissioner] under this Act, shall not have the following consequences:

(1) Cause any storage operator or carbon dioxide transporter of carbon dioxide for storage to become, or be classified as, a common carrier or a public utility for any purpose whatsoever.

(2) Subject such storage operator or such carbon dioxide to storage transporter to any duties, obligations, or liabilities as a common carrier or public utility, under the constitution and laws of this state.

(3) Increase the liability of any storage operator or carbon dioxide for storage transporter for any taxes otherwise due to this state in the absence of any additions or amendments to any tax laws of this state.

#### Section 8. [*Eminent Domain, Expropriation.*]

(A) (1) Any storage operator is hereby authorized, after obtaining any permit and any certificate of public convenience and necessity from the [commissioner] required by this Act, to exercise the power of eminent domain and expropriate needed property to acquire surface and subsurface rights and property interests necessary or useful for the purpose of constructing, operating, or modifying a storage facility and the necessary infrastructure including the laying, maintaining, and operating pipelines for the transportation of carbon dioxide to a storage facility, together with telegraph and telephone lines necessary and incidental to the operation of these storage facilities and pipelines, over private property thus expropriated; and have the further right to construct and develop storage facilities and the necessary infrastructure, including the laying, maintaining, and operating of pipelines along, across, over, and under any navigable stream or public highway, street, bridge, or other public place; and also have the authority, under the right of expropriation herein conferred, to cross railroads, street railways, and other pipelines, by expropriating property necessary for the crossing under the general expropriation laws of this state. The right to run along, across, over, or under any public road, bridge, or highway, as before provided for, may be exercised only upon condition that the traffic thereon is not interfered with, and that such road or highway is promptly restored to its former condition of usefulness, at the expense of the storage facility and the pipeline owner if different from the storage operator, the restoration to be subject also to the supervision and approval of the proper local authorities.

(2) In the exercise of the privilege herein conferred, owners or operators of such storage facilities and pipelines shall compensate the [parish], municipality, or road district, respectively, for any damage done to a public road, in the construction of storage facilities, and the laying of pipelines, telegraph or telephone lines, along, under, over, or across the road. Nothing in this Act shall be construed to grant any transporter the right to use any public street or alley of any [parish], incorporated city, town, or village, except by express permission from the [parish], city, or other governing authority.

(B) The exercise of the right of eminent domain granted in this Act shall not prevent persons having the right to do so from drilling through the storage facility in such manner as shall comply with the rules of the [commissioner] issued for the purpose of protecting the storage facility against pollution or invasion and against the escape or migration of carbon dioxide.

Furthermore, the right of eminent domain set out in this Section shall not prejudice the rights of the owners of the lands, minerals, or other rights or interests therein as to all other uses not acquired for the storage facility.

(C) The eminent domain authority authorized under this Act shall be exercised pursuant to the procedures found in [insert citation], and shall be in addition to any other power of eminent domain authorized by law.

(D) The [commissioner] is neither a necessary nor indispensable party to an eminent domain proceeding, and if named as a party or third party has an absolute right to be dismissed from said action at the expense of the party who names the [commissioner]. The [commissioner] shall recover all costs reasonably incurred to be dismissed from the action, including attorney fees.

#### Section 9. *[Cessation of Storage Operations; Liability Release.]*

(A) (1) [Ten] years, or any other time frame established by rule, after cessation of injection into a storage facility, the [commissioner] shall issue a certificate of completion of injection operations, upon a showing by the storage operator that the reservoir is reasonably expected to retain mechanical integrity and the carbon dioxide will reasonably remain emplaced, at which time ownership to the remaining project including the stored carbon dioxide transfers to the state. Upon the issuance of the certificate of completion of injection operations, the storage operator, all generators of any injected carbon dioxide, all owners of carbon dioxide stored in the storage facility, and all owners otherwise having any interest in the storage facility, shall be released from any and all duties or obligations under this Act and any and all liability associated with or related to that storage facility which arises after the issuance of the certificate of completion of injection operations.

(2) Provided the provisions pertaining to site-specific trust accounts are not applicable, such release from liability will not apply to the owner or last operator of record of a storage facility if the [Carbon Dioxide Geologic Storage Trust Fund] has been depleted of funds such that it contains inadequate funds to address or remediate any duty, obligation, or liability that may arise after issuance of the certificate of completion of injection operations.

(3) Such release from liability will not apply to the owner or operator of a storage facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide being handled by either the facility or pipeline if it is demonstrated that any such owner, operator, or generator intentionally and knowingly concealed or intentionally and knowingly misrepresented material facts related to the mechanical integrity of the storage facility or the chemical composition of any injected carbon dioxide. In addition, upon the issuance of the certificate of completion of injection operations, any performance bonds posted by the operator shall be released and continued monitoring of the site, including remediation of any well leakage, shall become the principal responsibility of the [Carbon Dioxide Geologic Storage Trust Fund].

(4) It is the intent of this Section that the state shall not assume or have any liability by the mere act of assuming ownership of a storage facility after issuance of a certificate of completion of injection operations.

(B) (1) In any civil liability action against the owner or operator of a storage facility, carbon dioxide transmission pipeline, or the generator of the carbon dioxide being handled by either the facility or pipeline, the maximum amount recoverable as compensatory damages for noneconomic loss shall not exceed [two hundred fifty thousand dollars] per occurrence, except where the damages for noneconomic loss suffered by the plaintiff were for wrongful death; permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining



activities. In such cases, the maximum amount recoverable as compensatory damages for noneconomic loss shall not exceed [five hundred thousand dollars] per occurrence.

(2) If Paragraph (1) of this Subsection, or the application thereof to any person or circumstance, is finally determined by a court of law to be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for noneconomic loss shall thereafter not exceed [one million dollars] per occurrence. This provision shall not supersede any contractual agreement with respect to liability between a plaintiff and an owner or operator of a storage facility, a carbon dioxide transmission pipeline, or the generator of the carbon dioxide.

(C) Nothing in this Act shall establish or create any liability or responsibility on the part of the [commissioner] or the state to pay any costs associated with site restoration from any source other than the funds or trusts created by this Act, nor shall the [commissioner] or this state have any liability or responsibility to make any payments for costs associated with site restoration if the trusts created herein are insufficient to do so.

(D) The [commissioner] or [his] agents, on proper identification, may enter the land of another for purposes of site assessment or restoration.

(E) The [commissioner] and [his] agents are not liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Act.

(F) No party contracting with the [department of natural resources, office of conservation], or the [commissioner] under the provisions of this Act shall be deemed to be a public employee or an employee otherwise subject to the provisions of [insert citation].

#### Section 10. [*Carbon Dioxide Geologic Storage Trust Fund.*]

(A) (1) There is hereby established a fund in the custody of the [state treasurer] to be known as the [Carbon Dioxide Geologic Storage Trust Fund], hereinafter referred to as the “fund”, which shall constitute a special custodial trust fund which shall be administered by the [commissioner], who shall make disbursements from the fund solely in accordance with the purposes and uses authorized by this Act.

(2) After compliance with the requirements of [insert citation] relative to the [Bond Security and Redemption Fund], and after a sufficient amount is allocated from that fund to pay all of the obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the [treasurer] shall pay into the fund, an amount equal to the monies received by the [state treasury] pursuant to this Act. The monies in this fund shall be used solely as provided in this Section and only in the amount appropriated by the [legislature]. All unexpended and unencumbered monies remaining in this fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the [state treasurer] in the same manner as monies in the [state general fund] and all returns of such investment shall be deposited to the fund. The funds received shall be placed in the special trust fund in the custody of the [state treasurer] to be used only in accordance with this Act and shall not be placed in the [general fund]. The funds provided to the [commissioner] pursuant to this Section shall at all times be and remain the property of the [commissioner]. The funds shall be used only for the purposes set forth in this Act and for no other governmental purposes, nor shall any branch of government be allowed to borrow any portion of the funds. It is the intent of the [legislature] that this fund and its increments shall remain intact and inviolate.

(B) The following monies shall be placed into the fund:

(1) The fees, penalties, and bond forfeitures collected pursuant to this Act. All fees and self-generated revenue remaining on deposit for the [office of conservation] at the end of any fiscal year shall be deposited into the fund.

(2) Private contributions.

383 (3) Interest earned on the funds deposited in the fund.

384 (4) Civil penalties for violation of any rules or permit conditions imposed under  
385 this Act, or costs recovered from responsible parties for geologic storage facility closure or  
386 remediation pursuant to this Section and Sections 4, 5, and 6 of this Act.

387 (5) Any grants, donations, and sums allocated from any source, public or private,  
388 for the purposes of this Act.

389 (6) Site-specific trust accounts; however, the monies of such accounts shall not be  
390 used for any geologic storage facility other than that specified for each respective account.

391 (C) The [commissioner] is hereby authorized to levy on storage operators the following  
392 fees or costs for the purpose of funding the fund:

393 (1) A fee payable to the [office of conservation], in a form and schedule  
394 prescribed by the [office of conservation], for each ton of carbon dioxide injected for storage.

395 (a) This fee is to be determined based upon the following formula:

396 (I)  $F \times 120 < M$

397 (II) "F" is a per unit fee in dollars per ton set by the [office of  
398 conservation].

399 (III) "120" is the minimum number of months over which a fee is  
400 to be collected.

401 (IV) "M" is the Maximum Payment of [five million dollars] and is  
402 the total amount of fees to be collected before the payment of the fee can be suspended as  
403 provided in this Section.

404 (b) The fee cannot exceed [five million dollars divided by one hundred  
405 twenty divided by the total tonnage of carbon dioxide to be injected],  $[\$5,000,000/120]/$  total  
406 injection tonnage of carbon dioxide].

407 (c) Once a storage operator has contributed [five million dollars] to the  
408 trust fund, the fee assessments to that storage operator under this Section shall cease until such  
409 time as funds begin to be expended for monitoring and caretaking of any completed storage  
410 facility. The [treasurer of this state] shall certify to the [commissioner], the date on which the  
411 balance in the fund for a storage operator equals or exceeds [five million dollars]. The fund fees  
412 shall not be collected or required to be paid on or after the [first day of the second month  
413 following the certification], except that the [commissioner] shall resume collecting the fees on  
414 receipt of a certification from the [treasurer] that, based on the expenditures or commitments to  
415 expend monies, the fund has fallen below [four million dollars] for the storage operator. If at any  
416 time the balance in the trust fund exceeds an authorized amount determined by multiplying [five  
417 million dollars] by the number of active and completed storage facilities within the state, the  
418 collection of fees from the operators of storage facilities that have already contributed [five  
419 million dollars] to the trust fund will be suspended until such time as the balance in the trust fund  
420 falls below such authorized amount, at which time they will be reinstated.

421 (d) At the end of each fiscal year, the fee may be redetermined by the  
422 [commissioner] based upon the estimated cost of administering and enforcing this Act for the  
423 upcoming year divided by the tonnage of carbon dioxide expected to be injected during the  
424 upcoming year. The total fee assessed shall be sufficient to assure a balance in the fund not to  
425 exceed [five million dollars] for any active storage facility within the state at the beginning of  
426 each fiscal year. Any amount received that exceeds the annual balance required shall be  
427 deposited in the fund, but appropriate credits shall be given against future fees or fees associated  
428 with other storage facilities operated by the same storage operator.

429 (2) An annual regulatory fee for storage facilities that have not received a  
430 certificate of completion of injection operations payable to the [office of conservation], in a form  
431 and schedule prescribed by the [office of conservation], on the carbon dioxide storage facility in

an amount not to exceed [fifty thousand dollars for Fiscal Year 2010-2011] and thereafter. Such fee shall be based upon the annual projected costs to the [office of conservation] for oversight and regulation of such storage facilities.

(3) An application fee payable to the [office of conservation], in a form and schedule prescribed by the [office of conservation], by industries under the jurisdiction of the [office of conservation]. The [commissioner] may, by rule in accordance with the [Administrative Procedure Act], increase any application fee to an amount not in excess of [eight and one-half percent] above the amount charged for the fee on [July 1, 2010].

(D) The provisions of the [state tax code] shall apply to the administration, collection, and enforcement of the fees imposed herein, and the penalties provided by that code shall apply to any person who fails to pay or report the fees. Proceeds from the fees, including any penalties and interest collected in connection with the fees, shall be deposited into the fund.

(E) The fund shall be used solely for the following purposes:

(1) Operational and long-term inspecting, testing, and monitoring of the site, including remaining surface facilities and wells.

(2) Remediation of mechanical problems associated with remaining wells and surface infrastructure.

(3) Repairing mechanical leaks at the site.

(4) Plugging and abandoning remaining wells or conversion for use as observation wells.

(5) (a) Administration of this Act by the [commissioner] in an amount not to exceed [seven hundred fifty thousand dollars] each fiscal year.

(b) The [Oil and Gas Regulatory Fund] created by [insert citation] may be used for the administration of this Act as authorized by this Paragraph until [June 30, 2014]. Any such payments from the [Oil and Gas Regulatory Fund] shall be repaid from the [Carbon Dioxide Storage Trust Fund] by [June 30, 2018].

(6) Payment of fees and costs associated with the administration of the fund or site-specific accounts.

(7) Payment of fees and costs associated with the acquisition of appropriate insurance for future storage facility liability if it should become available, either commercially or through government funding.

(F) The [commissioner] is authorized to enter into agreements and contracts and to expend money in the fund for the following purposes:

(1) To fund research and development in connection with carbon sequestration technology and methods.

(2) To monitor any remaining surface facilities and wells.

(3) To remediate mechanical problems associated with remaining wells or site infrastructure.

(4) To repair mechanical leaks at the storage facility.

(5) To contract with a private legal entity pursuant to this Act.

(6) To plug and abandon remaining wells except for those wells to be used as observation wells.

(G) The [commissioner] shall keep accurate accounts of all receipts and disbursements related to the administration of the fund and site-specific trust funds and shall make a specific annual report addressing the administration of the funds to the [Senate Committee on Natural Resources, the House Committee on Natural Resources and Environment, and the Senate Committee on Environmental Quality] before [March first].

(H) Every [five years] the [commissioner] shall submit a report to the [Senate Committee on Natural Resources, the House Committee on Natural Resources and Environment, and the

Senate Committee on Environmental Quality] before [March first], that assesses the effectiveness of the fund and other related provisions in this Section and provides such other information as may be requested by the [legislature] to allow the [legislature] to assess the effectiveness of this Act.

Section 11. *[Site-Specific Trust Accounts.]*

(A) If a storage facility site is transferred from one party to another, not including a transfer to the state pursuant to Section 9 of this Act, a site-specific trust account may be established to separately account for each such site for the purpose of providing a source of funds for long-term maintenance, monitoring, and site closure or remediation of that storage facility site at such time in the future when closure or remediation of that storage facility site is required. For purposes of this Act, a transfer shall be deemed to have been made once there is a change in ownership of any kind at a storage facility site. Once established, the site-specific trust account shall survive until completion of site closure or remediation of the associated storage facility site.

(B) In the event the parties to a transfer elect to establish a site-specific trust account under this Section, the [commissioner] shall require a storage facility long-term maintenance, monitoring, and site closure assessment to be made to determine the long-term maintenance, monitoring, and site closure requirements existing at the time of the transfer, or at the time the site-specific trust account is established. The storage facility long-term maintenance, monitoring, and site closure assessment shall be conducted by approved site assessment contractors appearing on a list approved by the [commissioner] or acceptable to the [commissioner]. The storage facility long-term maintenance, monitoring, and site closure assessment shall specifically detail the long-term maintenance, monitoring, and site closure needs and shall provide an estimate of the long-term maintenance, monitoring and site closure costs needed to maintain and restore the storage facility site based on the conditions existing at the time of transfer, or at the time the site-specific trust account is established.

(C) The party or parties to the transfer shall, based upon the long-term maintenance and site restoration assessment, propose a funding schedule which will provide for the site-specific trust account. The funding schedule shall consider the uniqueness of each transfer, acquiring party, and storage facility site. Funding of the site-specific trust account shall include some contribution to the account at the time of transfer and at least [quarterly] payments to the account. Cash or bonds in a form and of a type acceptable to the [commissioner], or any combination thereof, may also be considered for funding. The [commissioner] shall monitor each trust account to assure that it is being properly funded. The funds in each trust account shall remain the property of the [commissioner].

(D) The [commissioner] may approve the site-specific trust account for a storage facility site upon review of the assessment and the site-specific trust account that has been proposed for that storage facility site as provided in the regulations. Such approval shall not be unreasonably withheld.

(E) When transfers of storage facility sites occur subsequent to the formation of site-specific trust accounts but prior to the end of their economic life, the [commissioner] and the acquiring party shall, in the manner provided for in this Section, again redetermine cost and agree upon a funding schedule. The balance of any site-specific trust account at the time of subsequent transfer shall remain with the storage facility site and shall be a factor in the redetermination.

(F) Once the [commissioner] has approved the site-specific trust account, and the account is fully funded, the party transferring the storage facility site and all prior owners, operators, and working interest owners shall not thereafter be held liable by the state for any site closure costs or actions associated with the transferred storage facility site. The party acquiring the storage

530 facility site shall thereafter be the responsible party for the purposes of this Part.

531 (G) The failure of a transferring party to make a good faith disclosure of all material  
532 storage facility site conditions existing at the time of the transfer may render that party liable for  
533 the costs to address such undisclosed conditions to regulatory standards in excess of the balance  
534 of the site-specific trust fund.

535 (H) Except as provided in Subsection E of this Section, the parties to a transfer may elect  
536 not to establish a site-specific trust account; however, in the absence of such account, the parties  
537 shall not be exempt from liability as set forth in Subsection F of this Section.

538 (I) After site closure has been completed and approved by the [commissioner], funds  
539 from a site-specific trust account shall be disbursed as follows:

540 (1) The balance of the account existing in the site-specific trust account  
541 will be remitted to the responsible party.

542 (2) Such account shall thereafter be closed.

543 (J) The provisions of this Act regarding the implementation of site-specific trust accounts  
544 shall not be implemented until the rules and regulations pertaining to such trust accounts are  
545 finally adopted.

546

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

548

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

550

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

# Civil Gideon Legal Services

This Act helps facilitate legal services to underserved communities. It defines and restricts how a person or organization can use the term “legal aid.” The Act directs the state Judicial Council to set up a pilot program to appoint legal representation for unrepresented low-income parties in civil matters involving critical issues such as domestic violence, child custody, and elder abuse. Program projects must be partnerships between courts and qualified legal service providers in the community. The Act directs that local advisory committees be formed to help administer program projects and to ensure those fulfill program objectives. The bill requires the Judicial Council to study the effectiveness of the program and report its findings and recommendations to the governor and legislature. It directs the Judicial Council to use fees collected from various court services to help fund the program.

Submitted as:

California

[AB 590 / Chapter 457](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Pro Bono Legal  
2 Services and Financial Support to Nonprofit Organizations Which Provide Free Legal Services  
3 in Underserved Communities.”  
4

5           Section 2. [*Legislative Findings.*]

6           (a) The [Legislature] hereby finds there is an increasingly dire need for legal services for  
7 poor people in this state.

8           (b) Due to insufficient funding from all sources, existing programs providing free  
9 services in civil matters to indigent and disadvantaged persons, especially underserved groups  
10 such as elderly, disabled, children, and non-English-speaking people, are not adequate to meet  
11 existing needs.

12           (c) Equal access to justice without regard to income is a fundamental right in a  
13 democratic society. It is essential to the enforcement of all other rights and responsibilities in any  
14 society governed by the rule of law. It also is essential to the public’s confidence in the legal  
15 system and its ability to reach just decisions.

16           (d) It is the intent of the [Legislature] to encourage the legal profession to make further  
17 efforts to meet its professional responsibilities and other obligations by providing pro bono legal  
18 services and financial support to nonprofit legal organizations that provide free legal services to  
19 underserved communities.

20           (e) The services provided for in this Act are not intended to, and shall not, supplant legal  
21 services resources from any other source. This Act does not entitle any person to receive services  
22 from a particular legal services provider, nor shall this Act override the local or national  
23 priorities of existing legal services programs. The services provided for in this Act are likewise  
24 not intended to undermine any existing pilot programs or other efforts to simplify court  
25 procedures or provide assistance to unrepresented litigants. Furthermore, nothing in this Act shall

be construed to prohibit the provision of full legal representation or other appropriate services funded by another source.

### Section 3. [*Legal Aid Organizations.*]

(a) For purposes of this Act, “legal aid organization” means a nonprofit organization that provides civil legal services to the poor without charge.

(b) It is unlawful for any person or organization to use the term “legal aid,” “legal aide,” or any confusingly similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid organization subject to fair use principles for nominative, descriptive, or noncommercial use.

(c) Any consumer injured by a violation of this section of this Act may file a complaint and seek injunctive relief, restitution, and damages in the [superior court] of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(d) A person who violates this section of this Act shall be subject to an injunction against further violation of this section of this Act by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision of this section, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(e) Reasonable attorney’s fees shall be awarded to the prevailing plaintiff in any action under this section.

### Section 4. [*Civil Legal Representation.*]

(a) Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those specified courts selected by the [Judicial Council] as defined under [insert citation] and as provided in this section.

(b) (1) The [Judicial Council] shall develop one or more model pilot projects in selected courts pursuant to a competitive grant process and a request for proposals. Projects authorized under this section shall provide representation of counsel for low-income persons who require legal services in civil matters involving housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child, as well as providing court procedures, personnel, training, and case management and administration methods that reflect best practices to ensure unrepresented parties in those cases have meaningful access to justice, and to gather information on the outcomes associated with providing these services, to guard against the involuntary waiver of those rights or their disposition by default. These pilot projects should be designed to address the substantial inequities in timely and effective access to justice that often give rise to an undue risk of erroneous decision because of the nature and complexity of the law and the proceeding or disparities between the parties in education, sophistication, language proficiency, legal representation, access to self-help, and alternative dispute resolution services. In order to ensure that the scarce funds available for the program are used to serve the most critical cases and the parties least able to access the courts without representation, eligibility for representation shall be limited to clients whose household income falls at or below [200 percent] of the federal poverty level. Projects shall impose asset limitations consistent with their existing practices in order to ensure optimal use of funds.

(2) (A) In light of the significant percentage of parties who are unrepresented in family law matters, proposals to provide counsel in child custody cases should be considered

74 among the highest priorities for funding, particularly when one side is represented and the other  
75 is not.

76 (B) Excepting projects defined under [insert citation], up to [20 percent] of  
77 available funds shall be directed to projects regarding civil matters involving actions by a parent  
78 to obtain sole legal or physical custody of a child.

79 (3) Each project shall be a partnership between the court, a qualified legal services  
80 project as defined by [insert citation] that shall serve as the lead agency for case assessment and  
81 direction, and other legal services providers in the community which are able to provide the  
82 services for the project. The lead legal services agency shall be the central point of contact for  
83 receipt of referrals to the project and to make determinations of eligibility based on uniform  
84 criteria. The lead legal services agency shall be responsible for providing representation to the  
85 clients or referring the matter to one of the organization or individual providers with whom the  
86 lead legal services agency contracts to provide the service. Funds received by a qualified legal  
87 services project shall not qualify as expenditures for the purposes of the distribution of funds  
88 pursuant to [insert citation]. To the extent practical, the lead legal services agency shall identify  
89 and make use of pro bono services in order to maximize available services efficiently and  
90 economically. Recognizing that not all indigent parties can be afforded representation, even  
91 when they have meritorious cases, the court partner shall, as a corollary to the services provided  
92 by the lead legal services agency, be responsible for providing procedures, personnel, training,  
93 and case management and administration practices that reflect best practices to ensure  
94 unrepresented parties meaningful access to justice and to guard against the involuntary waiver of  
95 rights, as well as to encourage fair and expeditious voluntary dispute resolution, consistent with  
96 principles of judicial neutrality.

97 (4) The participating projects shall be selected by a committee appointed by the  
98 [Judicial Council] with representation from key stakeholder groups, including judicial officers,  
99 legal services providers, and others, as appropriate. The committee shall assess the applicants'  
100 capacity for success, innovation, and efficiency, including, but not limited to, the likelihood that  
101 the project would deliver quality representation in an effective manner that would meet critical  
102 needs in the community and address the needs of the court with regard to access to justice and  
103 calendar management, and the unique local unmet needs for representation in the community.  
104 Projects approved pursuant to this section shall initially be authorized for a [three-year] period,  
105 commencing [insert date], subject to renewal for a period to be determined by the [Judicial  
106 Council], in consultation with the participating project in light of the project's capacity and  
107 success. After the initial [three-year] period, the [Judicial Council] shall distribute any future  
108 funds available as the result of the termination or nonrenewal of a project pursuant to the process  
109 set forth in this subdivision. Projects shall be selected on the basis of whether, in the cases  
110 proposed for service, the persons to be assisted are likely to be opposed by a party who is  
111 represented by counsel. The [Judicial Council] shall also consider the following factors in  
112 selecting the projects:

113 (A) The likelihood that representation in the proposed case type tends to  
114 affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a  
115 matter in which they would otherwise frequently have judgment entered against them or suffer  
116 the deprivation of the basic human need at issue.

117 (B) The likelihood of reducing the risk of erroneous decision.

118 (C) The nature and severity of potential consequences for the  
119 unrepresented party regarding the basic human need at stake if representation is not provided.

120 (D) Whether the provision of legal services may eliminate or reduce the  
121 potential need for and cost of public social services regarding the basic human need at stake for  
122 the client and others in the client's household.



(E) The unmet need for legal services in the geographic area to be served.  
(F) The availability and effectiveness of other types of court services, such as self-help.

(5) Each applicant shall do all of the following:

(A) Identify the nature of the partnership between the court, the lead legal services agency, and the other agencies or other providers that would work within the project.

(B) Describe the referral protocols to be used, the criteria that would be employed in case assessment, why those cases were selected, the manner to address conflicts without violating any attorney-client privilege when adverse parties are seeking representation through the project, and the means for serving potential clients who need assistance with English.

(C) Describe how the project would be administered, including how the data collection requirements would be met without causing an undue burden on the courts, clients, or the providers, the particular objectives of the project, strategies to evaluate their success in meeting those objectives, and the means by which the project would serve the particular needs of the community, such as by providing representation to limited-English-speaking clients.

(6) To ensure the most effective use of the funding available, the lead legal services agency shall serve as a hub for all referrals, and the point at which decisions are made about which referrals will be served and by whom. Referrals shall emanate from the court, as well as from the other agencies providing services through the program, and shall be directed to the lead legal services agency for review. That agency, or another agency or attorney in the event of conflict, shall collect the information necessary to assess whether the case should be served. In performing that case assessment, the agency shall determine the relative need for representation of the litigant, including all of the following:

(A) Case complexity.

(B) Whether the other party is represented.

(C) The adversarial nature of the proceeding.

(D) The availability and effectiveness of other types of services, such as self-help, in light of the potential client and the nature of the case.

(E) Language issues.

(F) Disability access issues.

(G) Literacy issues.

(H) The merits of the case.

(I) The nature and severity of potential consequences for the potential client if representation is not provided.

(J) Whether the provision of legal services may eliminate or reduce the need for and cost of public social services for the potential client and others in the potential client's household.

(7) If both parties to a dispute are financially eligible for representation, each proposal shall ensure that representation for both sides is evaluated. In these and other cases in which conflict issues arise, the lead legal services agency shall have referral protocols with other agencies and providers, such as a private attorney panel, to address those conflicts.

(8) Each pilot project shall be responsible for keeping records on the referrals accepted and those not accepted for representation, and the reasons for each, in a manner that does not violate any privileged communications between the agency and the prospective client. Each pilot project shall be provided with standardized data collection tools, and required to track case information for each referral to allow the evaluation to measure the number of cases served, the level of service required, and the outcomes for the clients in each case. In addition to this

information on the effect of the representation on the clients, data shall be collected regarding the outcomes for the trial courts.

(9) A local advisory committee shall be formed for each pilot project, to include representatives of the bench and court administration, the lead legal services agency, and the other agencies or providers that are part of the local project team. The role of the advisory committee is to facilitate the administration of the local pilot project, and to ensure that the project is fulfilling its objectives. In addition, the committee shall resolve any issues that arise during the course of the pilot project, including issues concerning case eligibility, and recommend changes in project administration in response to implementation challenges. The committee shall meet at least [monthly] for the first [six months] of the project, and no less than [quarterly] for the duration of the pilot period. Each authorized pilot project shall catalog changes to the program made during the [three-year] period based on its experiences with best practices in serving the eligible population.

(c) The [Judicial Council] shall conduct a study to demonstrate the effectiveness and continued need for the pilot program established pursuant to this section and shall report its findings and recommendations to the [Governor] and the [Legislature] on or before [insert date]. The study shall report on the percentage of funding by case type and shall include data on the impact of counsel on equal access to justice and the effect on court administration and efficiency, and enhanced coordination between courts and other government service providers and community resources. This report shall describe the benefits of providing representation to those who were previously not represented, both for the clients and the courts, as well as strategies and recommendations for maximizing the benefit of that representation in the future. The report shall describe and include data, if available, on the impact of the pilot program on families and children. The report also shall include an assessment of the continuing unmet needs and, if available, data regarding those unmet needs.

(d) This section shall not be construed to negate, alter, or limit any right to counsel in a criminal or civil action or proceeding otherwise provided by state or federal law.

#### Section 5. *[Funding.]*

(a) To implement this Act, [insert percent] of the fees and fines collected on or after [insert date] from the actions listed under subdivisions (1) through (19) of this subsection (a) of this section shall be deposited by [each superior court], as soon as practicable after collection and on a regular basis, into a bank account or trust fund established for that purpose by the [Administrative Office of the Courts]:

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment under [insert citation];

(2) Issuing an abstract of judgment under [insert citation];

(3) Issuing a certificate of satisfaction of judgment under [insert citation];

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court under [insert citation];

(5) Taking an affidavit, except in criminal cases or adoption proceedings under [insert citation];

(6) Acknowledgment of any deed or other instrument, including the certificate under [insert citation];

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed under [insert citation];

(8) Issuing any certificate for which the fee is not otherwise fixed under [insert citation];

(9) Issuing an order of sale under [insert citation];

(10) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under [insert citation];

(11) Filing a confession of judgment under [insert citation];

(12) Filing an application for renewal of judgment under [insert citation];

(13) Issuing a commission to take a deposition in another state or place under [insert citation] or issuing a subpoena under [insert citation] to take a deposition in this state for purposes of a proceeding pending in another jurisdiction;

(14) Filing and entering an award under the Workers' Compensation Law under [insert citation];

(15) Filing an affidavit of publication of notice of dissolution of partnership under [insert citation];

(16) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under [insert citation];

(17) Filing an affidavit under [insert citation] together with the issuance of one certified copy of the affidavit under [insert citation];

(18) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment [insert citation]; and

(19) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under [insert citation].

(b) The [Administrative Office of the Courts] shall enable the [Judicial Council] to use money deposited into the bank account or trust fund authorized by subsection (a) of this section to finance the model pilot projects and related administrative expenses referenced in section (4) of this Act. The [Administrative Office of the Courts] shall disburse or otherwise make available such money to the [Judicial Council] in the amounts and manner defined under [insert citation]. The [Judicial Council] shall award money it receives from the [Administrative Office of the Courts] to implement this Act in the amounts and manner defined under [insert citation].

Section 6. [*Severability*.] [Insert severability clause.]

Section 7. [*Repealer*.] [Insert repealer clause.]

Section 8. [*Effective Date*.] [Insert effective date.]

# Cold Case Register

This Act defines a “cold case” as a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and one that has no viable and unexplored investigatory leads. The Act requires law enforcement agencies create registries of the names of cold case victims, their family members, and their legal representatives. It directs law enforcement agencies to notify such people when the agencies set up the registries. The bill requires the information in cold case registries be held for three years and it requires law enforcement agencies make reasonable efforts to notify registrants when that timeframe expires for their information. The Act requires law enforcement agencies keep registrants’ information an additional three years when registrants ask for such an extension. It requires law enforcement agencies give priority to cases in the registries and directs the agencies to provide registrants with information about new developments or reviews of their cases.

Submitted as:

Arizona

[Chapter 132 of 2009](#)

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 “Cold Case Register Act.”

2

3           Section 2. [*Cold Case; Definition and Register.*]

4           (A) As used in this Act, “Cold case” means a homicide or a felony sexual offense that  
5 remains unsolved for one year or more after being reported to a law enforcement agency and that  
6 has no viable and unexplored investigatory leads.

7           (B) A law enforcement agency that has a cold case shall establish and maintain a cold  
8 case register. The cold case register shall consist of the names of any victim, victim’s family  
9 member or other lawful representative of a victim of a cold case who requests that the person’s  
10 name be included in the cold case register.

11           (C) A law enforcement agency that maintains a cold case register shall provide notice of  
12 the law enforcement agency’s cold case register to any victim, victim’s family member, or other  
13 lawful representative of a victim of a cold case.

14           (D) A law enforcement agency that maintains a cold case register shall provide cold case  
15 registrants with the contact information for the law enforcement agency, information in a timely  
16 manner about any new developments or reviews of the cold case, and encourage registrants to  
17 contact the law enforcement agency if the registrant is aware of any new information related to  
18 the cold case.

19           (E) The name of a victim, a victim’s family member or any other lawful representative of  
20 a victim shall remain in the register for [three years]. The law enforcement agency shall make  
21 reasonable efforts to provide notice to the registrant of the end of the [three-year] period. On  
22 request, the law enforcement agency shall extend the person's registration for an additional [three  
23 years].

24 (F) A law enforcement agency shall give priority to any cold case that is associated with a  
25 name in the cold case register unless there is a compelling reason to give priority to a cold case  
26 that is not associated with a name in the cold case register.

27 (G) The cold case register is not a public record and is exempt from [insert citation].  
28

29 Section 3. [*Severability*.] [Insert severability clause.]  
30

31 Section 4. [*Repealer*.] [Insert repealer clause.]  
32

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

# Community-Based Renewable Energy

This Act directs the state public utilities commission to set up a pilot program to encourage developing community-based renewable energy facilities. The Act permits the state public utilities commission to direct investor-owned transmission and distribution utilities to enter into long-term contracts for energy, capacity resources or renewable energy credits with program participants located within the service territory of the utility. The Act enables consumer-owned transmission and distribution utilities, at the option of the utility, to enter into long-term contracts for energy, capacity resources or renewable energy credits with program participants located within the service territory of the utility. The bill contains incentives to encourage state agencies to buy electricity for state buildings from community-based renewable energy projects.

This Act also directs the state public utilities commission to create a “green power offer” to promote using electricity generated by renewable resources, including electricity supplied by community-based renewable energy projects.

Submitted as:

Maine

[Public Law, Chapter 329, LD 1075](#)

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 Community-Based Renewable  
2 Energy Act.”

3  
4           Section 2. [*Definitions.*] As used in this Act, unless the context otherwise indicates, the  
5 following terms have the following meanings.

6           1. “Community-based renewable energy pilot program,” means the program created  
7 under section 3 of this Act.

8           2. “Community-based renewable energy project” means a locally owned electricity  
9 generating facility that generates electricity from an eligible renewable resource.

10          3. “Eligible renewable resource” means a renewable resource as defined in [insert  
11 citation], except that “eligible renewable resource” does not include a generator fueled by  
12 municipal solid waste in conjunction with recycling and does include a generator fueled by  
13 landfill gas. “Eligible renewable resource” includes a biomass generator whose fuel includes  
14 anaerobic digestion of agricultural products, byproducts or wastes.

15          4. “Locally owned electricity generating facility” means an electricity generating facility  
16 at least [51%] of which is owned by one or more qualifying local owners.

17          5. “Program participant” means a community-based renewable energy project that is  
18 participating in the Community-based Renewable Energy Pilot Program established in section 3  
19 of this Act.

20          6. “Qualifying local owner” means a person or entity that is:

21               A. An individual who is a resident of the State;

22               B. A political subdivision of the State, including, but not limited to, a county,  
23 municipality, quasi-municipal corporation or district as defined in [insert citation], school  
24 administrative unit as defined in [insert citation], public or private institution of higher education,

regional council of governments or any other local or regional governmental organization, including, but not limited to, a board, commission or association;

C. A department, agency, or instrumentality of the State;

D. A federally recognized Indian tribe located in the State;

E. A nonprofit corporation, organized under the laws of the State, including a unit owners association organized [insert citation]; or

F. A business corporation, organized under the laws of the State, at least [51%] of which is owned by one or more residents of the State.

### Section 3. [*Community-based Renewable Energy Pilot Program.*]

(a) A community-based renewable energy pilot program is established to encourage the sustainable development of community-based renewable energy in the State. The [state public utilities commission] shall administer the community-based renewable energy pilot program.

(b) The [state public utilities commission] shall limit participation in the community-based renewable energy pilot program in accordance with this subsection.

1. The installed generating capacity of a program participant may not exceed [10 megawatts].

2. The total installed generating capacity of all program participants combined may not exceed [50 megawatts].

3. The total installed generating capacity of program participants within the service territory of a single investor-owned transmission and distribution utility may not exceed [25 megawatts], unless a higher capacity limit is authorized by the utility and approved by the [state public utilities commission]. The [state public utilities commission] shall determine a generating capacity limit for the service territory of each investor-owned transmission and distribution utility at the outset of the program, taking into consideration the utility's electric load and share of electricity market in the state. The [state public utilities commission] may modify the generating capacity limit under this paragraph based on program experience.

4. A. Of the [50-megawatt] limit on total generating capacity under paragraph 2, [10 megawatts] must be reserved at the outset of the program for program participants that:

i. Have an installed generating capacity of less than [100 kilowatts]; or

ii. Are located in the service territory of a consumer-owned transmission and distribution utility.

B. The [state public utilities commission] may modify the amount of generating capacity reserved under this paragraph based on program experience.

5. The total installed generating capacity of program participants that receive the renewable energy credit multiplier incentive under section 5 of this Act may not exceed [10 megawatts].

### Section 4. [*Community-based Renewable Energy Pilot Program Eligibility Criteria.*]

(a) To be eligible to participate in the program, a community-based renewable energy project must:

1. Provide documentation of a resolution of support passed by the municipal legislative body or municipal officers, as appropriate, of the municipality in which the community-based renewable energy project is proposed to be located, except that any project that is proposed to be located wholly in an unorganized or de-organized area of the State or that has a generating capacity of less than [100 kilowatts] is exempt from the requirement set forth in this paragraph;

73 2. In the case of a community-based renewable energy project proposed to be  
74 located on the tribal land or territory of a federally recognized Indian tribe in this State, including  
75 any land owned by the tribe or held in trust by the United States for the tribe, provide  
76 documentation that the tribe supports the community-based renewable energy project;

77 3. Be connected to the electric grid of this State;

78 4. Have an in-service date after [September 1, 2009]; and

79 5. Satisfy the limits on generating capacity established in section 3 of this Act.

80 (b) The [state public utilities commission] shall prescribe an application form or  
81 procedure that must be used to apply to the program under this Act. The application form or  
82 procedure must include any information that the [state public utilities commission] determines  
83 necessary for the purpose of administering the program. The [state public utilities commission]  
84 shall, within [30 days] of receipt of a completed application, determine whether a community-  
85 based renewable energy project qualifies to participate in the program and respond in writing.

86  
87 Section 5. [*Program Incentives.*] Subject to the requirements of section 3 (b) of this Act,  
88 a program participant may elect one of the following program incentives:

89 1. A long-term contract for community-based renewable energy pursuant to  
90 section 6 of this Act; or

91 2. The renewable energy credit multiplier pursuant to section 7 of this Act.

92  
93 Section 6. [*Long-Term Contracts for Community-based Renewable Energy.*]

94 (a) Long-term contracts with program participants who elect the long-term contract for  
95 community-based renewable energy pursuant to section 5 of this Act are governed by this  
96 section.

97 (b) Notwithstanding [insert citation], the [state public utilities commission] may direct  
98 investor-owned transmission and distribution utilities to enter into long-term contracts with  
99 program participants located within the service territory of the utility for energy, capacity  
100 resources or renewable energy credits. The [state public utilities commission] may direct  
101 investor-owned transmission and distribution utilities to enter into contracts under this subsection  
102 only as agents for their customers and only in accordance with this section. An investor-owned  
103 transmission and distribution utility shall sell energy, capacity resources or renewable energy  
104 credits purchased pursuant to this subsection into the wholesale electricity market or take other  
105 action relative to such energy, capacity resources or renewable energy credits as directed by the  
106 [state public utilities commission].

107 (c) A consumer-owned transmission and distribution utility may, at the option of the  
108 utility, enter into long-term contracts with program participants located within the service  
109 territory of the utility for energy, capacity resources, or renewable energy credits. Consumer-  
110 owned transmission and distribution utilities may enter into contracts under this subsection only  
111 as agents for their customers and only in accordance with this section.

112 (d) Energy, capacity resources or renewable energy credits contracted in long-term  
113 contracts pursuant to this section may be sold into the wholesale electricity market in conjunction  
114 with solicitations for standard-offer supply bids under [insert citation] or solicitations for green  
115 power offer bids under [insert citation]. To the greatest extent possible, the [state public utilities  
116 commission] shall develop procedures for long-term contracts for transmission and distribution  
117 utilities under this section having the same legal and financial effect as the procedures used for  
118 standard-offer service pursuant to [insert citation] for transmission and distribution utilities.

119 (e) A contract entered into pursuant to this section may not be for more than [20 years].

120 (f) The [state public utilities commission] shall ensure that in any contract entered into  
121 pursuant to this section:



1. The average price per kilowatt-hour within each contract year does not exceed [10¢]; and

2. The cost of the contract does not exceed the cost of the project plus a reasonable rate of return on investment as determined by the [state public utilities commission].

(g) For program participants with a generating capacity of [one megawatt] or more, the [state public utilities commission] shall, in accordance with this subsection, conduct competitive solicitations for long-term contracts. The [state public utilities commission] shall require that bids include full project cost disclosure. Following a review of bids received, the [state public utilities commission] may negotiate with one or more potential suppliers. The [state public utilities commission] shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior. In selecting program participants for contracting pursuant to this subsection, the [state public utilities commission] shall select program participants that are competitive and the lowest priced when compared to other available bids of the same or similar contract duration or terms.

(h) 1. For program participants with a generating capacity of less than [one megawatt], the [state public utilities commission] shall administer long-term contracts at prices established by the [state public utilities commission] by rule. The [state public utilities commission] shall, at a minimum, establish prices for energy generated by the following renewable resources:

A. Wind power installations;

B. Solar arrays and installations; and

C. Any other renewable resource upon request of one or more community-based renewable energy generators that use that resource.

2. The [state public utilities commission] shall establish prices under this subsection based on an analysis of reasonable costs and may establish different prices for different resources or technologies and different prices by time of generation in accordance with that analysis.

(i) The [state public utilities commission] shall ensure that a transmission and distribution utility recovers in rates all costs of contracts entered into under this section, including but not limited to any effects on the utility's costs of capital. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the energy is sold must be reflected in rates and may not be considered to be imprudent.

(j) Contracts for capacity and related energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of energy have been provided.

(k) The [state public utilities commission] shall ensure mechanisms are established to provide protections for ratepayers over the term of contracts entered into pursuant to this section.

Section 7. *[Renewable Energy Credit Multiplier.]* The value of a renewable energy credit for electricity generated by a program participant that elects the renewable energy credit multiplier as authorized under section 5 of this Act is [150% of the amount of the electricity]. When a program participant elects the renewable energy credit multiplier, the multiplier must be accounted for when renewable energy credits are used to satisfy the portfolio requirements of [insert citation].

#### Section 8. *Regulatory Approvals; Use of Public Resources.*

(a) The [state public utilities commission] shall adopt rules to implement this Act.

(b) The development, siting and operation of a community-based renewable energy project is subject to all applicable regulatory reviews and approvals required by governmental

entities, including, but not limited to, municipalities and state agencies, pursuant to law, ordinance or rule.

(c) Nothing in this Act limits the authority of the State or a political subdivision of the State to use publicly owned land, water or facilities in the development and operation of a community-based renewable energy project or to lease publicly owned land, water or facilities to other qualifying owners for the development and operation of a community-based renewable energy project.

(d) Community-based renewable energy projects, as defined in section 2 of this Act, may apply for funding from a trust established under [insert citation] as nonelectric savings programs.

Section 9. [*Electricity Purchases for State Buildings.*] In purchasing electricity for state-owned buildings, the State may give preference to electricity generated by community-based renewable energy projects as defined in section 2 of this Act.

Section 10. [*Reporting.*]

(a) No later than [February 15, 2010], the [state public utilities commission] shall submit an interim progress report to the [joint standing committee on utilities and energy] regarding the development and implementation of the community-based renewable energy pilot program pursuant to this Act, including, but not limited to:

1. Rulemaking undertaken by the [state public utilities commission] pursuant to this Act, including, but not limited to, rulemaking to establish prices for long-term contracts for program participants with a generating capacity of less than [one megawatt] pursuant to this Act;

2. The development of contract terms and conditions for long-term contracts under this Act, and

3. The number and types of projects that have expressed interest in the program to date, based on inquiries and applications made to the [state public utilities commission].

(b) The [state public utilities commission] shall develop and administer a system to register and track the development of community-based renewable energy projects and by [January 15, 2011 and biennially by January 15<sup>th</sup> thereafter] shall report to the [joint standing committee of the Legislature having jurisdiction over utilities and energy matters] on the program and the development of community-based renewable energy projects. The report must include, but is not limited to:

1. Documentation of the progress of community-based renewable energy development, including the number of community-based renewable energy projects in the State, the generating capacity of those projects and the kilowatt-hours of electricity purchased from community-based renewable energy projects; and

2. Actions taken by the [state public utilities commission] to implement the program, an assessment of the effectiveness of the program with respect to encouraging the sustainable development of community-based renewable energy in the State and recommendations, including any necessary implementing legislation, to improve the program.

(c) In the report due [January 15, 2011] the [state public utilities commission] shall also report policy options, including but not limited to financial incentives, to encourage the development of community-based renewable energy projects in economically disadvantaged areas of the State. For the purposes of this section, “economically disadvantaged areas” includes, but is not limited to, communities, counties and other geographic areas of the State in which the average weekly wage is below the state average weekly wage or the unemployment rate is greater than the state unemployment rate.

Section 11. [*Community-based Renewable Energy.*] The [state public utilities

commission] may incorporate energy generated by community-based renewable energy projects as defined in section 2 of this Act into the supply of standard-offer service as defined in [insert citation]. The [state public utilities commission] shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying energy from community-based renewable energy projects pursuant to this Act.

Section 12. *[Green Power Offer.]*

(a) The [state public utilities commission] shall arrange a “green power offer” that is composed of “green power supply” in accordance with this section. Except as provided in this section, the [state public utilities commission] shall ensure that the green power offer is available to all residential and small commercial electricity customers, as defined by the [state public utilities commission], and shall administer a competitive bid process to select a green power offer provider or providers for the service territory of a transmission and distribution utility.

(b) For purposes of this section, “green power supply” means electricity or renewable energy credits for electricity generated from renewable capacity resources as defined in [insert citation] from a generator fueled by landfill gas, including electricity generated by community-based renewable energy projects as defined in section 2 of this Act. “Green power supply” includes a biomass generator, whose fuel may include, but is not limited to, anaerobic digestion of agricultural products, byproducts or wastes.

(c) The green power offer must be in addition to existing standard-offer service under [insert citation].

(d) The [state public utilities commission] shall, to the maximum extent possible:

(1) Incorporate power supplied from community-based renewable energy projects as defined in section 2 of this Act into the green power offer; and

(2) Encourage community-based renewable energy projects to supply power for the green power offer.

(e) The green power offer may include incidental amounts of electricity supply that do not meet the definition of green power supply if the [state public utilities commission] determines that including such electricity supply is necessary to ensure that a green power offer provider can meet its retail load obligation.

(f) The [state public utilities commission] shall, in accordance with [insert citation], inform residential and small commercial consumers of electricity in this State of the opportunity to purchase the green power offer.

(g) The [state public utilities commission] is not required to arrange for a green power offer in the event that the [state public utilities commission] receives no bids to provide the green power offer in a transmission and distribution utility's territory, determines that the bids it receives are inadequate or unacceptable, or determines, based on prior experience arranging for a green power offer in a utility's territory, that it is reasonably likely that it will not receive any adequate or acceptable bids.

(h) The [state public utilities commission] is not required to arrange for a green power offer for the territory of a consumer-owned transmission and distribution utility. If the [commission] arranges standard-offer service for a consumer-owned transmission and distribution utility, the consumer-owned transmission and distribution utility may elect to have the commission arrange a green power offer in accordance with this subsection. A consumer-owned transmission and distribution utility may establish a green power offer through a competitive bidding process conducted in accordance with the [state public utilities commission] rules governing the selection of a green power offer provider under this section.

(i) Beginning [insert date], information about the availability of the green power offer and of green power supply products and renewable energy credit products that are certified by

the [state public utilities commission] may, at the option of the provider of the offer or the product, and with the cooperation of the transmission and distribution utility, be presented through inserts in customer bills issued by transmission and distribution utilities. The costs of the inserts, including but not limited to printing and postage costs, are the responsibility of the provider of the offer or product. The [commission] may define the criteria for certification of green power supply products and renewable energy credit products by order or by rule, and the [commission] may limit the criteria for certification for consumer protection and eligibility verification purposes.

(j) The [state public utilities commission] shall adopt rules to implement this section of this Act.

Section 13. [*Severability.*] [Insert severability clause.]

Section 14. [*Repealer.*] [Insert repealer clause.]

Section 15. [*Effective Date.*] [Insert effective date.]

# Electronic Textbooks and Technological Equipment in Public Schools

This Act requires the commissioner of education to adopt a list of electronic textbooks and instructional material, including tools, models, and investigative materials designed for use in the foundation curriculum for science in kindergarten through grade five, and it authorizes a school district to select a textbook or material on that list to be funded by the state textbook fund. The bill establishes conditions and criteria for the placement of such textbooks or material on the list, including a requirement for the state board of education to be given an opportunity to comment on the textbook or material before its placement. The bill requires the commissioner to update the list as necessary, sets forth prerequisites for the removal of textbooks or material from the list, and authorizes the provider of an electronic textbook or instructional material to update the textbook's or material's content or related navigational features or management system after notice to the commissioner.

If a school district or open-enrollment charter school selects an electronic textbook or instructional material on the list, the bill requires the state to pay the district or school an amount equal to the cost of the electronic textbook or instructional material plus textbook credits as specified in the bill, times number of such textbooks or materials needed by the district or school.

The bill authorizes a school district or open-enrollment charter school that selects a subscription-based electronic textbook or instructional material on the conforming list or the adopted list to cancel the subscription and subscribe to a new electronic textbook or instructional material before the end of the state contract period if the district or school has used the textbook or material for at least one school year and the state education agency approves the change based on a written request by the district or school that specifies the reasons for the change.

This Act requires school districts and open-enrollment charter schools to certify annually to the state board of education and the commissioner of education that, for each subject in the foundation curriculum and each grade level, the districts provide each student with textbooks, electronic textbooks, or instructional materials that cover all elements of the essential knowledge and skills adopted by the state board of education for that subject and grade level. The bill authorizes a state textbook fund to be used to purchase technological equipment necessary to support the use of electronic textbooks or instructional material included on the adopted list or any textbook or material approved by the state board of education.

The Act requires the commissioner by rule to establish a computer lending pilot program to provide computers to participating public schools that make computers available for use by students and their parents. The bill requires the commissioner to establish administrative procedures, including procedures for distributing to a participating school any surplus or salvage data processing equipment available for distribution under the pilot program or computers donated or purchased for that purpose with funds from any source. A school is eligible to participate if 50 percent or more of its students are educationally disadvantaged and the school operates or agrees to operate a computer lending program that allows students and parents to borrow a computer; includes an option for students and parents to work toward owning a computer initially borrowed under the program, subject to any applicable restrictions on the computer's disposition; provides computer training for students and parents; and operates outside regular school hours, including operation until at least 7 p.m. on at least three days each week. The bill requires the commissioner, not later than January 1 of each year, to submit a report to the legislature regarding the computer lending pilot program.

The bill also establishes criteria for transferring surplus or salvaged data processing equipment between schools and charter schools or the state criminal justice department.

Submitted as:

Texas

[HB 4294](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act Relating to Textbooks,  
2   Electronic Textbooks, Instructional Material, and Technological Equipment in Public Schools.”

3  
4           Section 2. [*Electronic Textbook and Instructional Material List*.]

5           (a) The [commissioner of education] shall adopt a list of electronic textbooks and  
6   instructional material that conveys information to the student or otherwise contributes to the  
7   learning process, including tools, models, and investigative materials designed for use as part of  
8   the foundation curriculum for science in [kindergarten through grade five].

9           (b) A school district may select an electronic textbook or instructional material on the list  
10   adopted under Subsection (a) to be funded by the state [Textbook Fund] under [insert citation].

11           (c) Before the [commissioner] places an electronic textbook or instructional material on  
12   the list adopted under Subsection (a), the [state board of education] must be given an opportunity  
13   to comment on the electronic textbook or instructional material. An electronic textbook or  
14   instructional material placed on the list adopted under Subsection (a):

15               (1) must be reviewed and recommended to the [commissioner] by a panel of  
16   recognized experts in the subject area of the electronic textbook or instructional material and  
17   experts in education technology;

18               (2) must satisfy criteria adopted for the purpose by [commissioner] rule; and

19               (3) must meet the National Instructional Materials Accessibility Standard, to the  
20   extent practicable as determined by the [commissioner].

21           (d) The criteria adopted under Subsection (c)(2) must:

22               (1) include evidence of alignment with current research in the subject for which  
23   the electronic textbook or instructional material is intended to be used;

24               (2) include coverage of the essential knowledge and skills identified under [insert  
25   citation] for the subject for which the electronic textbook or instructional material is intended to  
26   be used and identify:

27                   (A) each of the essential knowledge and skills for the subject and grade  
28   level or levels covered by the electronic textbook or instructional material; and

29                   (B) the percentage of the essential knowledge and skills for the subject and  
30   grade level or levels covered by the electronic textbook or instructional material; and

31               (3) include appropriate training for teachers.

32           (e) The [commissioner] shall update, as necessary, the list adopted under Subsection (a).  
33   Before the [commissioner] places an electronic textbook or instructional material on the updated  
34   list, the requirements of Subsection (c) must be met. Before the [commissioner] removes an  
35   electronic textbook or instructional material from the updated list, the removal must be  
36   recommended by a panel of recognized experts in the subject area of the electronic textbook or  
37   instructional material and experts in education technology.

38           (f) After notice to the [commissioner] explaining in detail the changes, the provider of an  
39   electronic textbook or instructional material on the list adopted under Subsection (a) may update

the navigational features or management system related to the electronic textbook or instructional material.

(g) After notice to the [commissioner] and a review by the [commissioner], the provider of an electronic textbook or instructional material on the list adopted under Subsection (a) may update the content of the electronic textbook or instructional material if needed to accurately reflect current knowledge or information.

(h) The [commissioner] shall adopt rules as necessary to implement this section. The rules must:

(1) be consistent with [insert citation] regarding the duties of publishers and manufacturers, as appropriate, and the imposition of a reasonable administrative penalty; and

(2) require public notice of an opportunity for the submission of an electronic textbook or instructional material.

### Section 3. *[Notice to the State Board of Education About Textbooks Selected for the Following School Year.]*

(a) Each year, during a period established by the [state board of education], the [board of trustees] of each school district and the governing body of each open-enrollment charter school shall:

(1) for a subject in the foundation curriculum, notify the [state board of education] of the textbooks selected by the [board of trustees] or governing body for the following school year from among the textbooks on the appropriate conforming or nonconforming list, including the list adopted under Section 2 of this Act; or

(2) for a subject in the enrichment curriculum:

(A) notify the [state board of education] of each textbook selected by the [board of trustees] or governing body for the following school year from among the textbooks on the appropriate conforming or nonconforming list, including the list adopted under Section 2 of this Act; or

(B) notify the [state board of education] that the [board of trustees] or governing body has selected a textbook that is not on the conforming or nonconforming list.

(b) If a school district or open-enrollment charter school selects for a particular subject or grade level an electronic textbook or instructional material on the list adopted under Section 2 of this Act, the state shall pay the district or school an amount equal to the cost of the electronic textbook or instructional material plus textbook credits under this Act equal to [50 percent] of the difference between that cost and the limitation established under [insert citation] for a textbook for that subject and grade level, multiplied by the number of electronic textbooks or instructional materials the district or school needs for that subject and grade level.

(c) A school district or open-enrollment charter school that selects a textbook that is not on the conforming or nonconforming list or that selects an electronic textbook or instructional material that is on the list adopted under Section 2 of this Act:

(1) is responsible for the portion of the cost of the textbook that is not paid by the state under Subsection (b); and

(2) may use funds received from the state under Subsection (b), as applicable, for purchasing the textbook, electronic textbook, or instructional material for which the funds were received or supplementing the allotment under [insert citation] to purchase technological equipment according to rules adopted by the [commissioner].

(d) Notwithstanding any other provision of this Act, a school district or open-enrollment charter school must purchase a classroom set of textbooks adopted by the [state board of education] under [insert citation] for each subject and grade level in the foundation and enrichment curriculum.

(e) A school district or open-enrollment charter school that selects a subscription-based electronic textbook or instructional material on the conforming list under [insert citation] or the list adopted under Section 2 of this Act may cancel the subscription and subscribe to a new electronic textbook or instructional material on the conforming list under [insert citation] or the list adopted under Section 2 of this Act before the end of the state contract period under [insert citation] if:

(1) the district or school has used the electronic textbook or instructional material for at least [one school year]; and

(2) the agency approves the change based on a written request to the agency by the district or school that specifies the reasons for changing the electronic textbook or instructional material used by the district or school.

Section 4. [*Applying Textbook Credit.*] [Fifty percent] of the total [textbook credit] of a school district or open-enrollment charter school shall be credited to the state [Textbook Fund], and [fifty percent] of the credit shall be credited to the district or school to apply toward the requisition of:

(1) additional textbooks or electronic textbooks that are on the conforming or nonconforming list under [insert citation] or the components of such textbooks, including any electronic components; [or]

(2) supplemental textbooks as provided by [insert citation];

(3) electronic textbooks or instructional materials on the list adopted under Section 2 of this Act; or

(4) technological equipment under Section 2 of this Act.

Section 5. [*Certification of Provision of Textbooks, Electronic Textbooks, and Instructional Materials.*] Each school district and open-enrollment charter school shall [annually] certify to the [state board of education] and the [commissioner] that, for each subject in the foundation curriculum and each grade level, the district provides each student with textbooks, electronic textbooks, or instructional materials that cover all elements of the essential knowledge and skills adopted by the [state board of education] for that subject and grade level.

Section 6. [*Accepting Rebate on Textbooks, Electronic Textbooks, Instructional Materials, or Technological Equipment.*]

(a) A school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any textbooks, electronic textbooks, instructional materials, or technological equipment used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) A school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

(1) is given to the person or the person's school;

(2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of a textbook, electronic textbook, instructional material, or technological equipment; and

(3) could not be lawfully purchased with funds from the [state textbook fund].

Section 7. [*Computer Lending Pilot Program.*]

(a) The [commissioner] by rule shall establish a computer lending pilot program to provide computers to participating public schools that make computers available for use by students and their parents. The [commissioner] shall establish procedures for the administration



of the pilot program, including procedures for distributing to participating public schools:

(1) any surplus or salvage data processing equipment available for distribution under the pilot program; or

(2) computers donated or purchased for that purpose with funds from any available source, including a foundation, private entity, governmental entity, and institution of higher education.

(b) A public school is eligible to participate in the pilot program if:

(1) [fifty percent or more] of the students enrolled in the school are educationally disadvantaged; and

(2) the school operates or agrees to operate a computer lending program that:

(A) allows students and parents to borrow a computer;

(B) includes an option for students and parents to work toward owning a computer initially borrowed under the school's lending program, subject to any applicable legal restrictions regarding disposition of the computer involved;

(C) provides computer training for students and parents; and

(D) operates outside regular school hours, including operation until at least [7 p.m. on at least three days each week].

(c) Not later than [January 1] of each year, the [commissioner] shall submit a report to the [legislature] regarding the computer lending pilot program established under this [Act].

(d) If a disposition of a state agency's surplus or salvage data processing equipment is not made under [insert citation], the state agency shall make the equipment available to the [commissioner of education] for use in the computer lending pilot program established under this Section of this Act. If the [commissioner of education] declines to take the equipment, the state agency shall transfer the equipment in accordance with [insert citation]. The state agency may not collect a fee or other reimbursement from the [commissioner of education] for the equipment made available under this subsection.

(e) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall make the equipment available to the [commissioner of education] for use in the computer lending pilot program established under this Act. If the [commissioner of education] declines to take the equipment, the institution or agency shall transfer the equipment in accordance with [insert citation]. The state eleemosynary institution or institution or agency of higher education may not collect a fee or other reimbursement from the [commissioner of education] for the equipment made available under this subsection.

(f) The computer lending pilot program established under this Section and the related provisions established under subsections (d) and (e) of this Section expire [September 1, 2014].

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

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

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

# Embryo Adoption

This Act defines embryos and establishes criteria for legal custodianship of embryos.

Submitted as:

Georgia

[HB 388 \(As Passed House and Senate\)](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be known and may be cited as the “Option of  
2   Adoption Act.”

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

5           (1) “Embryo” or “human embryo” means an individual fertilized ovum of the human  
6   species from the single-cell stage to eight-week development.

7           (2) “Embryo relinquishment” or “legal transfer of rights to an embryo” means the  
8   relinquishment of rights and responsibilities by the person or persons who hold the legal rights  
9   and responsibilities for an embryo and the acceptance of such rights and responsibilities by a  
10   recipient intended parent.

11          (3) “Embryo transfer” means the medical procedure of physically placing an embryo into  
12   the uterus of a female.

13          (4) “Legal embryo custodian” means the person or persons who hold the legal rights and  
14   responsibilities for a human embryo and who relinquishes said embryo to another person or  
15   persons.

16          (5) “Recipient intended parent” means a person or persons who receive a relinquished  
17   embryo and who accepts full legal rights and responsibilities for such embryo and any child that  
18   may be born as a result of embryo transfer.

19  
20          Section 3. [*Relinquishing Rights and Responsibilities for Embryos.*]

21          (a) A legal embryo custodian may relinquish all rights and responsibilities for an embryo  
22   to a recipient intended parent prior to embryo transfer. A written contract shall be entered into  
23   between each legal embryo custodian and each recipient intended parent prior to embryo transfer  
24   for the legal transfer of rights to an embryo and to any child that may result from the embryo  
25   transfer. The contract shall be signed by each legal embryo custodian for such embryo and by  
26   each recipient intended parent in the presence of a notary public and a witness. Initials or other  
27   designations may be used if the parties desire anonymity. The contract may include a written  
28   waiver by the legal embryo custodian of notice and service in any legal adoption or other  
29   parentage proceeding which may follow.

30          (b) If the embryo was created using donor gametes, the sperm or oocyte donors who  
31   irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled  
32   to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment  
33   be required.

34          (c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection  
35   (a) of this section, the legal transfer of rights to an embryo shall be considered complete, and the

embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) of this section shall be presumed to be the legal child of the recipient intended parent; provided that each legal embryo custodian and each recipient intended parent has entered into a written contract.

Section 4. [*Petitioning for an Expedited Order of Adoption or Parentage.*]

(a) Prior to the birth of a child or following the birth of a child, a recipient intended parent may petition the [superior court] for an expedited order of adoption or parentage. In such cases, the written contract between each legal embryo custodian and each recipient intended parent shall be acceptable in lieu of a surrender of rights.

(b) All petitions under this Act shall be filed in the [county] in which any petitioner or any respondent resides.

(c) The court shall give effect to any written waiver of notice and service in the legal proceeding for adoption or parentage.

(d) In the interest of justice, to promote the stability of embryo transfers, and to promote the interests of children who may be born following such embryo transfers, the court in its discretion may waive such technical requirements as the court deems just and proper.

(e) Upon a filing of a petition for adoption or parentage and the court finding that such petition meets the criteria required by this Act, an expedited order of adoption or parentage shall be issued and shall be a final order. Such order shall terminate any future parental rights and responsibilities of any past or present legal embryo custodian or gamete donor in a child which results from the embryo transfer and shall vest such rights and responsibilities in the recipient intended parent.

Section 5. [*Severability.*] [Insert severability clause.]

Section 6. [*Repealer.*] [Insert repealer clause.]

Section 7. [*Effective Date.*] [Insert effective date.]

# Energy Efficiency Trust Statement

According to The Council of State Governments Eastern Regional Conference staff, this Act generally creates an “Efficiency Trust” to develop funding sources to pay to weatherize all residential buildings and half of commercial buildings in the state by 2030, which is in line with the state’s greenhouse-gas reduction goals.

This trust will pay for programs to promote energy efficiency and increased use of alternative energy resources in the state. It defines “alternative energy resources” as “nonfossil fuel energy resources, including, but not limited to, biomass, wood, wood pellets and solar, wind or geothermal resources.”

The Act directs the trust’s governing board to deliver a detailed, triennial, energy efficiency, alternative energy resources, and conservation plan that includes the quantifiable measures of performance. The triennial plan must provide integrated planning, program design and implementation strategies for all energy efficiency, alternative energy resources, and conservation programs administered by the trust. It is an objective of the triennial plan to design, coordinate, and integrate sustained energy efficiency and weatherization programs that are available to all energy consumers in the state, regardless of fuel type, that advance the following targets:

- weatherizing 100% of residences and 50% of businesses by 2030;
- reducing peak-load electric energy consumption by 100 megawatts by 2020;
- reducing the state's consumption of liquid fossil fuels by at least 30% by 2030;
- by 2020, achieving electricity and natural gas savings of at least 30% and heating fuel savings of at least 20% as defined in and determined pursuant to the measures of performance ratified by the commission under section 10120;
- capturing all cost-effective energy efficiency resources available for electric and natural gas utility ratepayers;
- saving residential and commercial heating consumers not less than \$3 for every \$1 of program funds invested by 2020 in cost-effective heating and cooling measures that cost less than conventional energy supply;
- building stable private sector jobs providing clean energy and energy efficiency products and services in the state by 2020; and
- reducing greenhouse gas emissions from the heating and cooling of buildings in the state by amounts consistent with the state’s goals.

The trust shall preserve when possible and appropriate the opportunity for carbon emission reductions to be monetized and sold into a voluntary carbon market. Any program of the trust that supports weatherization of buildings must be voluntary and may not constitute a mandate that would prevent the sale of emission reductions generated through weatherization measures into a voluntary carbon market.

The Act directs the trust board to develop quantifiable measures of performance for all programs it administers and to which it will hold accountable all recipients of funding from the trust and recipients of funds used to deliver energy efficiency and weatherization programs administered or funded by the trust. Such measures may include, but are not limited to, reduced energy consumption, increased use of alternative energy resources, reduced capacity demand for natural gas, electricity and fossil fuels, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created by the award of trust funds, the number of energy efficiency trainings or certification courses completed and the amount of sales generated.

The Act directs the Efficiency Trust board to arrange for independent evaluations of each major program implemented under the Act at least once every 5 years. The evaluations must include an accounting audit of the program and an evaluation of the program's effectiveness in meeting the goals of this section. The evaluations must be conducted by a competent professional with expertise in energy efficiency matters, including the management of cost-effective energy efficiency programs. It defines “major programs” as programs with an annual budget of more than \$500,000.

This Act establishes a Regional Greenhouse Gas Initiative Trust Fund to support the goals and implementation of a carbon dioxide cap-and-trade program established under other state law. The Act authorizes this Regional Greenhouse Gas Initiative Trust Fund to receive and spend revenue resulting from the sale of carbon dioxide allowances under state law and any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded by the trust.

Submitted as:

Maine

[Public Law, Chapter 372, LD 1485](#)

Status: Enacted into law in 2009.

# Energy Efficiency/Zero Fossil-Fuel Greenhouse Gas Emissions from Homes, Buildings, and Neighborhoods

This Act requires the state department of community, trade, and economic development to implement a strategic plan to enhance energy efficiency in and reduce greenhouse gas emissions from homes, buildings, districts, and neighborhoods. It directs the department and the state building code council to convene a work group to develop the plan. The Act requires the state energy code be designed to accelerate construction of energy efficient homes and buildings which help achieve a broad goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the year 2031.

This legislation requires the state building code council adopt starter energy codes from 2013 through 2031 which incrementally move towards achieving seventy percent reduction in annual net energy consumption.

It requires utilities to:

- maintain records of the energy consumption data of all nonresidential and qualifying public agency buildings to which they provide service;
- create an energy benchmark for each reporting public facility using a portfolio manager;
- report the environmental protection agency national energy performance rating for each reporting public facility included in the technical requirements for this rating to the department of general administration; and
- link all portfolio manager accounts to the state portfolio manager master account to facilitate public reporting.

The bill requires the department of community, trade, and economic development to recommend to the legislature a methodology to determine an energy performance score for residential buildings and an implementation strategy to use such information to improve the energy efficiency of the state's existing housing supply.

This Act requires the department of general administration to:

- establish a state portfolio manager master account;
- select a standardized portfolio manager report for reporting public facilities;
- make the standard report of each reporting public facility available to the public through the portfolio manager web site;
- develop a technical assistance program to facilitate the implementation of a preliminary audit and the investment grade energy audit and design the program to utilize audit services provided by utilities or energy services contracting companies when possible; and
- conduct a review of facilities not covered by the national energy performance rating, and based on this review, develop a portfolio of additional facilities that require preliminary energy audits.

Submitted as:

Washington

[Chapter 423, Laws of 2009](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Promote Energy Efficiency  
2 in Buildings.”  
3

4           Section 2. [*Definitions.*] Unless the context clearly requires otherwise, as used in this Act:  
5           (1) “Benchmark” means the energy used by a facility as recorded monthly for at least  
6 [one year] and the facility characteristics information inputs required for a portfolio manager.

7           (2) “Conditioned space” means conditioned space, as defined in the [state energy code].

8           (3) “Consumer-owned utility” includes a municipal electric utility formed under [insert  
9 citation], a public utility district formed under [insert citation], an irrigation district formed under  
10 [insert citation], a cooperative formed under [insert citation], a mutual corporation or association  
11 formed under [insert citation], a port district formed under [insert citation], or a water-sewer  
12 district formed under [insert citation], that is engaged in the business of distributing electricity to  
13 one or more retail electric customers in the state.

14           (4) “Cost-effectiveness” means that a project or resource is forecast to be reliable and  
15 available within the time it is needed and to meet or reduce the power demand of the intended  
16 consumers at an estimated incremental system cost no greater than that of the least-cost similarly  
17 reliable and available alternative project or resource, or any combination thereof.

18           (5) “Council” means the [state building code council].

19           (6) “Department” means the [department of community, trade, and economic  
20 development].

21           (7) “Embodied energy” means the total amount of fossil fuel energy consumed to extract  
22 raw materials and to manufacture, assemble, transport, and install the materials in a building and  
23 the life-cycle cost benefits including the recyclability and energy efficiencies with respect to  
24 building materials, taking into account the total sum of current values for the costs of investment,  
25 capital, installation, operating, maintenance, and replacement as estimated for the lifetime of the  
26 product or project.

27           (8) “Energy consumption data” means the monthly amount of energy consumed by a  
28 customer as recorded by the applicable energy meter for the most recent [twelve-month] period.

29           (9) “Energy service company” has the same meaning as in [insert citation].

30           (10) “General administration” means the [department of general administration].

31           (11) “Greenhouse gas” and “greenhouse gases” includes carbon dioxide, methane, nitrous  
32 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

33           (12) “Investment grade energy audit” means an intensive engineering analysis of energy  
34 efficiency and management measures for the facility, net energy savings, and a cost-effectiveness  
35 determination.

36           (13) “Investor-owned utility” means a corporation owned by investors that meets the  
37 definition of “corporation” as defined in [insert citation] and is engaged in distributing either  
38 electricity or natural gas, or both, to more than one retail electric customer in the state.

39           (14) “Major facility” means any publicly owned or leased building, or a group of such  
40 buildings at a single site, having [ten thousand square feet] or more of conditioned floor space.

41           (15) “National energy performance rating” means the score provided by the Energy Star  
42 Program, to indicate the energy efficiency performance of the building compared to similar  
43 buildings in that climate as defined in the United States Environmental Protection Agency  
44 “ENERGY STAR® Performance Ratings Technical Methodology.”

45           (16) “Net zero energy use” means a building with net energy consumption of zero over a  
46 typical [year].

47           (17) “Portfolio manager” means the United States Environmental Protection Agency's  
48 Energy Star Portfolio Manager or an equivalent tool adopted by the [department].

49           (18) “Preliminary energy audit” means a quick evaluation by an energy service company

of the energy savings potential of a building.

(19) “Qualifying public agency” includes all [state agencies, colleges, and universities].

(20) “Qualifying utility” means a consumer-owned or investor-owned gas or electric utility that serves more than [twenty-five thousand] customers in this state.

(21) “Reporting public facility” means any of the following:

(a) A building or structure, or a group of buildings or structures at a single site, owned by a qualifying public agency, that exceed [ten thousand square feet of conditioned space];

(b) Buildings, structures, or spaces leased by a qualifying public agency that exceeds [ten thousand square feet of conditioned space], where the qualifying public agency purchases energy directly from the investor-owned or consumer-owned utility;

(c) A wastewater treatment facility owned by a qualifying public agency; or

(d) Other facilities selected by the qualifying public agency.

(22) “State portfolio manager master account” means a portfolio manager account established to provide a single shared portfolio that includes reports for all the reporting public facilities.

### Section 3. [*Strategic Plan to Enhance Energy Efficiency In and Reduce Greenhouse Gas Emissions from Homes, Buildings, Districts, and Neighborhoods.*]

(A) To the extent that funding is appropriated specifically for the purposes of this section, the [department] shall develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the future code increases in [insert citation], with targets for new buildings consistent with section 5 of this Act. The strategic plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future energy code updates and through complementary policies.

(B) The [department] must complete and release the strategic plan to the [legislature] and the [council] by [December 31, 2010], and update the plan every [three years].

(C) The strategic plan must include recommendations to the [council] on energy code upgrades. At a minimum, the strategic plan must:

(1) Consider development of aspirational codes separate from the state energy code that contain economically and technically feasible optional standards that could achieve higher energy efficiency for those builders that elected to follow the aspirational codes in lieu of or in addition to complying with the standards set forth in the [state energy code];

(2) Determine the appropriate methodology to measure achievement of [state energy code] targets using the United States Environmental Protection Agency’s Target Finder Program or equivalent methodology;

(3) Address the need for enhanced code training and enforcement;

(4) Include state strategies to support research, demonstration, and education programs designed to achieve a [seventy percent] reduction in annual net energy consumption as specified in section 5 of this Act and enhance energy efficiency and on-site renewable energy production in buildings;

(5) Recommend incentives, education, training programs and certifications, particularly state-approved training or certification programs, joint apprenticeship programs, or labor-management partnership programs that train workers for energy-efficiency projects to ensure proposed programs are designed to increase building professionals’ ability to design, construct, and operate buildings that will meet the [seventy percent] reduction in annual net energy consumption as specified in section 5 of this Act;

(6) Address barriers for utilities to serve net zero energy homes and buildings and



99 policies to overcome those barriers;

100 (7) Address the limits of a prescriptive code in achieving net zero energy use  
101 homes and buildings and propose a transition to performance-based codes;

102 (8) Identify financial mechanisms such as tax incentives, rebates, and innovative  
103 financing to motivate energy consumers to take action to increase energy efficiency and their use  
104 of on-site renewable energy. Such incentives, rebates, or financing options may consider the role  
105 of government programs as well as utility-sponsored programs;

106 (9) Address the adequacy of education and technical assistance, including school  
107 curricula, technical training, and peer-to-peer exchanges for professional and trade audiences;

108 (10) Develop strategies to develop and install district and neighborhood-wide  
109 energy systems that help meet net zero energy use in homes and buildings;

110 (11) Identify costs and benefits of energy efficiency measures on residential and  
111 nonresidential construction; and

112 (12) Investigate methodologies and standards for the measurement of the amount  
113 of embodied energy used in building materials.

114 (D) The [department] and the [council] shall convene a work group with affected parties  
115 to inform the initial development of the strategic plan.

116

117 Section 4. *[State Energy Code.]*

118 (A) The state [building code council] shall adopt rules to be known as the [state energy  
119 code] as part of the [state building code].

120 (B) The [council] shall follow the [legislature's] standards set forth in this section to  
121 adopt rules to be known as the [state energy code]. The [state energy code] shall be designed to:

122 (1) Construct increasingly energy efficient homes and buildings that help achieve  
123 the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the  
124 year [2031];

125 (2) Require new buildings to meet a certain level of energy efficiency, but allow  
126 flexibility in building design, construction, and heating equipment efficiencies within that  
127 framework; and

128 (3) Allow space heating equipment efficiency to offset or substitute for building  
129 envelope thermal performance.

130 (C) The [state energy code] shall take into account regional climatic conditions. [Climate  
131 zone [1] shall include [insert zones and counties as necessary].

132 (D) The [state energy code for residential buildings] shall be the [insert year] edition of  
133 the [state energy code], or as amended by rule by the [council].

134 (E) The minimum state energy code for new nonresidential buildings shall be the [insert  
135 year] edition of the [state energy code], or as amended by the [council] by rule.

136 (F) (1) Except as provided in (2) of this subsection, the [state energy code for  
137 residential structures] shall preempt the residential energy code of each city, town, and county in  
138 this state.

139 (2) The [state energy code for residential structures] does not preempt a city,  
140 town, or county's energy code for residential structures which exceeds the requirements of the  
141 [state energy code] and which was adopted by the city, town, or county prior to [March 1, 1990].  
142 Such cities, towns, or counties may not subsequently amend their energy code for residential  
143 structures to exceed the requirements adopted prior to [March 1, 1990].

144 (G) The [state building code council] shall consult with the [department of community,  
145 trade, and economic development] as provided in [insert citation] prior to publication of  
146 proposed rules. The [director of the department of community, trade, and economic  
147 development] shall recommend to the [state building code council] any changes necessary to

conform the proposed rules to the requirements of this section.

(H) The [state building code council] shall evaluate and consider adoption of the [international energy conservation code] in this state in place of the existing [state energy code].

Section 5. *[Reducing Annual Net Energy Consumption: Targets.]*

(A) Except as provided in subsection (B) of this section, residential and nonresidential construction permitted under the [2031 state energy code] must achieve a [seventy percent] reduction in annual net energy consumption, using the adopted [insert date] [state energy code] as a baseline.

(B) The [council] shall adopt [state energy codes] from [2013 through 2031] that incrementally move towards achieving the [seventy percent] reduction in annual net energy consumption as specified in subsection (A) of this section. The [council] shall report its progress by [December 31, 2012, and every three years thereafter]. If the [council] determines that economic, technological, or process factors would significantly impede adoption of or compliance with this subsection, the [council] may defer the implementation of the proposed energy code update and shall report its findings to the [legislature] by [December 31st of the year prior to the year in which those codes would otherwise be enacted].

Section 6. *[Recording Energy Consumption of Nonresidential and Qualifying Public Agency Buildings.]*

(A) On and after [January 1, 2010], qualifying utilities shall maintain records of the energy consumption data of all nonresidential and qualifying public agency buildings to which they provide service. This data must be maintained for at least the most recent [twelve months] in a format compatible for uploading to the United States Environmental Protection Agency's Energy Star Portfolio Manager.

(B) On and after [January 1, 2010], upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, a qualifying utility shall upload the energy consumption data for the accounts specified by the owner or operator for a building to the United States Environmental Protection Agency's Energy Star Portfolio Manager in a form that does not disclose personally identifying information.

(C) In carrying out the requirements of this section, a qualifying utility shall use any method for providing the specified data in order to maximize efficiency and minimize overall program cost. Qualifying utilities are encouraged to consult with the United States Environmental Protection Agency and their customers in developing reasonable reporting options.

(D) Disclosure of nonpublic nonresidential benchmarking data and ratings required under subsection (E) of this section will be phased in as follows:

(1) By [January 1, 2011], for buildings greater than [fifty thousand square feet]; and

(2) By [January 1, 2012], for buildings greater than [ten thousand square feet].

(E) Based on the size guidelines in subsection (D) of this section, a building owner or operator, or their agent, of a nonresidential building shall disclose the United States Environmental Protection Agency's Energy Star Portfolio Manager benchmarking data and ratings to a prospective buyer, lessee, or lender for the most recent continuously occupied [twelve-month] period. A building owner or operator, or their agent, who delivers United States Environmental Protection Agency's Energy Star Portfolio Manager benchmarking data and ratings to a prospective buyer, lessee, or lender is not required to provide additional information regarding energy consumption, and the information is deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the United States Environmental Protection

Agency's Energy Star Portfolio Manager benchmarking data and ratings for the most recent [twelve-month] period for the building that is being sold, leased, financed, or refinanced.

(F) Notwithstanding subsections (D) and (E) of this section, nothing in this section increases or decreases the duties, if any, of a building owner, operator, or their agent under this chapter or alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property.

Section 7. [*Energy Performance Score for Residential Buildings.*] By [December 31, 2009], to the extent that funding is appropriated specifically for the purposes of this section, the [department] shall develop and recommend to the [legislature] a methodology to determine an energy performance score for residential buildings and an implementation strategy to use such information to improve the energy efficiency of the state's existing housing supply. In developing its strategy, the [department] shall seek input from providers of residential energy audits, utilities, building contractors, mixed use developers, the residential real estate industry, and real estate listing and form providers.

Section 8. [*Energy Benchmark.*]

(A) The requirements of this section apply to the [department of general administration] and other qualifying state agencies only to the extent that specific appropriations are provided to those agencies referencing this Act or chapter number and this section.

(B) By [July 1, 2010], each qualifying public agency shall:

(1) Create an energy benchmark for each reporting public facility using a portfolio manager;

(2) Report to general administration, the Environmental Protection Agency national energy performance rating for each reporting public facility included in the technical requirements for this rating; and

(3) Link all portfolio manager accounts to the state portfolio manager master account to facilitate public reporting.

(C) By [January 1, 2010], [general administration] shall establish a state portfolio manager master account. The account must be designed to provide shared reporting for all reporting public facilities.

(D) By [July 1, 2010], [general administration] shall select a standardized portfolio manager report for reporting public facilities. [General administration], in collaboration with the United States Environmental Protection Agency, shall make the standard report of each reporting public facility available to the public through the portfolio manager web site.

(E) [General administration] shall prepare a [biennial] report summarizing the statewide portfolio manager master account reporting data. The first report must be completed by [December 1, 2012]. Subsequent reporting shall be completed every [two years] thereafter.

(F) By [July 1, 2010], [general administration] shall develop a technical assistance program to facilitate the implementation of a preliminary audit and the investment grade energy audit. [General administration] shall design the technical assistance program to utilize audit services provided by utilities or energy services contracting companies when possible.

(G) For a reporting public facility that is leased by the state with a national energy performance rating score below [seventy-five], a qualifying public agency may not enter into a new lease or lease renewal on or after [January 1, 2010], unless:

(1) A preliminary audit has been conducted within the last [two years]; and

(2) The owner or lessor agrees to perform an investment grade audit and implement any cost-effective energy conservation measures within the first [two years] of the lease agreement if the preliminary audit has identified potential cost-effective energy

conservation measures.

(H) (1) Except as provided in (2) of this subsection, for each reporting public facility with a national energy performance rating score below [fifty], the qualifying public agency, in consultation with [general administration], shall undertake a preliminary energy audit by [July 1, 2011]. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by [July 1, 2013]. Implementation of cost-effective energy conservation measures are required by [July 1, 2016]. For a major facility that is leased by a [state agency, college, or university], energy audits and implementation of cost-effective energy conservation measures are required only for that portion of the facility that is leased by the [state agency, college, or university].

(2) A reporting public facility that is leased by the state is deemed in compliance with (1) of this subsection if the qualifying public agency has already complied with the requirements of subsection (G) of this section.

(I) Schools are strongly encouraged to follow the provisions in subsections (B) through (H) of this section.

(J) The [director of the department of general administration], in consultation with the affected state agencies and the [office of financial management], shall review the cost and delivery of agency programs to determine the viability of relocation when a facility leased by the state has a national energy performance rating score below [fifty]. The [department of general administration] shall establish a process to determine viability.

(K) [General administration], in consultation with the [office of financial management], shall develop a waiver process for the requirements in subsection (G) of this section. The [director of the office of financial management], in consultation with [general administration], may waive the requirements in subsection (G) of this section if the [director] determines that compliance is not cost-effective or feasible. The [director of the office of financial management] shall consider the review conducted by the [department of general administration] on the viability of relocation as established in subsection (J) of this section, if applicable, prior to waiving the requirements in subsection (G) of this section.

(L) By [July 1, 2011], [general administration] shall conduct a review of facilities not covered by the national energy performance rating. Based on this review, [general administration] shall develop a portfolio of additional facilities that require preliminary energy audits. For these facilities, the qualifying public agency, in consultation with [general administration], shall undertake a preliminary energy audit by [July 1, 2012]. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by [July 1, 2013].

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

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

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

# Exchange Facilitators

Generally, this Act refers to “exchange facilitators” as people, who, for a fee, enter into an agreement with a taxpayer to act as a qualified intermediary in an exchange of like-kind property, an Exchange Accommodation Titleholder, or a qualified trustee or escrow holder. It requires exchange facilitators maintain certain funds in separately identified accounts or in a qualified escrow or qualified trust in order to do business. It prohibits exchange facilitators from making misrepresentations, failing to account for moneys or property of others, engaging in fraudulent or dishonest dealings, committing certain crimes, or materially failing to fulfill contractual duties to an exchange client. The Act requires exchange facilitators notify their clients about changes in the control of the exchange facilitator. Violations are subject to a civil penalty of up to \$2,500.

Submitted as:

Virginia

[HB 417 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

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

2

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

4           “Affiliated with” means that a person directly, or indirectly through one or more  
5 intermediaries, controls, or is controlled by, or is under common control with the other specified  
6 person.

7           “Commingle” means to mix together exchange funds with operating and other  
8 nonexchange funds belonging to or under control of the exchange facilitator in such a manner  
9 that a client's exchange funds cannot be distinguished from operating or other nonexchange  
10 funds belonging to or under control of the exchange facilitator.

11           “Exchange Accommodation Titleholder” or “EAT” has the same meaning ascribed  
12 thereto in IRS Revenue Procedure 2000-37.

13           “Exchange client” means the taxpayer with whom the exchange facilitator enters into an  
14 agreement described in subdivision 1 of the definition of exchange facilitator.

15           “Exchange facilitator” means a person that:

16                 1. For a fee, facilitates an exchange of like-kind property by entering into an  
17 agreement with a taxpayer:

18                         a. By which the exchange facilitator acquires from said taxpayer the  
19 contractual rights to sell said taxpayer's relinquished property located in the state and transfer a  
20 replacement property to said taxpayer as a qualified intermediary as that term is defined under  
21 Treasury Regulation § 1.1031(k)-1(g)(4);

22                         b. To take title to a property located in the state as an Exchange  
23 Accommodation Titleholder; or

24                         c. To act as a qualified trustee or qualified escrow holder as those terms  
25 are defined under Treasury Regulation § 1.1031(k)-1(g)(3), except as otherwise provided in this  
26 definition; or

27                   2. Maintains an office in the state for the purpose of soliciting business as an  
28 exchange facilitator.

29                   “Exchange facilitator” shall not include:

30                   1. The taxpayer or disqualified person as that term is defined under Treasury  
31 Regulation § 1.1031(k)-1(k) seeking to qualify for the non-recognition provisions of Internal  
32 Revenue Code § 1031;

33                   2. Any financial institution as defined herein or any title insurance company,  
34 underwritten title company, or escrow company that is merely acting as a depository for  
35 exchange funds or that is acting solely as a qualified escrow holder or qualified trustee as those  
36 terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3), and is not otherwise  
37 facilitating exchanges as defined herein;

38                   3. A person who advertises for and teaches seminars or classes or otherwise  
39 gives presentations to attorneys, accountants, real estate professionals, tax professionals, or other  
40 professionals where the primary purpose is to teach the professionals about tax deferred  
41 exchanges or train them to act as exchange facilitators; or

42                   4. An entity that is wholly owned by an exchange facilitator or that is wholly  
43 owned by the same person as the exchange facilitator and is used by such entity to facilitate  
44 exchanges or to take title to property in the state as an EAT.

45                   “Exchange funds” means the funds received by the exchange facilitator from or on behalf  
46 of the exchange client for the purpose of facilitating an exchange of like-kind property.

47                   “Fee” means, for purposes of subdivision 1 of the definition of exchange facilitator,  
48 compensation of any nature, direct or indirect, monetary or in-kind, that is received by a person  
49 or a related person as described in Internal Revenue Code § 267(b) or 707(b) for any services  
50 relating to or incidental to the exchange of like-kind property under Internal Revenue Code §  
51 1031.

52                   “Financial institution” means any bank, credit union, savings and loan association,  
53 savings bank, or trust company chartered under the laws of the state or the United States whose  
54 accounts are insured by the full faith and credit of the United States of America, the Federal  
55 Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or other similar  
56 or successor programs and any direct or indirect subsidiary of such bank, credit union, savings  
57 and loan association, savings bank, or trust company.

58                   “Person” means, in addition to the singular, persons, groups of persons, cooperative  
59 associations, limited liability companies, firms, partnerships, corporations, or other legal entities  
60 and includes the agents and employees of any such person.

61  
62                   Section 3. [*Change in Control.*] An exchange facilitator shall notify all existing exchange  
63 clients whose relinquished property is located in the state, or whose replacement property held  
64 under a Qualified Exchange Accommodation Agreement as defined in [insert citation] and is  
65 located in the state, of any change in control of the exchange facilitator. Such notification shall  
66 be made to the exchange facilitator's clients within [10 business days] following the effective  
67 date of such change in control either by facsimile or email transmission, or by first class mail,  
68 and by posting such notice of change in control on the exchange facilitator's website, if any, for a  
69 period ending not sooner than [90 days] after the change in control. Such notification shall set  
70 forth the name, address, and other contact information of the transferees. For purposes of this  
71 Act, “transferee” means the party or parties to whom the ownership or control of the exchange  
72 facilitator has been transferred. Notwithstanding the above, if the exchange facilitator is a  
73 publicly traded company and remains a publicly traded company after a change in control, the  
74 publicly traded company shall not be required to notify its existing clients of such change in  
75 control. For purposes of this section, “change in control” means any transfer within [12 months]

of more than [50 percent] of the assets or ownership interests, direct or indirect, of the exchange facilitator.

Section 4. [*Separately Identified Accounts, or Qualified Escrows or Qualified Trusts.*]

A. An exchange facilitator at all times shall:

1. Deposit the exchange funds in a deposit account that is a separately identified account, as defined in Treasury Regulation § 1.468B-6(c)(ii), and provide that any withdrawals from such separately identified account require the written authorization of the exchange client and written acknowledgment of the exchange facilitator. Authorization for withdrawals may be delivered by any commercially reasonable means, including the exchange client's delivery to the exchange facilitator of the exchange client's authorization to disburse exchange funds and the exchange facilitator's delivery to the financial institution of the exchange facilitator's authorization to disburse exchange funds or delivery to the financial institution of both the exchange client's and the exchange facilitator's authorizations to disburse exchange funds. For purposes of this Act, a "deposit account" means a demand, time, savings, passbook, money market, certificate of deposit, or similar account maintained with a financial institution; or

2. Deposit the exchange funds in a deposit account that is a qualified escrow or qualified trust as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3).

B. The deposit account shall be with a financial institution and the interest earned on such account shall accrue to the parties as provided in a written agreement between the exchange facilitator and the exchange client. However, the exchange client may expressly direct the exchange facilitator in writing to invest the exchange proceeds in an investment of the exchange client's choice, provided that the exchange facilitator provides written acknowledgment back to the exchange client that includes a confirmation of how the exchange proceeds will be invested.

Section 5. [*Errors and Omissions Insurance; Cash or Letters of Credit.*]

A. An exchange facilitator at all times shall:

1. Maintain a policy of errors and omissions insurance in an amount not less than [\$250,000] executed by an insurer authorized to do business in the state; or

2. Deposit an amount of cash or provide irrevocable letters of credit equivalent to the sum of not less than [\$250,000].

B. The exchange facilitator may maintain errors and omissions insurance, cash, or irrevocable letters of credit in excess of the amounts required in this section.

Section 6. [*Accounting for Money and Property.*]

A. Every exchange facilitator shall hold all property related to the exchange client including the exchange funds, other property, and other consideration or instruments received by the exchange facilitator, on behalf of the client, except funds received as the exchange facilitator's compensation. Exchange funds shall be held in accordance with the requirements of Section 4 of this Act.

B. An exchange facilitator shall not:

1. Commingle exchange funds with the operating accounts of the exchange facilitator; or

2. Lend or otherwise transfer exchange funds to any person or entity affiliated with or related (as described in Internal Revenue Code § 267(b) or 707(b)) to the exchange facilitator except that this subsection shall not apply to a transfer or loan made to a financial institution that is the parent of or related to the exchange facilitator or to a transfer from an exchange facilitator to an EAT as required under the exchange contract.

C. Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. An exchange facilitator shall not keep or cause to be kept any money in any financial institution under any name designating the money as belonging to an exchange client of the exchange facilitator unless the money equitably belongs to the exchange client and was actually entrusted to the exchange facilitator by the exchange client.

Section 7. [*Prohibited Acts and Penalties.*]

A. A person who engages in the business of an exchange facilitator is prohibited from:

1. Making any material misrepresentations concerning any exchange facilitator transaction that are intended to mislead another;
2. Pursuing a continued course of misrepresentation or making false statements through advertising or otherwise;
3. Failing, within a reasonable time, to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;
4. Engaging in any conduct constituting fraudulent or dishonest dealings;
5. Committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;
6. Materially failing to fulfill its contractual duties to the exchange client to deliver property or funds to the exchange client unless such failure is due to circumstances beyond the control of the exchange facilitator; or

B. A person who is an owner, officer, director, or employee of an exchange facilitator is prohibited from committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property; however, the commission of such crime by an officer, director, or employee of an exchange facilitator shall not be considered a violation of this Act if the employment or appointment of such officer, director, or employee has been terminated and no clients of the exchange facilitator were harmed or full restitution has been made to all harmed clients within a reasonable period of time.

Section 8. [*Penalty, Attorney Fees.*]

A. In any action brought under this Act, if a court finds that a person has willfully engaged in an act or practice in violation of this Act, the [Attorney General], the [attorney for the State], or the attorney for the locality may recover for a [Literary Fund] established under [insert citation], upon petition to the court, a civil penalty of not more than [\$2,500] per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the [Attorney General], the [attorney for the State], or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this Act and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

B. In any action brought under this Act, the [Attorney General], the [attorney for the State], or the attorney for the county, city, or town may recover costs and reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorney fees.

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

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

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



# Food Banks

This Act establishes a program in the state department of agriculture to award grants to nonprofit organizations to collect and distribute surplus food grown in the state to food banks and other charitable organizations which serve needy or low-income people. The Act creates a Surplus Agricultural Commodities Fund to fund the program and an advisory committee to guide the program.

Submitted as:

Kentucky

[Chapter 24 of 2009 \(HB 344\)](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Food Banks Using  
2 Surplus Agricultural Commodities.”

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

5           (1) “Agricultural commodity” means any agricultural product, including but not limited  
6 to plant and animal products grown, raised, or produced within this state for use as food, feed,  
7 seed, or any aesthetic, industrial, or chemurgic purpose; and

8           (2) “Food bank” means a surplus food collection and distribution system operated and  
9 established to assist in bringing donated food to nonprofit charitable organizations and  
10 individuals for redistribution to reduce hunger and supply nutritional needs.

11  
12           Section 3. [*Establishing a Program to Collect and Distribute Surplus Agricultural*  
13 *Commodities to Food Banks and Other Charitable Organizations.*]

14           (A)           There is hereby established in the [department of agriculture] a program to  
15 award grants to nonprofit organizations for the purpose of collecting and distributing surplus  
16 agricultural commodities grown and raised in this state to food banks and other charitable  
17 organizations that serve needy or low-income individuals.

18           (B) Subject to available funds, a nonprofit organization is eligible to receive a grant under  
19 this Act if the organization:

20           (1) Has at least [five (5)] years of experience coordinating a statewide network of  
21 food banks and charitable organizations that serve counties of this state;

22           (2) Operates a program that coordinates the collection and transportation of  
23 surplus agricultural commodities to a statewide network of food banks that provide food to  
24 needy or low-income individuals; and

25           (3) Submits to the [department], in a manner and time prescribed by the  
26 [department], a proposal for the collection and distribution of agricultural commodities to food  
27 banks and other charitable organizations for use in providing food for needy or low-income  
28 individuals, including:

29                   (a) A description of the proposal;

30                   (b) A schedule of projected costs for the proposal;

31                   (c) Measurable goals for the proposal; and

- 32 (d) A plan for evaluating the success of the proposal.
- 33 (C) A nonprofit organization that receives a grant under this Act shall comply with the
- 34 following requirements:
- 35 (1) Purchases shall be made from farmers, growers, and vendors in this state;
- 36 (2) Agricultural commodities collected and distributed shall be culls or those
- 37 designated as surplus or unmarketable, and not primary agricultural commodities;
- 38 (3) Surplus or unmarketable agricultural commodities or culls shall be purchased
- 39 at production cost or below market price from produce auctions, farmers, growers, and vendors;
- 40 (4) Donations of culls, or surplus or unmarketable agricultural commodities from
- 41 farmers' markets, cooperatives, farmers, and growers shall be encouraged; and
- 42 (5) People making the donations may be reimbursed for picking, packaging,
- 43 processing, transportation, storage, distribution, or other costs.
- 44 (D) A nonprofit organization that receives a grant under this Act shall report the results of
- 45 the project to the [department of agriculture] in a manner prescribed by the [department of
- 46 agriculture].

47

48 Section 4. *[Surplus Agricultural Commodities Advisory Committee.]*

49 (A) A [Surplus Agricultural Commodities Advisory Committee] is hereby created for the

50 purpose of advising the [department of agriculture] concerning the implementation and

51 administration of the program established under this Act. The [committee] shall be composed of

52 no fewer than [ten (10)] but no more than [fifteen (15)] members appointed by the

53 [commissioner of agriculture]. Membership on the [committee] shall include:

- 54 (1) Food and nutrition advocates;
- 55 (2) Regional food bank representatives;
- 56 (3) Local government representatives;
- 57 (4) Representatives of the [department] and [governor's office];
- 58 (5) Agricultural commodity producers;
- 59 (6) Representatives of farm advocacy groups;
- 60 (7) Representatives of public or private colleges and universities in this state; and
- 61 (8) At-large members designated by the [commissioner of agriculture].

62 (B) The [advisory committee] shall elect a chairperson during the first organizational

63 meeting.

64 (C) The [committee] shall:

- 65 (1) Advise the [department] concerning the implementation and administration of
- 66 this Act; and
- 67 (2) Make recommendations to the [department] regarding the content of
- 68 administrative regulations promulgated by the [department] in accordance with this Act.

69 (D) Appointed [committee] members may be reimbursed for reasonable and necessary

70 expenses incurred while engaged in carrying out the official duties of the [committee].

71 (E) The [committee] shall be attached to the [department of agriculture] for

72 administrative purposes.

73

74 Section 5. *[Surplus Agricultural Commodities Fund.]*

75 (A) The [Surplus Agricultural Commodities Fund] is hereby created in the [State

76 Treasury] as a restricted account to be administered by the [department] for the purposes

77 provided in this section.

78 (B) Notwithstanding the provisions of [insert citation], any moneys accruing to this fund

79 in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any

80 other funds both public and private, shall not lapse but shall be carried forward to the next fiscal

81 year.

82 (C) Moneys received in the fund shall be used for carrying out the provisions of this Act.

83

84 Section 6. [*Regulations Implementing this Act.*] The [commissioner] shall promulgate the  
85 administrative regulations necessary to carry out the provisions of this Act.

86

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

88

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

90

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

# Healthy Food Retail Act

This Act directs the state department of agriculture and forestry to set up a financing program to stimulate investment in healthy food retail outlets in underserved areas of the state. The Act defines “Healthy food retailers” as for-profit or not-for-profit retailers that sell high quality fresh fruits and vegetables at competitive prices including but not limited to supermarkets, grocery stores, and farmers’ markets.

Submitted as:

Louisiana

[Act 252, Regular Session, 2009](#)

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 Healthy Food Retail Act.”

2

3           Section 2. [*Definitions.*] As used in this Act, the following terms and phrases shall have  
4 the meanings hereinafter ascribed to them:

5           (1) “Funding” means grants, loans, or a combination of grants and loans.

6           (2) “Healthy food retailers” means for-profit or not-for-profit retailers that sell high  
7 quality fresh fruits and vegetables at competitive prices including but not limited to  
8 supermarkets, grocery stores, and farmers’ markets.

9           (3) “Program” means a public-private partnership established to provide a dedicated  
10 source of financing for food retailers that increase access to fresh fruits and vegetables and other  
11 affordable healthy food for residents of this state and managed by the state [department of  
12 agriculture and forestry].

13           (4) “Underserved community” means a geographic area that has limited access to healthy  
14 food retailers and is located in a lower-income or high-poverty area, or an area that is otherwise  
15 determined to have serious healthy food access limitations.

16

17           Section 3. [*Program to Provide Grants and Loans to Food Retailers to Increase Access*  
18 *to Fresh Fruits and Vegetables in Underserved Communities.*]

19           (A) To the extent funds are available, the state [department of agriculture and forestry], in  
20 cooperation with public and private sector partners, shall establish a financing program that  
21 provides grants and loans to healthy food retailers that increase access to fresh fruits and  
22 vegetables and other affordable healthy food in underserved communities.

23           (B) The [department] may contract with one or more qualified nonprofit organizations or  
24 community development financial institutions to administer the program described in this  
25 Section through a public-private partnership, to raise matching funds, market the program  
26 statewide, evaluate applicants, make award decisions, underwrite loans, and monitor compliance  
27 and impact. The [department] and its partners shall coordinate with complementary nutrition  
28 assistance and education programs.

29           (C) The program shall provide funding on a competitive, one-time basis as appropriate  
30 for the eligible project.

31           (D)     (1) The program may provide funding for projects such as:

32 (a) New construction of supermarkets and grocery stores.  
 33 (b) Store renovations, expansion, and infrastructure upgrades that improve  
 34 the availability and quality of fresh produce.  
 35 (c) Farmers' markets and public markets, food cooperatives, mobile  
 36 markets and delivery projects, and distribution projects that enable food retailers in underserved  
 37 communities to regularly obtain fresh produce.  
 38 (d) Other projects that create or improve healthy food retail outlets that  
 39 meet the intent of this Act as determined by the [department].  
 40 (2) Funding made available for projects included in Subparagraph (1) of this  
 41 Paragraph may be used for the following purposes:  
 42 (a) Site acquisition and preparation.  
 43 (b) Construction costs.  
 44 (c) Equipment and furnishings.  
 45 (d) Workforce training.  
 46 (e) Security.  
 47 (f) Certain pre-development costs such as market studies and appraisals.  
 48 (g) Working capital for first-time inventory and start-up costs.  
 49 (3) A restaurant is not eligible for funding under this Act.  
 50 (E) An applicant for funding may be a for-profit or a not-for-profit entity, including but  
 51 not limited to a sole proprietorship, partnership, limited liability company, corporation,  
 52 cooperative, nonprofit organization, nonprofit community development entity, university, or  
 53 governmental entity.  
 54 (F) In order to be considered for funding, an applicant shall meet the following criteria:  
 55 (1) The project for which the applicant seeks funding shall benefit an underserved  
 56 community.  
 57 (2) The applicant shall demonstrate a meaningful commitment to sell fresh fruits  
 58 and vegetables, according to a measurable standard established by the [department].  
 59 (3) Generally, the applicant shall accept Food Stamps (Supplemental Nutrition  
 60 Assistance Program) and WIC (Special Supplemental Nutrition Program for Women, Infants and  
 61 Children) benefits. For categories of applicants that are not eligible to accept Food Stamps or  
 62 WIC benefits, an alternative standard shall be established by the [department] to demonstrate a  
 63 meaningful commitment to make healthy food affordable to low-income households.  
 64 (G) Applicants shall be evaluated on the following criteria in order to determine the  
 65 funding awarded:  
 66 (1) Demonstrated capacity to successfully implement the project, including the  
 67 applicant's relevant experience, and the likelihood that the project will be economically self-  
 68 sustaining.  
 69 (2) The ability of the applicant to repay debt.  
 70 (3) The degree to which the project requires an investment of public funding to  
 71 move forward, create impact, or be competitive, and the level of need in the area to be served.  
 72 Additional factors that will improve or preserve retail access for low-income residents, such as  
 73 proximity to public transit lines, also may be taken into account.  
 74 (4) The degree to which the project will promote sales of fresh produce,  
 75 particularly fruits and vegetables grown in this state.  
 76 (5) The degree to which the project will have a positive economic impact on the  
 77 underserved community, including by creating or retaining jobs for local residents.  
 78 (6) Other criteria the [department] determines to be consistent with the purposes  
 79 of this Section.  
 80 (H) The [department] shall establish program benchmarks and reporting processes to

81 make certain that the program benefits both rural and urban communities in this state. The  
82 [department] shall likewise establish monitoring and accountability mechanisms for projects  
83 receiving grants or loans, such as tracking fruit and vegetable sales data.

84 (I) The [department] shall prepare and submit an [annual] report to the [legislature] on  
85 any projects funded and outcome data.

86 (J) The [department] shall establish rules for the implementation of this Act in  
87 accordance with the [Administrative Procedure Act].  
88

89 Section 4. [*Funds.*] Funds described in this Act, to the extent practicable, may be used to  
90 leverage other funding including but not limited to [state] [New Markets Tax Credits], federal  
91 and foundation grant programs, incentives available to designated [Enterprise Zones or Renewal  
92 Communities], operator equity, and funding from private sector financial institutions under the  
93 federal [Community Reinvestment Act].  
94

95 Section 5. [*Severability.*] [Insert severability clause.]  
96

97 Section 6. [*Repealer.*] [Insert repealer clause.]  
98

99 Section 7. [*Effective Date.*] [Insert effective date.]

# Homelessness, Foster Youth, and Education

This Act directs the state housing and development authority to:

- Determine the number of homeless people, including homeless children, in the state, and the number of homeless people in the state who are not residents of the state;
- Oversee and encourage a regional homeless delivery system; and
- Facilitate the dissemination of information to help people access local resources related to homelessness, housing, and community development.

The Act extends the authority's power to coordinate and establish linkages between governmental and social services programs to include people or families facing or experiencing homelessness.

The Act requires the department of child services (DCS) to promote sibling visitation for every child who receives foster care. It allows a sibling or certain other individuals to request sibling visitation if one of the siblings is receiving foster care. The Act requires DCS to allow sibling visitation if it is in the best interests of the child receiving foster care. It provides that if DCS denies a request for sibling visitation, a child's guardian ad litem or court appointed special advocate may petition a juvenile court for sibling visitation. The Act requires a court to grant sibling visitation if the court determines sibling visitation is in the best interests of the child who receives foster care. The Act permits a court to appoint a guardian ad litem or court appointed special advocate if a child requesting sibling visitation is receiving foster care.

The law provides that a child may receive shelter and services or items directly related to providing shelter for homeless or low income individuals without the approval of a parent, guardian, or custodian. It requires an emergency shelter or shelter care facility to notify DCS not later than 24 hours after a child enters the shelter or facility unless the child is an emancipated minor. The bill requires DCS to conduct an investigation concerning the child not later than 48 hours after DCS receives notification and notify the child's parent, guardian, or custodian not later than 72 hours after the child enters the shelter or facility. It prohibits DCS from notifying the child's parent, guardian, or custodian as to the specific shelter or facility the child has entered if DCS has reason to believe the child is a victim of child abuse or neglect.

The Act requires the state department of education to establish an office of coordinator for education of homeless children. Under the Act, each school corporation must appoint a liaison for homeless children and report to the department of education the contact information for the liaison. The department of education must train new liaisons. Each school corporation that has an Internet web site must publish on the web site the contact information for the liaison.

The Act requires certain school corporations to transport a student in foster care to and from the school in which the student was enrolled before receiving foster care. It requires, after June 30, 2009, each school corporation to provide tutoring for a child who is in foster care or who is homeless if the school corporation determines a child has a demonstrated need for tutoring.

The Act allows a student who has resided in a school corporation for at least two consecutive years immediately before moving to an adjacent school corporation to attend school in the former school corporation without transfer tuition being charged if the principal and superintendent in both school corporations agree. It prohibits a student to enroll primarily for athletic reasons in a school in a school corporation where the student does not have legal settlement.

Submitted as:  
Indiana

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Homelessness, Foster Youth, and  
2 Education Act.”

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

5           (1) “Child” means a person as defined under [insert citation].

6           (2) “Homeless child” means a minor who lacks a fixed, regular, and adequate nighttime  
7 residence. The term includes:

8                 (a) a child who:

9                         (I) shares the housing of other people due to the child’s loss of housing,  
10 economic hardship, or a similar reason;

11                        (II) lives in a motel, hotel, or campground due to the lack of alternative  
12 adequate accommodations;

13                        (III) lives in an emergency or transitional shelter;

14                        (IV) is abandoned in a hospital or other place not intended for general  
15 habitation; or

16                        (V) is awaiting foster care placement;

17                 (b) a child who has a primary nighttime residence that is a public or private place  
18 not designed for or ordinarily used as a regular sleeping accommodation for human beings;

19                 (c) a child who lives in a car, a park, a public space, an abandoned building, a bus  
20 station, a train station, substandard housing, or a similar setting; and

21                 (d) a child of a migratory worker who lives in circumstances described in  
22 subdivisions (a) through (c).

23           (3) “Original school corporation” means the school corporation in which the school of  
24 origin of a student in foster care is located.

25           (4) “School of origin” means the school that a student in foster care attended when the  
26 student last had a permanent residence or in which a student in foster care was last enrolled.

27           (5) “Services or items” include food, clothing, personal hygiene products, health care,  
28 and counseling.

29           (6) “Sibling” means a brother or sister by blood, half-blood, or adoption.

30           (7) “Transitional school corporation” means the school corporation in which a student in  
31 foster care temporarily stays.

32  
33           Section 3. [*System to Deliver Housing and Support Services to Homeless People.*]

34           (A) The [state housing and development authority] shall:

35                 (1) Oversee and encourage a regional homeless delivery system that:

36                         (a) considers the need for housing and support services;

37                         (b) implements strategies to respond to gaps in the delivery system; and

38                         (c) ensures individuals and families are matched with optimal housing  
39 solutions;

40                 (2) facilitate the dissemination of information to assist individuals and families  
41 accessing local resources, programs, and services related to homelessness, housing, and  
42 community development; and



- 43 (3) each year, estimate and reasonably determine the number of the following:
- 44 (a) People in [this state] who are homeless.
- 45 (b) People in [this state] who are homeless and less than [eighteen] years
- 46 old.
- 47 (c) People in [this state] who are homeless and not residents of [this state].
- 48

49 Section 4. *[Authority to Provide Services to Homeless Children.]*

50 (A) A child may receive shelter and services or items that are directly related to

51 providing shelter to the child from an emergency shelter; a shelter care facility; or a program that

52 provides services or items that are directly related to providing shelter to people who are

53 homeless or have a low income; without the notification, consent, or permission of the child's

54 parent, guardian, or custodian.

55 (B) Except as provided in subsection (D), if a child voluntarily enters an emergency

56 shelter or a shelter care facility, the shelter or facility shall notify the [department], not later than

57 [twenty-four] hours after the child enters the shelter or facility, of the following:

58 (1) The name of the child.

59 (2) The location of the shelter or facility.

60 (3) Whether the child alleges that the child is the subject of abuse or neglect.

61 (C) The [department] shall conduct an investigation concerning the child not later than

62 [forty-eight] hours after receiving notification from the emergency shelter or shelter care facility

63 under subsection (A) of this section.

64 (D) The [department] shall notify the child's parent, guardian, or custodian that the child

65 is in an emergency shelter or a shelter care facility not later than [seventy-two] hours after the

66 child enters the shelter or facility. However, if the [department] has reason to believe that the

67 child is a victim of child abuse or neglect, the [department] may not notify the child's parent,

68 guardian, or custodian as to the specific shelter or facility the child has entered.

69 (E) An emergency shelter or a shelter care facility is not required to notify the

70 [department] of a child who is an emancipated minor.

71

72 Section 5. *[Providing Educational Services to Homeless Children.]*

73 (A) The [state department of education] shall establish an [office of coordinator for

74 education of homeless children] as required by 42 U.S.C. 11431 et seq.

75 (B) Each school corporation shall appoint an employee to be the school corporation's

76 liaison for homeless children as required by 42 U.S.C. 11431 et seq.

77 (C) Each school corporation shall report to the [department of education], by [August 1]

78 of each year, the name and contact information of the school corporation's liaison for homeless

79 children.

80 (D) Each school corporation that has an Internet web site shall post the contact

81 information of the school corporation's liaison for homeless children on the school corporation's

82 Internet web site.

83 (E) Each year, the [state department of education] shall provide training to people who

84 are appointed as liaisons for homeless children under this Act.

85 (F) Each school corporation shall provide tutoring for a child enrolled in a school

86 operated by the school corporation who is in foster care or a homeless child if the school

87 corporation determines the child has a demonstrated need for tutoring.

88 (G) If a student in foster care temporarily stays in the student's original school

89 corporation but outside the attendance area of the student's school of origin, the original school

90 corporation shall provide transportation for the student from the place where the student is

91 temporarily staying to the school of origin and from the school of origin to the place where the

student is temporarily staying.

(H) The original school corporation and the transitional school corporation shall enter into an agreement concerning the responsibility for and apportionment of the costs of transporting the student to and from the school of origin if:

(1) the school of origin of a student in foster care is located in a school corporation other than the school corporation in which the student is temporarily staying;

(2) the school of origin is located in a school corporation that adjoins the school corporation in which the student is temporarily staying; and

(3) the student does not elect to attend a school located in the school corporation in which the student in foster care is temporarily staying.

(I) If the original school corporation and the transitional school corporation described in subsection (H) are unable to reach an agreement under subsection (H), the responsibility for transporting the student in foster care to and from the school of origin is shared equally between both school corporations, and the cost of transporting the student to and from the school of origin is apportioned equally between both school corporations.

(J) A school corporation in which a student had legal settlement as described in subsection (H)(3) for at least [two] consecutive years immediately before moving to an adjacent school corporation:

(1) shall allow the student to attend an appropriate school within the school corporation in which the student formerly resided;

(2) may not request the payment of transfer tuition for the student from the school corporation in which the student currently resides and has legal settlement or from the student's parent; and

(3) shall include the student in the school corporation's [ADM]; if the principal and superintendent in both school corporations jointly agree to enroll the student in the school.

(K) If a student enrolls under this section in a school described in subsection (J)(1), the student's parent must provide for the student's transportation to school.

(L) A student to whom this section applies may not enroll primarily for athletic reasons in a school in a school corporation in which the student does not have legal settlement. However, a decision to allow a student to enroll in a school corporation in which the student does not have legal settlement is not considered a determination that the student did not enroll primarily for athletic reasons.

#### Section 6. *[Foster Care Sibling Visitation.]*

(A) The [department] shall make reasonable efforts to promote sibling visitation for every child who receives foster care, including visitation when one sibling receives foster care and another sibling does not. A child, a child's foster parent, a child's guardian ad litem, a court appointed special advocate, or an agency that has the legal responsibility or authorization to care for, treat, or supervise a child may request the [department] to permit the child to have visitation with the child's sibling if the child or the child's sibling, or both, receive foster care. If the [department] finds that the sibling visitation is in the best interests of each child who receives foster care, the [department] shall permit the sibling visitation and establish a sibling visitation schedule.

(B) If the [department] denies a request for sibling visitation under subsection A of this section, the child's guardian ad litem or court appointed special advocate may petition the [juvenile court] with jurisdiction in the [county] in which the child receiving foster care is located for an order requiring sibling visitation.

(C) If the [juvenile court] determines it is in the best interests of the child receiving foster care to have sibling visitation, the [juvenile court] shall order sibling visitation and establish a

141 schedule for the sibling visitation.

142 (D) The [juvenile court] may appoint a guardian ad litem or court appointed special  
143 advocate if a child receiving foster care requests sibling visitation.

144 (E) The provisions of [insert citation] apply to a guardian ad litem or court appointed  
145 special advocate appointed under this section.

146

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

148

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

150

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

# Improving Hospital Discharge Procedures and Follow-up Care of Premature Infants

This Act directs the state Medicaid Program and Children's Health Insurance Program to improve discharge and follow-up care for infants born in hospitals and who are born earlier than thirty-seven weeks gestational age. The Act directs the state Medicaid Program and the Children's Health Insurance Program to use guidance from the Centers for Medicare and Medicaid Services' Neonatal Outcomes Improvement Project to implement programs to improve such processes. The goal is to ensure standardized and coordinated processes are followed when such infants leave the hospital.

Submitted as:

Mississippi

[HB 1449](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Improve Post-Discharge  
2 Care for Babies Born Prematurely in Hospitals.”  
3

4           Section 2. [*Legislative Findings.*] The [Legislature] finds:

5           (1) According to the Institute for Medicine, although there has been significant attention  
6 focused on neonatal intensive care for extremely preterm infants, little attention has been given  
7 to the majority of late-preterm infants born at thirty-four through thirty-six weeks gestational  
8 age. Even though these late-preterm infants may appear larger in size, they are still more  
9 vulnerable to complications and disabilities than full-term infants. All babies born premature,  
10 including late-preterm infants, are at risk for a host of health and developmental issues that can  
11 last into and sometimes beyond childhood.

12           (2) Although there is growing evidence that late-preterm infants are at increased risk for  
13 morbidity and mortality compared to full-term infants, late-preterm infants may not be identified  
14 or managed any differently than full-term infants.

15           (3) Without organized discharge care plans, premature babies are more likely to  
16 experience gaps in health care. These infants require diligent evaluation, monitoring, referral and  
17 early return appointments for both post-neonatal evaluation and also continued long-term follow-  
18 up care.

19           (4) It is important to focus on the care and management of premature infants because the  
20 number of babies born premature at less than thirty-seven weeks gestational age continues to  
21 grow in the United States.

22           (5) In [2005, twelve and seven-tenths of all births were premature at less than thirty-  
23 seven weeks gestational age, or more than five hundred twenty-five thousand infants].

24           (6) The increase in premature birth rates in recent years is primarily associated with a rise  
25 in late-preterm births (thirty-four through thirty-six weeks gestational age), which has increased  
26 [twenty-five percent since 1990 and account for seventy percent of all preterm births]. Although  
27 multiple births have contributed to this rise, [substantial increases in preterm birth rates, and  
28 especially late-preterm rates, have occurred because of singleton birth rates since 1990].

29           (7) Several studies have found that late-preterm infants have greater morbidity and  
30 mortality than full-term infants.

(8) Late-preterm infants have a mortality rate that is three times greater than full-term infants, with the highest risk occurring during the neonatal period.

(9) Late-preterm babies have significant differences in clinical outcomes than full-term infants during the birth hospitalization, including greater risk for temperature instability, hypoglycemia, respiratory distress, and jaundice.

(10) Late-preterm infants have higher rates of rehospitalization during their first full year of life compared to full-term infants.

(11) The costs of premature births are significant. For the initial hospitalization after birth, the average length of stay for full-term infants was [two and two-tenths days] and the average cost was [two thousand eighty-seven dollars], whereas late-preterm infants had a substantially longer average stay of [eight and eight-tenths days] and cost of [twenty-six thousand fifty-four dollars]. The average cost for late-preterm infants in their first year of life was [thirty-eight thousand three hundred one dollars] versus [six thousand one hundred fifty-six dollars] for full-term infants. Late-preterm infants had higher costs across every type of medical service category compared to full-term infants, including inpatient hospitalizations, well baby physician office visits, outpatient hospital services, home health care services and prescription drug use.

(12) The most frequent causes of rehospitalization for late-preterm infants are RSV bronchiolitis, bronchiolitis (cause unspecified), pneumonia (cause unspecified), esophageal reflux and vascular implant complications.

(13) Because all premature infants, and especially late-preterm infants born at thirty-four through thirty-six weeks gestational age, have higher risks for medical complications and rehospitalizations compared to full-term infants, stakeholders should examine and improve the discharge process, follow-up care and management of these infants to foster better health outcomes and lower risks for re-hospitalizations and complications.

Section 3. [*Developing Standardized and Coordinated Processes to Follow When Infants Born Prematurely in Hospitals are Discharged from the Hospitals.*] The state [Medicaid Program] and the state [Children's Health Insurance Program], in consultation with statewide organizations focused on premature infant healthcare, shall:

(1) Examine and improve hospital discharge and follow-up care procedures for premature infants born earlier than [thirty-seven weeks gestational age] to ensure standardized and coordinated processes are followed as premature infants leave the hospital from either a Level 1 (well baby nursery), Level 2 (step down or transitional nursery) or Level 3 (neonatal intensive care unit) unit and transition to follow-up care by a health care provider in the community; and

(2) Use guidance from the Centers for Medicare and Medicaid Services' Neonatal Outcomes Improvement Project to implement programs to improve newborn outcomes, reduce newborn health costs and establish ongoing quality improvement for newborns.

(3) Report data by the [state department of health] using the mandated hospital discharge data system authorized in [insert citation] about the incidence and cause of rehospitalization in the first six months of life for infants born premature at earlier than [thirty-seven weeks gestational age] to the [Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee].

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

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

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

# Intercepting Computer Trespasser Communications

This Act authorizes intercepting electronic communications of suspected computer trespassers under certain conditions. It defines “computer trespasser” as “a person who accesses a computer or any other device with Internet capability without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the computer or other device.”

The Act sets out procedures for people to challenge an interception. It provides that any aggrieved person in any trial, hearing, or proceeding in or before any court or other authority of the state may move to suppress the contents of any wire or electronic communication intercepted in accordance with the Act, or evidence derived there from, on the grounds that the communication was unlawfully intercepted or the interception was not made in conformity with the Act.

Submitted as:

New Jersey

[P.L. 2009, Chapter 142](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Intercepting  
2 Computer Trespasser Communications.”

3  
4           Section 2. [*Permitting Intercepting Wire and Electronic Communications.*]

5           (A) It shall not be a violation of any provision of [insert citation] for a person acting  
6 under color of law to intercept the wire or electronic communications of a suspected computer  
7 trespasser transmitted to, through, or from a computer or any other device with Internet  
8 capability, if:

9                   (1) the owner or operator of the computer or other device authorizes the  
10 interception of the computer trespasser’s wire or electronic communications on the computer;

11                   (2) the person acting under color of law is lawfully engaged in an investigation;

12                   (3) the person acting under color of law has reasonable grounds to believe that the  
13 contents of the computer trespasser’s wire or electronic communications will be relevant to the  
14 investigation; and

15                   (4) such interception does not acquire communications other than those  
16 transmitted to or from the computer trespasser.

17           (B) For purposes of this section, “computer trespasser” means a person who accesses a  
18 computer or any other device with Internet capability without authorization and thus has no  
19 reasonable expectation of privacy in any communication transmitted to, through, or from the  
20 computer or other device. The term “computer trespasser” does not include a person known by  
21 the owner or operator of the computer or other device with Internet capability to have an existing  
22 contractual relationship with the owner or operator of the computer or other device for access to  
23 all or part of the computer or other device.

24           (C) Any aggrieved person in any trial, hearing, or proceeding in or before any court or  
25 other authority of this state may move to suppress the contents of any wire or electronic

26 communication intercepted in accordance with subsection (A) of this section, or evidence  
27 derived therefrom, on the grounds that the communication was unlawfully intercepted or the  
28 interception was not made in conformity with the provisions of this section. The motion shall be  
29 made at least [10 days] before the trial, hearing, or proceeding unless there was no opportunity to  
30 make the motion or the moving party was not aware of the grounds for the motion. Motions by  
31 coindictes are to be heard in a single consolidated hearing. The court, upon the filing of such  
32 motion by the aggrieved person, shall make available to the aggrieved person or their counsel for  
33 inspection such portions of the intercepted communication, or evidence derived therefrom, as the  
34 court determines to be in the interests of justice. If the motion is granted, the entire contents of all  
35 intercepted wire or electronic communications obtained during or after any interception which is  
36 determined to be in violation of [insert citation] or evidence derived therefrom, shall not be  
37 received in evidence in the trial, hearing or proceeding. In addition to any other right to appeal,  
38 the state shall have the right to appeal from an order granting a motion to suppress upon  
39 certification to the court that the appeal is not taken for purposes of delay. The appeal shall be  
40 taken within the time specified by the [Rules of Court] and shall be diligently prosecuted.

41  
42 Section 3. [*Severability*.] [Insert severability clause.]

43  
44 Section 4. [*Repealer*.] [Insert repealer clause.]

45  
46 Section 5. [*Effective Date*.] [Insert effective date.]

# Life Insurance and Travel

This Act limits how life insurers can deny a policy to someone or cancel or charge different rates to policy holders based upon the applicants' or policy holders' past or future travel to lawful destinations. It makes for exceptions when the insurers' decisions are based upon sound actuarial principles or reasonably anticipated experience.

Submitted as:

Missouri

[SB 126 Truly Agreed to and Finally Passed version](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Prohibit Certain Practices  
2 Related to Life Insurance and Traveling.”

3  
4           Section 2. [*Prohibiting Discrimination in Life Insurance Based on Lawful Travel*  
5 *Destinations.*]

6           (A) No life insurance company doing business within this state shall deny or refuse to  
7 accept an application for life insurance or refuse to renew, cancel, restrict, or otherwise terminate  
8 a policy of life insurance, or charge a different rate for the same life insurance coverage, based  
9 upon the applicant's or insured's past or future lawful travel destinations. Nothing in this section  
10 shall prohibit a life insurance company from denying an application for life insurance, or  
11 restricting or charging a different premium or rate for coverage under such a policy based on a  
12 specific travel destination where the denial, restriction, or rate differential is based upon sound  
13 actuarial principles or is related to actual or reasonably anticipated experience.

14           (B) A violation of the provisions of this section shall be unfair trade practice as defined  
15 by [insert citation], and shall be governed by and subject to all of the provisions and penalties  
16 provided by such sections.

17           (C) The provisions of this section shall apply to any life insurance policy issued or  
18 renewed on or after [August 28, 2009].

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.]



# Long-Term Care Patient Access to Pharmaceuticals

This Act provides a mechanism to enable patients with the ability to acquire lower cost drugs through the Veterans' Administration to access those drugs if those patients reside in a different long-term care facility. This means permitting the pharmacy within the long-term care facility or which has a contract with the long-term care facility to receive the lower cost drugs directly from the Veterans' Administration Drug Benefit Program in the patient's name and repackage and re-label those drugs so they may be dispensed in unit doses to the patient.

Submitted as:

Pennsylvania

[HB2034](#)

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 Certain Patients in  
2 Long-Term Care Facilities to Access the Veterans’ Administration Drug Benefit Program.”

3  
4           Section 2. [*Legislative Intent*.] The [General Assembly] finds and declares:

5           (1) A mechanism is to be provided whereby patients who have the ability to acquire  
6 lower cost drugs through the Veterans’ Administration have access to those drugs if they reside  
7 in a long-term care facility.

8           (2) The mechanism is to be provided by permitting the pharmacy within the long-term  
9 care facility or which has a contract with the long-term care facility to:

10           (a) receive the lower cost drugs directly from the Veterans' Administration Drug  
11 Benefit Program in the patient's name; and

12           (b) repackage and relabel those drugs so they may be dispensed in unit doses in  
13 compliance with the Food and Drug Administration, the United States Pharmacopeia and the  
14 long-term care facility's policies and procedures to patients in a long-term care facility.

15           (3) This Act shall be interpreted and construed to effectuate the following purposes:

16           (a) To provide for the care, protection, and treatment of patients in long-term care  
17 facilities by allowing them to use the drug benefit provided by the Veterans’ Administration.

18           (b) Consistent with the care, protection and treatment of patients in long-term care  
19 facilities, to provide a means by which a pharmacy in a long-term care facility or a pharmacy  
20 which has a contract with a long-term care facility may:

21           (I) accept, on behalf of the patient, drugs received directly from the  
22 Veterans' Administration; and

23           (II) repackage and relabel those drugs so that the patient may receive them  
24 in a unit dose in compliance with the Food and Drug Administration, the United States  
25 Pharmacopeia and the long-term care facility's policies and procedures.

26           (c) To provide a means through which the provisions of this Act are executed and  
27 enforced and in which long-term care facilities, pharmacists, drug source facilities and  
28 pharmaceutical providers may implement the provisions of this Act.

29           (4) Only people eligible for benefits provided by the Veterans’ Administration are  
30 eligible for the program under this Act.

Section 3. [*Definitions.*] Unless the context clearly indicates otherwise, as used in this Act:

(1) "Board," means the State Board of Pharmacy.

(2) "Drug source facility," means a facility where drugs are lawfully manufactured, dispensed or distributed, and which is operated by or under contract with the Veterans' Administration or approved by the Veterans' Administration.

(3) "Long-term care facility," means a long-term care nursing facility as defined in [insert citation].

(4) "Pharmaceutical provider" means an entity that employs a pharmacist.

Section 4. [*Third-Party Drugs in Long-Term Care Facilities.*]

(A) Notwithstanding any other provision of law, all of the following may dispense a drug acquired from a drug source facility outside the long-term care facility to a patient of a long-term care facility:

(1) A pharmacist employed by a long-term care facility.

(2) A pharmacy that contracts with a long-term care facility to fill prescriptions for patients of the long-term care facility.

(B) A person authorized under subsection (A) to dispense a drug shall repackage, relabel and dispense the drug in a unit dose if all of the following conditions are met:

(1) The drug is obtained from a drug source facility.

(2) There is a prescription for the drug.

(3) The prescriber has signed a form authorizing the long-term care facility to administer a drug from a drug source facility outside the long-term care facility.

(4) The patient has signed a form authorizing the long-term care facility to administer a drug from a drug source facility outside the long-term care facility and provided payment information for payment of the related fees to the pharmacy. In the case of a minor or a patient who is unable to sign the form, a parent, a guardian, an agent acting under a power of attorney or a family member is authorized to sign the form. The form must explain that a person authorized under subsection (A) to dispense a drug from a drug source facility outside the long-term care facility:

(a) is required to go through the process of repackaging and relabeling the drug;

(b) may charge a fee for repackaging and relabeling the drug, including the amount of the fee and the frequency of its assessment; and

(c) has immunity from civil liability arising from dispensation of the drug if the person properly repackages and relabels the drug as set forth in subsection (A) of this section.

(5) The nursing facility attending physician has issued an order continuing the patient's medical regime.

(6) The repackaging is in compliance with the Food and Drug Administration, the United States Pharmacopeia and the long-term care facility's policies and procedures.

(7) The Veterans' Administration provides the drug directly to the long-term care pharmacy in the patient's name and with the following information in preparation for the repackaging and relabeling:

(a) The name and address of the dispensing pharmacy.

(b) The name of the dispensing pharmacist.

(c) The lot number of the drug.

(d) A copy of the original prescription.

80 (e) The date the drug was dispensed.  
81 (f) Directions for use, contraindications and other materials required by  
82 law to be provided to the patient.  
83 (C) The [board] has the following powers and duties:  
84 (1) Develop the form required by subsections (B)(3) and (B)(4) of this section of  
85 this Act.  
86 (2) Publish a notice in the [state Bulletin] that form has been developed.  
87 (D) For each drug dispensed in accordance with section 4(A) of this Act, the person  
88 authorized to dispense the drug and the long-term care facility shall maintain a record for at least  
89 [two years] of all of the items specified in subsection (B)(7) of this section of this Act.  
90 (E) A person authorized under subsection (A) of this section to dispense a drug may  
91 charge no more than the [maximum] dispensing fee authorized by the [department of public  
92 welfare] regulations under the [medical assistance program].  
93 (F) A person authorized under subsection (A) of this section to dispense a drug shall be  
94 immune from civil liability arising out of dispensation of the drug if the person properly  
95 repackages and relabels a drug based on the information received from the original drug source  
96 facility.  
97 (G) A long-term care facility or an employee or agent of a long-term care facility that  
98 properly administers a drug from a person authorized under subsection (A) of this section to  
99 dispense the drug shall be immune from civil liability arising out of administration of the drug.  
100 (H) A pharmacist authorized under subsection (A) of this section to dispense a drug who  
101 properly relabels and repackages the drug shall not be deemed to have engaged in unprofessional  
102 conduct under [insert citation].

103  
104 Section 5. [*Severability*.] [Insert severability clause.]

105  
106 Section 6. [*Repealer*.] [Insert repealer clause.]

107  
108 Section 7. [*Effective Date*.] [Insert effective date.]

# Low-Profit Limited Liability Companies

This Act establishes general criteria for creating low-profit limited liability companies.

Submitted as:

Utah

[SB148/Session Law Chapter 141](#)

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 Low-Profit Limited Liability  
2 Company Act.”

3  
4           Section 2. [*Low-Profit Limited Liability Company.*]

5           (1)   (a) To be a low-profit limited liability company, a company shall state in its  
6 articles of organization that it is a low-profit limited liability company and be organized for a  
7 business purpose that satisfies, and at all times operates to satisfy, each of the requirements under  
8 subdivision (b).

9                   (b) A low-profit limited liability company:  
10                       (i) shall significantly further the accomplishment of one or more charitable  
11 or educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;  
12                       (ii) shall demonstrate that it would not be formed but for the company's  
13 relationship to the accomplishment of a charitable or educational purpose;  
14                       (iii) subject to subsection (3), may not have as a significant purpose the  
15 production of income or the appreciation of property; and  
16                       (iv) may not have as a purpose to accomplish one or more political or  
17 legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

18           (2)   (a) If a company that is a low-profit limited liability company at its formation at  
19 any time ceases to meet a requirement to be a low-profit limited liability company under  
20 subsection (1)(b), the company:

21                       (i) ceases to be a low-profit limited liability company on the day on which  
22 the company no longer meets the requirement; and  
23                       (ii) if it continues to meet the requirements to be a limited liability  
24 company, continues to exist as a limited liability company that is not a low-profit limited-  
25 liability company.

26           (b) A low-profit limited liability company's failure to meet a requirement of  
27 subsection (1)(b) may be:

28                       (i) voluntary, in order to convert to a limited liability company that is not a  
29 low-profit limited liability company; or  
30                       (ii) involuntary.

31           (c) If a low-profit limited liability company ceases to be a low-profit limited  
32 liability company in accordance with subdivision (a), the company shall:

33                       (i) change its name to conform with the name requirements for a limited  
34 liability company; and  
35                       (ii) amend its articles of organization to reflect the change.

36 (3) Notwithstanding subsection (1), if a low-profit limited liability company produces  
37 significant income or capital appreciation, in the absence of other factors, the fact that the low-  
38 profit limited liability company produces significant income or capital appreciation is not  
39 conclusive evidence of a significant purpose involving the production of income or the  
40 appreciation of property.

41 (4) A low-profit limited liability company may do the following to the same extent a  
42 limited liability company that is not a low-profit limited liability company may do so under this  
43 part:

- 44 (a) convert to another subject entity;
- 45 (b) convert from another subject entity; or
- 46 (c) participate in a merger.

47  
48 Section 3. [*Severability*.] [Insert severability clause.]

49  
50 Section 4. [*Repealer*.] [Insert repealer clause.]

51  
52 Section 5. [*Effective Date*.] [Insert effective date.]

# Medical Language Interpreter

This Act provides that a person who renders language interpretation services between a health care provider who speaks English and another person in Spanish, Russian, Bosnian, Somali, Mandarin Chinese, Cantonese, or Navajo, can get certified by the state division of occupational and professional licensing as a medical language interpreter. The Act provides that a person may provide medical interpreter services without obtaining the certification described in the preceding paragraph. The bill describes the requirements that a person must comply with in order to obtain certification. It makes it a misdemeanor to represent or hold oneself out as a certified medical language interpreter when not certified under the provisions of the bill.

The Act permits the state division of occupational and professional licensing to charge a fee to recover the costs of administering the certification examination and issuing the certificate described in this bill. It allows the state department of health and the state department of human services to give priority to contracting with companies that use certified medical language interpreters.

Submitted as:

Utah

[HB144/Session Law Chapter 49](#)

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 “Medical Language Interpreter  
2 Act.”

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

5       (1) “Certified medical language interpreter” means a medical language interpreter who  
6 has received a certificate from the [division] under this Act.

7       (2) “Health care provider” means a person licensed under the:

- 8           (a) [Podiatric Physician Licensing Act];
- 9           (b) [Optometry Practice Act];
- 10          (c) [Pharmacy Practice Act];
- 11          (d) [Physical Therapist Practice Act];
- 12          (e) [Nurse Practice Act];
- 13          (f) [Nurse Licensure Compact];
- 14          (g) [Advanced Practice Registered Nurse Compact];
- 15          (h) [Nurse Midwife Practice Act];
- 16          (i) [Respiratory Care Practices Act];
- 17          (j) [Mental Health Professional Practice Act];
- 18          (k) [Psychologist Licensing Act];
- 19          (l) [Medical Practice Act];
- 20          (m) [Osteopathic Medical Practice Act];
- 21          (n) [Dentist and Dental Hygienist Practice Act];
- 22          (o) [Physician Assistant Act];
- 23          (p) [Naturopathic Physician Practice Act];

(q) [Chiropractic Physician Practice Act]; or  
(r) [Direct-Entry Midwife Act].  
(3) “Medical language interpreter” means a person who, for compensation, performs verbal language interpretation services between a health care provider who speaks English and another person for the purpose of assisting the person in seeking or obtaining medical advice, diagnoses, or treatment.  
(4) “National standards of practice” means the National Standards of Practice, published by the National Council on Interpreting in Health Care.

Section 3. [*Certification.*]

(A) The certification provided under this Act is voluntary.  
(B) This Act does not prohibit a person from acting as a medical language interpreter if the person does not have a certificate described in this Section.  
(C) The [division] shall issue to a person who qualifies under this Act a certificate as a certified medical language interpreter.  
(D) A certificate described in Subsection (C) shall specify the language that the person is certified for.  
(E) A person qualifies as a certified medical language interpreter if the person:  
(1) acts as a medical language interpreter between English and at least one of the following languages:  
(a) Spanish;  
(b) Russian;  
(c) Bosnian;  
(d) Somali;  
(e) Mandarin Chinese;  
(f) Cantonese; or  
(g) Navajo;  
(2) passes an examination administered by, or under contract with, the [division], that tests:  
(a) the following areas, with respect to the language for which the person applies for certification:  
(i) basic language fluency;  
(ii) basic medical terminology, including the ability to:  
(aa) name human body parts;  
(bb) name internal human organs;  
(cc) describe basic medical symptoms; and  
(dd) describe basic medical instructions, including dosage amounts and frequency; and  
(iii) basic cultural competency relating to medical care beliefs and practices that are common to people who speak that language;  
(b) knowledge and understanding of the national standards of practice; and  
(c) a basic understanding of medical confidentiality requirements, including the confidentiality requirements of the federal Health Insurance Portability and Accountability Act;  
(3) signs a statement agreeing to abide by the national standards of practice; and  
(4) pays the fee described in Section 4 of this Act.  
(F) A person may not represent or hold oneself out as a certified medical language interpreter if they do not have a certificate described in this Section.  
(G) A person who represents or holds themselves out as a certified medical language

73 interpreter when not certified under this Act commits “unlawful conduct” as defined under  
74 [insert citation] and is guilty of a [class A misdemeanor].

75  
76 Section 4. [*Fees.*]

77 (A) The [division] may charge a fee, established under [insert citation] to recover the  
78 costs of administering the examination described in Section 3 of this Act and issuing the  
79 certificate described in Section 3 of this Act.

80 (B) The [division] may make rules, pursuant to the state [administrative rulemaking act]  
81 to accomplish the requirements of this Act.

82  
83 Section 5. [*Priority for Certified Medical Language Interpreter.*]

84 The [department of health] and the [department of human services] may give priority to  
85 contracting with companies that use certified medical language interpreters.

86  
87 Section 6. [*Severability.*] [Insert severability clause.]

88  
89 Section 7. [*Repealer.*] [Insert repealer clause.]

90  
91 Section 8. [*Effective Date.*] [Insert effective date.]



# Micro-Combined Heat and Power Systems, Fuel Cell Systems, and Solar Generated Electricity

This Act directs electric utilities to interconnect solar and farm waste electric generating equipment, micro-combined heat and power generating equipment and fuel cell electric generating equipment owned or operated by a customer-generator and for net energy metering, provided that the customer-generator enters into a net energy metering contract with the utility or complies with the corporation's net energy metering schedule and other standards under state law.

Submitted as:

New York

[Chapter 355 of 2009](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act to Address Net Energy  
2 Metering for Micro-combined Heat and Power Generating Systems.”

3  
4           Section 2. [*Definitions*.]

5           (a) “Customer-generator” means:

6               (i) a residential customer of an electric corporation, who owns or operates solar  
7 electric generating equipment located and used at his or her residence;

8               (ii) a customer of an electric corporation, who owns or operates farm waste  
9 electric generating equipment located and used at his or her “farm operation,” as such term is  
10 defined in [insert citation];

11               (iii) a non-residential customer of an electric corporation which owns or operates  
12 solar electric generating equipment located and used at its premises;

13               (iv) a residential customer of an electric corporation who owns, leases or operates  
14 micro-combined heat and power generating equipment located on the customer's premises; and

15               (v) a residential customer of an electric corporation who owns, leases or operates  
16 fuel cell generating equipment located on the customer's premises.

17           (b) “Electric corporation” or “corporation,” means a corporation as defined in [insert  
18 citation];

19           (c) “Farm waste electric generating equipment” means equipment that generates electric  
20 energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock  
21 manure, farming wastes and food processing wastes with a rated capacity of not more than five  
22 hundred kilowatts, that is:

23               (i) manufactured, installed, and operated in accordance with applicable  
24 government and industry standards;

25               (ii) connected to the electric system and operated in conjunction with an electric  
26 corporation's transmission and distribution facilities;

27               (iii) operated in compliance with any standards and requirements established  
28 under this Act;

(iv) fueled at a minimum of [ninety percent on an annual basis] by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues, and food processing waste; and

(v) fueled by biogas generated by anaerobic digestion with at least [fifty percent] by weight of its feedstock being livestock manure materials on an annual basis.

(d) "Fuel cell electric generating equipment" means a solid oxide, molten carbonate, proton exchange membrane or phosphoric acid fuel cell with a combined rated capacity of not more than [ten kilowatts] that is manufactured, installed and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in parallel with an electric corporation's transmission and distribution facilities, and that is operated in compliance with any standards and requirements established under this Act.

(e) "Micro-combined heat and power generating equipment" means an integrated, cogenerating building heating and electrical power generation system, operating on any fuel and of any applicable engine, fuel cell, or other technology, with a rated capacity of at least [one kilowatt and not more than ten kilowatts] electric and any thermal output that at full load has a design total fuel use efficiency in the production of heat and electricity of not less than [eighty percent], and annually produces at least [two thousand kilowatt hours] of useful energy in the form of electricity that may work in combination with supplemental or parallel conventional heating systems, that is manufactured, installed and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities.

(f) "Net energy meter" means a meter that measures the reverse flow of electricity to register the difference between the electricity supplied by an electric corporation to the customer-generator and the electricity provided to the corporation by that customer-generator.

(g) "Net energy metering" means the use of a net energy meter to measure, during the billing period applicable to a customer-generator, the net amount of electricity supplied by an electric corporation and provided to the corporation by a customer-generator.

(h) "Solar electric generating equipment" means a photovoltaic system;

(i) (A) in the case of a residential customer, with a rated capacity of not more than [twenty-five kilowatts]; and

(B) in the case of a non-residential customer, with a rated capacity of not more than the lesser of [two thousand kilowatts] or such customer's peak load as measured over the prior [twelve-month] period, or in the case that such [twelve-month] period of measurement is not available, then as determined by the [commission] based on its analysis of comparable facilities; and

(ii) that is manufactured, installed, and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, and that is operated in compliance with any standards and requirements established under this Act.

Section 3. [*Interconnection and Net Energy Metering.*] An electric corporation shall provide for the interconnection of solar and farm waste electric generating equipment, micro-combined heat and power generating equipment and fuel cell electric generating equipment owned or operated by a customer-generator and for net energy metering, provided that the customer-generator enters into a net energy metering contract with the corporation or complies with the corporation's net energy metering schedule and complies with standards and requirements established under this Act.

Section 4. [*Conditions of Service.*]

(a) (i) On or before [three months after the effective date of this Act], each electric corporation shall develop a model contract and file a schedule that establishes consistent and reasonable rates, terms and conditions for net energy metering to customer-generators, according to the requirements of this Act. The [state utilities commission] shall render a decision within [three months] from the date on which the schedule is filed.

(ii) On or before [three months] after the effective date of this subparagraph, each electric corporation shall develop a model contract and file a schedule that establishes consistent and reasonable rates, terms and conditions for net energy metering to non-residential customer generators, according to the requirements of this Act. The [state utilities commission] shall render a decision within [three months] of the date on which the schedule is filed.

(iii) Each electric corporation shall make such contract and schedule available to customer-generators on a first come, first served basis, until the total rated generating capacity for solar and farm waste electric generating equipment, micro-combined heat and power generating equipment and fuel cell electric generating equipment owned, leased or operated by customer-generators in the corporation's service area is equivalent to [one percent] of the corporation's electric demand for the year [insert date], as determined by the [department].

(b) Nothing in this subdivision shall prohibit a corporation from providing net energy metering to additional customer-generators. The [state utilities commission] shall have the authority, after [January first, two thousand twelve], to increase the percent limits if it determines that additional net energy metering is in the public interest.

(c) In the event that the electric corporation determines that it is necessary to install a dedicated transformer or transformers, or other equipment to protect the safety and adequacy of electric service provided to other customers, a customer-generator shall pay the electric corporation's actual costs of installing the transformer or transformers, or other equipment:

(i) In the case of a customer-generator who owns or operates solar electric generating equipment, micro-combined heat and power generating equipment or fuel cell electric generating equipment located and used at his or her residence, up to a maximum amount of [three hundred fifty dollars];

(ii) In the case of a customer-generator who owns or operates farm waste electric generating equipment located and used at his or her "farm operation," up to a total amount of [five thousand dollars] per "farm operation"; and

(iii) In the case of a non-residential customer-generator who owns or operates solar electric generating equipment located and used at its premises, such cost shall be as determined by the [department] pursuant to standards established thereby.

(d) An electric corporation shall impose no other charge or fee, including back-up, stand by and demand charges, for the provision of net energy metering to a customer-generator, except as provided in paragraph (iv) of subdivision five of this Act.

Section 5. *[Rates.]* An electric corporation shall use net energy metering to measure and charge for the net electricity supplied by the corporation and provided to the corporation by a customer-generator, according to these requirements:

(i) In the event that the amount of electricity supplied by the corporation during the billing period exceeds the amount of electricity provided by a customer-generator, the corporation shall charge the customer-generator for the net electricity supplied at the same rate per kilowatt hour applicable to service provided to other customers in the same service class which do not generate electricity onsite.

(ii) In the event that the amount of electricity produced by a customer-generator during the billing period exceeds the amount of electricity used by the customer-generator, the corporation shall apply a credit to the next bill for service to the customer-generator for the net

electricity provided at the same rate per kilowatt hour applicable to service provided to other customers in the same service class which do not generate electricity onsite, except for micro-combined heat and power or fuel cell customer-generators, who will be credited at the corporation's avoided costs. The avoided cost credit provided to microcombined heat and power or fuel cell customer-generators shall be treated for ratemaking purposes as a purchase of electricity in the market that is includable in commodity costs.

(iii) At the end of the year or annualized over the period that service is supplied by means of net energy metering, the corporation shall promptly issue payment at its avoided cost to the customer-generator, as defined in subparagraph (i) or (ii) of paragraph (a) of section 2 of this Act, for the value of any remaining credit for the excess electricity produced during the year or over the annualized period by the customer-generator.

(iv) In the event that the corporation imposes charges based on kilowatt demand on customers who are in the same service class as the customer-generator but which do not generate electricity on site, the corporation may impose the same charges at the same rates to the customer-generator, provided, however, that the kilowatt demand for such demand charges is determined by the maximum measured kilowatt demand actually supplied by the corporation to the customer-generator during the billing period.

#### Section 6. [*Safety Standards.*]

(a) On or before [three months] after the effective date of this Act, each electric corporation shall establish standards that are necessary for net energy metering and the interconnection of residential solar or farm waste electric generating equipment, micro-combined heat and power generating equipment and fuel cell electric generating equipment to its system and that the [state utilities commission] shall determine are necessary for safe and adequate service and further the public policy set forth in this Act. Such standards may include but shall not be limited to:

(i) equipment necessary to isolate automatically the residential solar, farm waste, micro-combined heat and power and fuel cell electric generating system from the utility system for voltage and frequency deviations; and

(ii) a manual lockable disconnect switch provided by the customer-generator which shall be located on the outside of the customer's premises and externally accessible for the purpose of isolating the residential solar and farm waste electric generating equipment.

(b) Upon its own motion or upon a complaint, the [commission, or its designated representative], may investigate and make a determination as to the reasonableness and necessity of the standards or responsibility for compliance with the standards.

(i) In the case of a customer-generator who owns or operates solar electric generating equipment located and used at his or her residence; an electric corporation may not require a customer-generator to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance provided that the residential solar or farm waste electric generating equipment, micro-combined heat and power generating equipment or fuel cell electric generating equipment meets the safety standards established pursuant to this paragraph.

(ii) In the case of a customer-generator who owns or operates farm waste electric generating equipment located and used at his or her "farm operation," an electric corporation may not require a customer-generator to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance provided that:

(A) the electric generating equipment meets the safety standards established pursuant to this paragraph; and

175 (B) the total rated generating capacity (measured in kW) of farm waste  
176 electric generating equipment that provides electricity to the electric corporation through the  
177 same local feeder line, does not exceed [twenty percent] of the rated capacity of that local feeder  
178 line.

179 (iii) In the event that the total rated generating capacity of farm waste electric  
180 generating equipment that provides electricity to the electric corporation through the same local  
181 feeder line exceeds [twenty percent] of the rated capacity of the local feeder line, the electric  
182 corporation may require the customer-generator to comply with reasonable measures to ensure  
183 safety of that local feeder line.

184 (c) On or before [three months after the effective date of this Act], each electric  
185 corporation shall establish standards that are necessary for net energy metering and the  
186 interconnection of non-residential solar electric generating equipment to its system and that the  
187 [state utilities commission] shall determine are necessary for safe and adequate service and  
188 further the public policy set forth in this Act. Such standards may include but shall not be limited  
189 to:

190 (i) equipment necessary to isolate automatically the solar generating system from  
191 the utility system for voltage and frequency deviations; and

192 (ii) a manual lockable disconnect switch provided by the customer-generator  
193 which shall be located on the outside of the customer-generator's premises and externally  
194 accessible for the purpose of isolating the solar electric generating equipment.

195 (d) In the event that the total rated generating capacity of solar electric generating  
196 equipment that provides electricity to the electric corporation through the same local feeder line  
197 exceeds [twenty percent] of the rated capacity of the local feeder line, the electric corporation  
198 may require the customer-generator to comply with reasonable measures to ensure safety of the  
199 local feeder line.

200 (e) Unless otherwise determined to be necessary by the [state utilities commission], an  
201 electric corporation may not require a customer-generator to comply with additional safety or  
202 performance standards, perform or pay for additional tests, or purchase additional liability  
203 insurance provided that the solar electric generating equipment meets the safety standards  
204 established pursuant to this subdivision.

205 (f) Upon its own motion or upon a complaint, the [commission, or its designated  
206 representative], may investigate and make a determination as to the reasonableness and necessity  
207 of the standards or responsibility for compliance with the standards.

208  
209 Section 7. [*Electric Restructuring.*] Notwithstanding the provisions of this Act, including,  
210 but not limited to paragraph (b) of Section 4 of this Act, a customer-generator shall comply with  
211 any applicable determinations of the [state utilities commission] relating to restructuring of the  
212 electric industry.

213  
214 Section 8. [*Severability.*] [Insert severability clause.]

215  
216 Section 9. [*Repealer.*] [Insert repealer clause.]

217  
218 Section 10. [*Effective Date.*] [Insert effective date.]

# Military Installations and Civilian Encroachment

This Act declares areas of the state wholly or partially within a jointly developed community — military Air Installation Compatible Use Zone (AICUZ) study area, Joint Land Use Study (JLUS) area, Army Compatible Use Buffer (ACUB), or an Environmental Noise Management Plan (ENMP) of an active duty, National Guard or reserve military installation, constitute a state area of interest vital to national security and the economic well being of the state. The bill requires military installations notify and coordinate with municipalities about any development, project, or operational change that alters or amends a JLUS area, ACUB, AICUZ, or ENMP.

The Act requires representatives from military installations and municipal officials to meet at least annually to determine critical areas within areas of vital interest. It defines “critical areas” as areas “where future use of such area is set through a coordinated effort between the municipality and military installation to avoid conflict with any military operation or the economic well being of the municipality.”

The bill requires military and municipal officials notify each other about proposed changes and developments within critical areas and it requires municipalities consider a number of factors that might impact a military installation before permitting development within critical areas.

Interested readers should know that some concerns were raised by SSL Committee members that a state cannot legally mandate participation and compliance by military officials. However, because the bill lacks any enforcement provisions and because the goals of the bill can only be achieved when both municipal and military officials willingly participate in the program, the Department of Defense representatives involved in the legislative process supported the final bill language of HB 2445.

Submitted as:

Kansas

[HB 2445 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Concerning Land Use  
2 Relating to Military Installations and Adjacent Areas.”

3  
4           Section 2. [*Legislative Findings.*] Areas of this state that are wholly or in part within  
5 jointly developed community — military Air Installation Compatible Use Zone (AICUZ) study  
6 area, Joint Land Use Study (JLUS) area, Army Compatible Use Buffer (ACUB), or an  
7 Environmental Noise Management Plan (ENMP) of an active duty, National Guard or reserve  
8 military installation shall constitute a state area of interest vital to national security and the  
9 economic well being of the state.

10  
11           Section 3. [*Promoting Communication, Cooperation, and Collaboration between*  
12 *Military Installations in the State and Municipalities in the State.*]

13 (a) It is the desire of this state to promote communication, cooperation, and collaboration  
14 between any military installation and any municipality adjacent to or surrounding the military  
15 installation.

16 (b) To further communication, cooperation, and collaboration:

17 (1) Each military installation shall:

18 (A) Notify and coordinate with each municipality adjacent to or  
19 surrounding the military installation regarding any development, project or operational change  
20 on the military installation which will alter or amend a JLUS, ACUB, AICUZ or ENMP or any  
21 element therein.

22 (B) Notify each municipality adjacent to or surrounding the military  
23 installation of any change in the name of any contact person, and any related information thereto,  
24 who is used for the purpose of communication between the military installation and the  
25 municipality.

26 (C) Meet and coordinate at least annually with representatives of each  
27 municipality adjacent to or surrounding military installations for the purpose of determining any  
28 critical area within the state area of interest. A critical area of interest is any portion of the state  
29 area of interest where future use of such area is determined in a coordinated manner between the  
30 military installation and the municipality and should be monitored or managed to reduce any  
31 potential conflict with any military operation and the economic well being of the municipality.

32 (2) Each municipality adjacent to or surrounding a military installation shall:

33 (A) Meet and coordinate at least annually with the commander of the active  
34 duty, National Guard or reserve military installation associated with the state area of interest in  
35 which the municipality is located to jointly determine what portion, if any, of that state area of  
36 interest is a critical area.

37 (B) Notify the commander of each military installation located adjacent to  
38 or surrounded by a municipality of any change in the name of any contact person, and any  
39 related information thereto, who is used for the purpose of communication between the military  
40 installation and the municipality.

41 (C) Provide notice to the commander of each military installation located  
42 adjacent to or surrounded by a municipality of the adoption of any regulation, including any  
43 amendment thereof, or any amendment to any comprehensive planning document which affects  
44 any mutually agreed upon critical area. Such notice shall be provided at least 30 days prior to the  
45 adoption of any such regulation, or amendment thereof, or any such amendment to a  
46 comprehensive planning document. Failure of an installation commander to respond after  
47 receiving notification under this subparagraph shall be deemed to indicate such commander's  
48 approval of the regulation, or amendment thereof, or amendment to the comprehensive planning  
49 document.

50 (D) Provide written notice to the commander of each military installation  
51 located adjacent to or surrounded by a municipality of each development proposal which affect  
52 any agreed upon critical area to provide the commander of any military installation affected an  
53 opportunity to assess any impact and coordinate issues with planning staff. Such an assessment  
54 shall not be unreasonably withheld, but shall be offered within the statutorily required notice for  
55 public hearing. Such notice shall be provided concurrently with any statutorily required notice  
56 for public hearing.

57 (E) Consider the impact of each of the following factors, based upon  
58 information provided by the installation, before making a decision regarding a development  
59 proposal located within an agreed upon critical area:

(I) The potential for release into the air of any substance such as steam, dust or smoke unless such substance is generated by agricultural use, that would impair visibility or otherwise interfere with military operations, including ground operations.

(II) The potential for production of any light emission, either directly, or indirectly or by reflective light, that would interfere with pilot vision, and aerial or ground based night vision training.

(III) The potential for the production of electrical emissions that would interfere with military ground and aircraft communications and navigation equipment.

(IV) The potential to attract birds or waterfowl including, but not limited to, operation of any sanitary landfill and the maintenance of any large scale feeding station.

(V) Whether or not structures are proposed within 10 feet of any defined aircraft approach, departure, or transitional surface; or within 100 feet beneath any low-level military aircraft training route as provided by the Federal Aviation Administration.

(VI) The potential to expose persons to noise greater than 65 DNL.

(VII) The potential for obstructed visibility or surveillance, or both, of direct fire weaponry platforms into permanently populated or operational areas of military installations.

(VIII) Whether or not there will be a violation of any Federal Aviation Administration height restriction in Title 14 of the Code of Federal Regulations (14 CFR) part 77 entitled “Objects Affecting Navigable Airspace” or Department of Defense Instruction (DoDI) Number 4165.57 entitled “Air Installations Compatible Use Zones.”

(F) Review and coordinate all comprehensive plans or zoning ordinances or regulations affecting any mutually agreed upon critical area of a state area of interest and consider the most current jointly developed community—military JLUS or AICUZ, or both, recommendations from the following [insert applicable military installations in the state]. All such comprehensive plans or zoning ordinances or regulations shall also consider the presence of any ACUB and the findings of any AICUZ or ENMP.

(G) For such plans, ordinances or regulations, consider the recommendation or study provided by the military with a view to protection of public health, safety and welfare and maintenance of safe military and aircraft operations, and the sustainability of installation missions.

(H) Consider the adoption of a mandatory disclosure requirement for any property within any agreed upon critical area of a state area of interest, which would inform a buyer of the potential for impact from noise, smoke, dust, light, electromagnetic interference and aircraft safety zones on the landowner produced by normal military operations.

(I) Provide the following written notice to individuals receiving a construction permit for improvements within the agreed upon critical area:

“The property for which this permit is issued is situated in an area that may be subjected to conditions resulting from military training at a nearby military installation. Such conditions may include the firing of small and large caliber weapons, the over flight of both fixed-wing and rotary-wing aircraft, the movement of vehicles, the use of generators and other accepted and customary military training activities. These activities ordinarily and necessarily produce noise, dust, smoke and other conditions that may not be compatible with the permitted improvement according to established federal guidelines, state guidelines or both.”



(c) Nothing herein shall prevent municipalities adjacent to or surrounding military installations from entering into inter-local agreements with such military installations, in order to accomplish the objectives expressed herein.

Section 4. *[Definitions.]* As used in sections 1 through 4, and amendments thereto of this Act:

(1) “AICUZ” means a jointly developed community - Military Air Installation Compatible Use Zone as defined in Department of Defense Instruction 4165.57.

(2) “ACUB” means an Army Compatible Use Buffer as authorized in 10 U.S.C.A. § 2684a.

(3) “Development proposal” means any development requiring a review process prior to approval including, but not limited to, platting, rezoning, conditional use, special use, variance or any other similar action.

(4) “DNL” means the Day-Night Noise Level as defined in Army Regulation AR 200-1, Cpt. 7 (1997) and Cpt. 14 (2007).

(5) “ENMP” means an Environmental Noise Management Plan of an active duty, National Guard or reserve military installation as required by Army Regulation AR 200-1, Cpt. 7 (1997) and Cpt. 14 (2007).

(6) “JLUS” means a Joint Land Use Study as authorized in 10 U.S.C. § 2391.

(7) “Military training buffer contract” means land in which the private owner voluntarily provides, sells or leases the development rights for the land or provides, sells or leases the right of the military to reject proposed development that will be incompatible with the training mission and operations of a federal or state military facility of more than 100 acres. Nothing in the state area of interest, military training buffer area or military training buffer area contract shall provide authority for the use of eminent domain.

(8) “Municipality” shall mean a city or county as defined in [insert citation].

(9) “State area of interest military training buffer area” means land that is contiguous to a federal or state military facility of more than 100 acres as specified in the applicable AICUZ, JLUS, ACUB, or ENMP or is located adjacent to lands already in the program or is under a military flight path as defined in as defined in the Joint Air Force, Navy, Army, and FAA Criteria Handbook - FM 55-9.

Section 5. *[Authority to Make Final Decisions About Planning and Zoning Issues for Land Surrounding Military Installations.]* Notwithstanding any other provision of this Act, the final decision on all planning, development, zoning and land use issues shall be made by each municipality adjacent to or surrounding a military installation.

Section 6. *[Severability.]* [Insert severability clause.]

Section 7. *[Repealer.]* [Insert repealer clause.]

Section 8. *[Effective Date.]* [Insert effective date.]

# Model Entity Transactions Act

According to the Uniform Law Commissioners (ULC), anyone who establishes and develops a business in America has choices available for the entity that may be chosen to do business. As a business grows, these options also allow for some changes in form and location of the entity chosen. For example, a small enterprise that chooses to be a partnership initially has the opportunity to reorganize as a corporation when the business is big enough to want the advantage of the corporate form. Not-for-profit activities also have a greater array of organizational forms, now including the limited liability company and the limited partnership along with the not-for-profit corporation. American law is particularly flexible and responsive to the needs of both the for-profit and the not-for-profit sectors.

However, until recently, there was no comprehensive statutory framework for changing entity form, whether for merger of entities, conversion of one entity to another, exchanging interests to merge businesses without merging the entities (called an interest exchange), or for changing the location of the entity (called a domestication). The problem with mergers, conversions, interest exchanges and changing the location of entities is that an entity involved may have to be dissolved to accomplish the desired end. This means technically winding down the business, satisfying creditors and interest holders in the winding down, and potentially incurring adverse tax consequences. This is a burden when the objective is not to dissolve the business but to continue it in another form or another location. The hazards of the process are many and very costly. A statute that allows these events to occur without dissolving at least one of the entities involved will increase efficiency and lower costs. A general statute, not limited in scope to less than all of the kinds of entities commonly involved in these transactions, is highly desirable. Cross-entity transactions should be available. That statute should also be one that can be fit with the existing entity law in a state so that it is not necessary to repeal all the existing entity law to accomplish the objective. The ULC/American Bar Association Model Entity Transaction Act (META) is a general statute that is designed to fit with a state's existing entity law to accomplish the objective.

META governs four kinds of transactions: *merger* of one entity with another, *conversion* of an entity to another kind of entity, an *interest exchange* between two entities so that one of them is controlled by the other without actually merging the two entities and the *domestication* of an entity originally organized in one state in another state. A merger occurs when one entity acquires another entity and the result is a single entity composed of both the original entities. A conversion occurs when one kind of entity converts to another kind, i.e., a limited liability company converts into a business corporation. An interest exchange occurs when interest holders transfer their interests in one entity to another for interests in the second entity. For example, the holders of all interests in a limited partnership transfer their interests to a corporation in return for shares of stock in the corporation. A domestication occurs when an entity formed under the laws of one state becomes an entity formed in another state, extinguishing its entity status in the first state. The articles of META essentially provide the procedures to accomplish each of these transactions.

META authorizes each of these kinds of transactions. It authorizes different entities to merge, i.e., a corporation may merge with a limited partnership. It authorizes a partnership to convert to a limited liability company. An interest swap may occur between a limited partnership and a limited liability company. A corporation may change its place of organization from one state to another. These are examples of the kinds of transactions authorized. They can occur between an entity in one state and a foreign entity formed originally in another state, providing that the law of the foreign state permits such a transaction.

In each kind of transaction, there must be a plan that is approved by the interest holders in the entities. The plan generally describes the transaction and its effect in detail. Approval of the plan proceeds according to the organic statute and rules that govern the pre-existing entities, or if none, by unanimous consent of all interest holders. If, for example, a partnership agreement governing a limited partnership provides for consent of partners to one of the kinds of transactions subject to META, the agreement would be the organic rules that would determine the approval of the plan. Otherwise all the partners would have to consent.

Once a plan is approved, a statement relevant to the transaction must be filed in the office in a state in which entity statements or charters are normally filed. The filing puts the transaction and the identity of the entity that survives in public records. That entity becomes the entity with the capacity to do business and it has the applicable liability shield from that time onward.

The objective in these procedures is to make sure that no interest is extinguished in the process of any of the transactions under META, whether a merger, conversion, interest exchange or domestication. This is true for an interest holder such as a shareholder in a corporation or holder of a partnership interest. It is also true for creditor interests that pre-existed the given transaction. The point of the procedures is to end with an entity that continues the business of those entities it succeeds without extinguishing obligations incurred by these entities in a seamless, nondisruptive transfer.

META is a model Act, not a uniform Act. This means states generally will have to adapt some META provisions to their own statutes. To do this, states must first identify all of the existing statutory provisions that allow for same-type (all of the entities involved are the same, e.g., a merger between two corporations) and cross-type (more than one type of entity is involved in the transaction, e.g., a merger between a corporation and a partnership), mergers, interest exchanges, conversions, and domestications for any kind of entity. An entity is defined in Section 102 to include all types of partnerships (general partnerships, limited liability partnerships, limited partnerships, and limited liability limited partnerships), limited liability companies, all types of corporations (including non-profit corporations, close corporations in those states that have separate statutes for close corporations, and professional corporations), business trusts, cooperatives, and unincorporated nonprofit associations (at least in states that have the Uniform Unincorporated Nonprofit Associations Act or have statutes that allow an unincorporated nonprofit organization to hold property in its own name). Many states have statutes governing other types of business organizations. Texas, for example, has special statutory provisions for real estate investment trusts (in most other states, REITs would be considered a type of business trust). These special types of entities should also be included in the review process.

The next step is to analyze the overall existing statutory framework for same-type and cross-type transactions. This analysis will reveal that there are gaps in coverage for many of the types of transactions covered by the act, either directly or by default, even in those states that have adopted Chapter 9 and 11 of the Model Business Corporation Act and the uniform unincorporated organization acts.

Every state will have provisions for mergers of corporations into other corporations but not all states authorize interest exchanges between corporations (the corporate statutes generally refer to these as share exchanges) and only a few states specifically authorize corporations to enter into merger or interest exchange transactions with other types of organizations. Moreover, very few existing corporate statutes have provisions for conversions of corporations into other types of entities or authorize corporations to domesticate in another state.

The same-type and cross-type landscape with respect to unincorporated entities is even less complete. The Uniform Partnership Act (1997) (RUPA), which has been adopted in approximately 2/3 of the states (and in the District of Columbia, Puerto Rico and the Virgin

Islands) only authorizes mergers and conversions of general partnerships and limited partnerships. It does not allow conversions into any other type of entity or mergers with any other type of entity; nor does it authorize interest exchange or domestication transactions. Several states that have adopted RUPA have provisions allowing same-type and cross-type conversions and mergers of general partnerships with not only limited partnerships but also with corporations and limited liability companies; and a few RUPA states have expanded the list to include any business entity (it is unclear in many of these states, however, whether these statutes apply to non-profit entities). With the exception of Ohio, which authorizes mergers and consolidations of general partnerships with other partnerships and “other domestic or foreign entities,” there are apparently no same-type or cross-type provisions in the general partnership statutes of the approximately one-third of the states that still have the 1914 Uniform Partnership Act.

The statutory framework for limited partnership same-type and cross-type transactions is also quite varied. Most states have the Uniform Limited Partnership Act (1976 with 1985 Amendments). That act has no provisions dealing with merger, interest exchange, conversion, or domestication transactions. According to Volume 6A of Uniform Laws Annotated (Supp. 2004), 19 states have adopted provisions authorizing limited partnerships to merge with or convert into some other types of entities. Arizona, for example, only authorizes limited partnerships to convert into general partnerships, but also authorizes limited partnerships to merge with any other type of business entity. Some states allow conversions of limited partnerships into limited liability companies and a few states expand the conversion list to include corporations; most also allow mergers of limited partnerships into other limited partnerships and some other types of entities. Several states appear to exclude non-profit organizations, business trusts, and cooperatives from their cross-form list.

As of October 2007, the Uniform Limited Partnership Act (2001) had been adopted in 16 states. It authorizes a conversion of a limited partnership into any other type of organization, conversion of any other organization into a limited partnership, a merger of a limited partnership with any other type of organization and a domestication (which is a type of conversion under ULPA (2001)). It does not, however, have any specific provisions for interest exchanges.

Most limited liability company statutes have provisions authorizing mergers and conversions, although the scope of coverage is quite varied. The Uniform Limited Liability Company Act (1997) (ULLCA), which has been adopted in eight states and the Virgin Islands, authorizes the conversion of a limited liability company into a general or limited partnership (but not into a corporation or any other type of entity) and a merger of a limited liability company with other limited liability companies or any “other domestic or foreign entities.” ULLCA does not, however, have any provisions authorizing limited liability companies to enter into interest exchange or domestication transactions. In the other 42 states there are substantial differences from the ULLCA scheme with respect to same-type and cross-type transactions. The recently-adopted revised Uniform Limited Liability Company Act (2006) authorizes cross-type mergers, conversions, and domestications, but does not provide for interest exchanges; and the Uniform Limited Cooperative Association Act (2007) authorizes cross-type mergers and conversions.

There are no same-type or cross-type provisions in the Uniform Unincorporated Nonprofit Associations Act. Moreover, there are very few same-type or cross-type provisions in statutes governing all the other types of entities that exist under state law. There are some exceptions, however, such as the Delaware Statutory Trust Act which allows mergers and conversions of business trusts into other entities, and the Minnesota cooperative statute which allows farm cooperatives to convert into limited liability companies.

Once the analysis of the existing same-type and cross-type statutes has been made, decisions need to be made as to which ones should be amended or repealed and whether to add

additional provisions to these statutes. Under META, if the statute governing an entity has same-type provisions, those provisions govern the transaction in question. META provides default rules, however, if the other applicable entity statute has no same-type provisions for the transaction in question. META also applies to cross-type transactions (but defaults to applicable state entity law for approval requirements and the like).

In deciding how to amend, repeal or add to the existing entity statutes, states should avoid any potential inconsistency between META's provisions and similar provisions in the state's entity statutes and make the interplay between META and the state's various entity laws relatively easy to navigate. There are several ways to achieve these goals. First, states can limit existing laws to same-type transactions. One method, which it is anticipated will be the method chosen by most states, is as follows:

With respect to the state's corporation statutes:

(i) Repeal any cross-type provisions from the state's corporation merger statutes. The amendments necessary for this purpose in a state that has adopted the Model Business Corporation Act and the Model Nonprofit Corporation Act are found in Sections A2-1 and A2-2, respectively. In states whose corporate codes do not have any cross-type merger provisions no amendments to the state's corporate merger provisions will be necessary. Most state also may not have interest exchange provisions in their corporate codes. If that is the case, same-type provisions for interest exchanges do not need to be added to the corporate codes because under META the requirements for approval of a merger and other rights that a shareholder would have in a merger, for example, dissenters' rights, apply. See Sections 203(a) (mergers) and 303(a) (interest exchange).

(ii) Repeal any conversion provisions in the state's corporation statutes. Article 3 of META will, therefore, govern all conversions.

(iii) Retain any existing domestication provisions in the state's organic laws. As is pointed out in the Legislative Note to META Section 501, these entity specific domestication provisions will be listed in Section 501(e) with the result being that Article 5 of META will apply to those types of entities whose organic laws do not already have domestication provisions.

With respect to the state's other entity statutes:

(i) Amend all the merger, interest exchange, and conversion provisions in the state's other entity statutes by stripping out all of the cross-type provisions in the merger provisions, and by repealing any interest exchange or conversion provisions. Any existing domestication provisions would be retained and an appropriate reference to those provisions would be included in Section 501(e). The appropriate amendments for states that have adopted the Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996) or the ABA Prototype Limited Liability Company Act are found in Sections A2-3, A2-4, A2-5, and A2-6, respectively.

(ii) The existing requirements for approval of mergers, interest exchanges, conversions, domestications, and amendment of the organic rules in the state's existing organic laws for unincorporated entities need to be carefully reviewed. If they require unanimity (or they are silent on what vote is required), then the suggested amendments in this appendix will make all the voting requirements for both same-type and cross-type transactions involving unincorporated entities consistent. The situation is more complicated, however, if there is not complete consistency among those organic laws; for example, as is sometimes the case, if the state's partnership statutes require unanimity but its LLC statute requires only a majority vote for some or all transactions. If there is not complete consistency, decisions will need to be made whether to retain the differences or to make all of the voting requirements either unanimous or majority. Other issues that will need to be resolved are what the appropriate vote should be for transactions other than mergers (i.e., interest exchanges, conversions, and domestications) where

there are no existing voting provisions other than for mergers; what is the appropriate voting requirement for a transaction under META where an unincorporated entity organic law does not have any same-type or cross-type provisions for that type of transaction; and how the voting requirements under META relate to the vote required to amend an unincorporated entity's organic rules. Once this analysis is completed, it will be possible to construct the appropriate amendments to the state's existing unincorporated entity organic laws.

Another method of integrating META with a state's organic laws is to delete from the existing organic laws any provisions that deal with cross-type transactions and add same-type merger and interest exchange, and domestication provisions to every organic law that does not currently have these provisions. Thus all same-type entity transactions would be governed by the state's organic laws and all cross-type transactions would be governed by META. This approach will require a large number of changes to existing organic laws in most states because same-type merger and interest exchange, and domestication provisions would have to be added to many of the state's organic laws, including its unincorporated nonprofit, cooperative, and business trust statutes. Article 5 of META would also not be enacted because the organic laws for each type of entity would have domestication provisions.

States can also repeal all the existing same-type and cross-type transaction provisions in all of the organic laws and add to META all the corporate merger approval and related statutory provisions such as appraisal rights, as well as substantially modifying Sections 203, 303, 403, and 503 so that there will be one set of approval provisions for a corporation engaging in a META transaction and a second set of approval provisions for unincorporated entities engaging in a META transaction. Making all of these modifications will be a monumental task.

Finally, integrating META with a state's existing organic laws could be achieved by repealing any provisions for cross-type transactions from the corporation laws (see Sections A2-1 and A2-2 for the appropriate amendments in a state that has enacted the Model Business Corporation Act and the Model Nonprofit Corporation Act) and, in addition by repealing all of the provisions for same-type and cross-type transactions in all of the state's unincorporated entity organic laws. This approach, which is a variant of avoids the problem of incorporating the corporation law voting requirements and related provisions such as appraisal rights. It will work best, however, in a state where all of the existing unincorporated entity organic laws require unanimity for approval of a merger or similar transaction (and where unanimity is also required to amend each type of entity's organic rules), since that is the ultimate default rule in META. This approach will be quite cumbersome if the state's unincorporated entity organic laws require less than unanimous consent for some types of entities, because the less than unanimous approval requirements would have to be incorporated into META.

The ULC suggests states place a reference to META in the state's entity statutes specifying the transactions that are governed by META. As an alternative to the statutory references proposed in this appendix, legislative notes could be used in those states that follow that practice. A note would be placed in the corporate statutes at the end of the merger and share exchange provisions stating that META is the primary statute that applies to reorganization transactions involving a corporation and another form of entity. For other entities whose organic laws have merger provisions, the legislative notes would appear at the end of those provisions stating META is the primary statute for any cross-type merger involving that type of entity and also is the primary statute governing both same-type and cross-type interest exchange and domestication transactions where that type of entity is a party. Finally, if there are no merger provisions for a particular type of entity, a legislative note should be placed at the end of the governing statute stating that META is the statute that governs merger, interest exchange, conversion and domestication transactions where that type of entity is involved.

Interested readers can see how one state adopted META by viewing amendments Kansas

made to its law when it adopted META as SB 132 in 2009. However, the text in this *SSL* volume is the model ULC language, includes legislative notes about the act, and excludes line numbers. Readers can access official commentary about the act and detailed suggestions about how to implement the Act vis-à-vis existing business entity laws at this Web address: [http://www.law.upenn.edu/bll/archives/ulc/ueta/2007\\_final.htm](http://www.law.upenn.edu/bll/archives/ulc/ueta/2007_final.htm) or at [www.nccusl.org](http://www.nccusl.org).

Submitted as:

Kansas

[SB 132](#)

Status: Enacted into law in 2009.

Comment:

Notes about ULC Acts:

For information on the specific drafting rules used by the ULC, the ULC *Procedural and Drafting Manual* is available online at [www.nccusl.org](http://www.nccusl.org).

In general, the use of bracketed language in ULC acts indicates that a choice must be made between alternate bracketed language, or that specific language must be inserted into the empty brackets. For example: “An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [ ].

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or requirements, or to indicate that the entire section is optional. For example: “An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual, and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury.”

The sponsor may need to be consulted when dealing with bracketed language.

Questions about META?

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## **Suggested State Legislation**

(Title, enacting clause, etc.)

### **MODEL ENTITY TRANSACTIONS ACT** (Last Revised or Amended in 2007)

#### **[ARTICLE] 1** **GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. This [act] may be cited as the Model Entity Transactions Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Acquired entity” means the entity, all of one or more classes or series of interests in which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) “Approve” means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under its organic rules, organic law, and other law to:

(A) propose a transaction subject to this [act];

(B) adopt and approve the terms and conditions of the transaction; and

(C) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) “Business corporation” means a corporation whose internal affairs are governed by [the Model Business Corporation Act].

(5) “Conversion” means a transaction authorized by [Article] 4.

(6) “Converted entity” means the converting entity as it continues in existence after a conversion.

(7) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

(8) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(9) “Domesticated entity” means the domesticating entity as it continues in existence after a domestication.

(10) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to Section 503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(11) “Domestication” means a transaction authorized by [Article] 5.

(12) “Entity” means:

(A) a business corporation;

(B) a nonprofit corporation;

(C) a general partnership, including a limited liability partnership;

(D) a limited partnership, including a limited liability limited partnership;

(E) a limited liability company;

(F) a business trust or statutory trust entity;

(G) an unincorporated nonprofit association;

(H) a cooperative; or

(I) any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(i) an individual;

(ii) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity or similar trust;

(iii) an association or relationship that is not a partnership solely by reason of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any other jurisdiction;

(iv) a decedent’s estate; or

(v) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

(13) “Filing entity” means an entity that is created by the filing of a public organic document.

(14) “Foreign entity” means an entity other than a domestic entity.



(15) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for the election of the governors of the entity; or

(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(16) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) “Interest” means:

(A) a governance interest in an unincorporated entity;

(B) a transferable interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(18) “Interest exchange” means a transaction authorized by [Article] 3.

(19) “Interest holder” means a direct holder of an interest.

(20) “Interest holder liability” means:

(A) personal liability for a liability of an entity that is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) “Jurisdiction of organization” of an entity means the jurisdiction whose law includes the organic law of the entity.

(22) “Liability” means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or whether it is contingent.

(23) “Merger” means a transaction in which two or more merging entities are combined into a surviving entity pursuant to a filing with the [Secretary of State].

(24) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(25) “Nonprofit corporation” means a corporation whose internal affairs are governed by [the Model Nonprofit Corporation Act].

(26) “Organic law” means the statutes, if any, other than this [act], governing the internal affairs of an entity.

(27) “Organic rules” means the public organic document and private organic rules of an entity.

(28) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(29) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

(30) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(31) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date of this [act];

(B) an agreement that is binding on an entity on the effective date of this [act];  
(C) the organic rules of an entity in effect on the effective date of this [act]; or  
(D) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this [act].

(32) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(33) “Qualified foreign entity” means a foreign entity that is authorized to transact business in this state pursuant to a filing with the [Secretary of State].

(34) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(35) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or  
(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(36) “Surviving entity” means the entity that continues in existence after or is created by a merger.

(37) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(38) “Type,” with regard to an entity, means a generic form of entity:

(A) recognized at common law; or  
(B) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

#### SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.

(a) Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

(b) This [act] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [act].

(c) A transaction effected under this [act] may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this [act] relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless:

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the provision; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

#### SECTION 104. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to be a party to a merger must give the notice or obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this [act] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order

of [name of court] [the attorney general] specifying the disposition of the property.

*Legislative Note: As an alternative to enacting subsection (a), a state may identify each of its regulatory laws that requires prior approval for a merger of a regulated entity, decide whether regulatory approval should be required for an interest exchange, conversion, or domestication, and make amendments as appropriate to those laws. As with subsection (a), an adopting state may choose to amend its various laws with respect to the nondiversion of charitable property to cover the various transactions authorized by this act as an alternative to enacting subsection (b).*

SECTION 105. STATUS OF FILINGS. A filing under this [act] signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

SECTION 106. NONEXCLUSIVITY. The fact that a transaction under this [act] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [act].

SECTION 107. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS. Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [act] by the unanimous vote or consent of its interest holders satisfies the requirements of this [act] for approval

#### SECTION 109. APPRAISAL RIGHTS.

(a) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this [act] to the extent provided:

(1) in the entity's organic rules;

(2) in the plan; or

(3) in the case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, [Chapter 13 of the Model Business Corporation Act] applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

**Legislative Note:** Section 109(a) preserves appraisal rights (sometimes referred to as “dissenters’ rights”) granted by other laws. As an alternative to enacting subsection (a), a state may amend the appraisal rights provisions of its organic laws to specify which transactions under this act will give rise to appraisal rights. See the suggested amendments in Appendix 2. If that alternative approach is adopted, subsections (b) and (c) should be designated as subsections (a) and (b).

#### SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.

(a) The following entities may not participate in a transaction under this [act]:

(1)

(2)

(b) This [act] may not be used to effect a transaction that:

(1)

(2)

(3).]

**Legislative Note:** Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.

Nonprofit entities may participate in transactions under this act with for-profit entities, subject to compliance with Section 104(b). If a state desires, however, to exclude entities with a charitable purpose from the scope of the act, that may be done by referring to those entities in subsection (a).

More limited provisions that exclude certain types of domestic entities just from certain provisions of this act are set forth in Sections 201(d) (mergers), 301(e) (interest exchanges), 401(d) (conversions), and 501(e) (domestications).

Subsection (b) may be used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.

### [ARTICLE] 2 MERGER

#### SECTION 201. MERGER AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article]:

(1) one or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may be a party to a merger under this [article] or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity’s jurisdiction of organization.

(c) This [article] does not apply to a transaction under:

(1) [Chapter 11 of the Model Business Corporation Act];

(2) [Chapter 11 of the Model Nonprofit Corporation Act];

(3) [Article 9 of the Uniform Partnership Act (1997)];

(4) [Article 11 of the Uniform Limited Partnership Act (2001)];

(5) [Article 12 of the Prototype Limited Liability Company Act];

(6) [Article 9 of the Uniform Limited Liability Company Act (1996)];

(7) [Article 10 of the Uniform Limited Liability Company Act (2006)]; or  
(8) [Article 15 of the Uniform Limited Cooperative Association Act (2007)] [; or  
(9) Cite provisions of any other organic law that has merger provisions for entities of the same type.]

[(d) The following entities may not participate in a merger under this [article]:

(1)

(2).]

***Legislative Note:*** *The text of subsection (c) will depend on which choice a state makes with respect to the scope of the act. It is anticipated that most states will choose to retain all of the merger provisions for entities of the same type it currently has in its organic laws and will repeal any merger provisions for entities of different types in those laws. The end result will be that the merger provisions in the organic laws will apply to mergers of entities of the same type and this act will apply to mergers involving entities of more than one type. If a state chooses to add merger provisions for entities of the same type to all of its organic laws and the list of statutes in subsection (c) will need to be expanded.*

*If a state chooses option (d), the list of statutes in subsection (c) will probably include only the business and nonprofit corporation act merger provisions since under option (d) this act will apply to mergers of unincorporated entities involving entities of the same type, as well as mergers involving different types of entities.*

*If a state chooses option (c), subsection (c) is not necessary because this act will govern all mergers whether involving the same type of entity or different types of entities.*

#### SECTION 202. PLAN OF MERGER.

(a) A domestic entity may become a party to a merger under this [article] by approving a plan of merger. The plan must be in a record and contain:

(1) as to each merging entity, its name, jurisdiction of organization, and type;

(2) if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization, and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

#### SECTION 203. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

(1) by a domestic merging entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a

merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation; or

(B) if neither its organic law nor organic rules provide for approval of a merger described in subparagraph (A)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

#### SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger of a domestic merging entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of merger has been approved by a domestic merging entity and before a statement of merger becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of merger is abandoned after a statement of merger has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the [Secretary of State] before the time the statement of merger becomes effective. The statement of abandonment takes effect upon filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;

(2) the date on which the statement of merger was filed; and

(3) a statement that the merger has been abandoned in accordance with this section.

## SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.

(a) A statement of merger must be signed on behalf of each merging entity and filed with the [Secretary of State].

(b) A statement of merger must contain:

(1) the name, jurisdiction of organization, and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization, and type of the surviving entity;

(3) if the statement of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [article] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the plan of merger;

(6) if the surviving entity is created by the merger and is a domestic filing entity, its public organic document, as an attachment;

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, its [statement of qualification], as an attachment; and

(8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 206(e).

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [act] to a statement of merger refer to the plan of merger filed under this subsection.

(f) A statement of merger becomes effective upon the date and time of filing or the later date and time specified in the statement of merger.

## SECTION 206. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without assignment, reversion, or impairment;

(4) all liabilities of each merging entity are liabilities of the surviving entity;

(5) except as otherwise provided by law other than this [act] or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all of its property continues to be vested in it without reversion or impairment;

(B) it remains subject to all of its liabilities; and  
(C) all of its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic document, if any, is amended as provided in the statement of merger and is binding on its interest holders; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger and are binding on and enforceable by:

(i) its interest holders; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;

(9) if the surviving entity is created by the merger:

(A) its public organic document, if any, is effective and is binding on its interest holders; and

(B) its private organic rules are effective and are binding on and enforceable by:

(i) its interest holders; and

(ii) in the case of a surviving entity that is not a business corporation or a nonprofit corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and

(10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 109 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

(1) the merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;

(2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;

(3) the organic law of the domestic merging entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any



interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity:

(1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

### [ARTICLE] 3 INTEREST EXCHANGE

#### SECTION 301. INTEREST EXCHANGE AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article]:

(1) a domestic entity may acquire all of one or more classes or series of interests of another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic entity may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an interest exchange under this [article] if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic entity is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of this [act].

[(d) This [article] does not apply to a transaction under:

(1) [Chapter 11 of the Model Business Corporation Act]; or

(2).]

[(e) The following entities may not participate in an interest exchange under this [article]:

(1)

(2).]

***Legislative Note:*** *It is anticipated that most states will choose to limit any existing interest exchange provisions to same-type transactions, for example interest exchanges where all of the entities are corporations. Any interest exchange provisions added to entity statutes should similarly be limited to same-type transactions. The net effect will be that the interest exchange provisions in the various entity statutes will govern same-type interest exchanges and Article 3 will govern cross-type interest exchanges. In the event a state does not have any existing interest exchange legislation and chooses not to add interest exchange provisions to any of its entity statutes, Article 3 will govern and will cover both same-type and cross-type interest exchanges. See Section 2 of the Prefatory Note and Appendix 2.*

#### SECTION 302. PLAN OF INTEREST EXCHANGE.

(a) A domestic entity may be the acquired entity in an interest exchange under this

[article] by approving a plan of interest exchange. The plan must be in a record and contain:

- (1) the name and type of the acquired entity;
- (2) the name, jurisdiction of organization, and type of the acquiring entity;
- (3) the manner of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- (5) the other terms and conditions of the interest exchange; and
- (6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any other provision not prohibited by law.

### SECTION 303. APPROVAL OF INTEREST EXCHANGE.

(a) A plan of interest exchange is not effective unless it has been approved:

- (1) by a domestic acquired entity:
  - (A) in accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
  - (B) except as otherwise provided in subsection (d), if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a merger, as if the interest exchange were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the interest exchange were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity provide in a record for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

(d) A provision of the organic law of a domestic acquired entity that would permit a merger between the acquired entity and the acquiring entity to be approved without the vote or consent of the interest holders of the acquired entity because of the percentage of interests in the acquired entity held by the acquiring entity does not apply to approval of an interest exchange under subsection (a)(1)(B).

**Legislative Note:** *An issue that needs to be analyzed under this section is what approval requirements apply to an interest exchange if there are no interest exchange provisions for entities of the same type in the organic law for a particular type of entity. If an entity's organic law, and also its organic rules, are silent on approving an interest exchange, subsection (a)(1)(B) provides that the required approval is the approval required for a merger under the entity's organic law. If the entity's organic law required a majority vote of the entity's interest holders, the approval of an interest exchange if the entity is the acquired entity would also require a majority vote of its interest holders. If the organic law, on the other hand, required a unanimous vote of the entity's interest holders to approve a merger, a unanimous vote would also be required to approve an interest exchange. As a result, differences between entity laws on the vote required to approve a merger will be carried over into this act. It is important, therefore, that states review any differences in the merger approval requirements in their organic laws to determine if those differences are supported by appropriate policy considerations.*

*If an entity's organic law does not provide for approval of either a merger or an interest exchange, and if the entity's organic rules are also silent on approval of a merger or interest exchange, then subsection (a)(1)(C) requires approval of an interest exchange by all of the entity's interest holders. States should evaluate how that approval requirement compares to any approval requirements it has adopted for mergers or interest exchanges in any of its other organic laws.*

*This article permits the organic rules of an acquired entity to be amended in the context of an interest exchange. The other articles in this act also permit the organic rules to be amended in the contexts of the other types of transactions that may be accomplished under this act. When states conduct the analysis described in this Legislative Note of what approval requirement to adopt, they should also evaluate that question from the perspective of what approval requirements they provide in their organic laws for amending the organic rules of each type of entity.*

*The analysis described in this Legislative Note needs to be undertaken with respect to Sections 403 and 503 as well.*

#### SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange of a domestic acquired entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the acquired entity under the plan;

(B) the public organic document or private organic rules of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

- (1) as provided in the plan; or
  - (2) unless prohibited by the plan, in the same manner as the plan was approved.
- (c) If a plan of interest exchange is abandoned after a statement of interest exchange has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the [Secretary of State] before the time the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:
- (1) the name of the acquired entity;
  - (2) the date on which the statement of interest exchange was filed; and
  - (3) a statement that the interest exchange has been abandoned in accordance with this section.

#### SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.

- (a) A statement of interest exchange must be signed on behalf of a domestic acquired entity and filed with the [Secretary of State].
- (b) A statement of interest exchange must contain:
- (1) the name and type of the acquired entity;
  - (2) the name, jurisdiction of organization, and type of the acquiring entity;
  - (3) if the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;
  - (4) a statement that the plan of interest exchange was approved by the acquired entity in accordance with this [article]; and
  - (5) any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange.
- (c) In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.
- (d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [act] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.
- (e) A statement of interest exchange becomes effective upon the date and time of filing or the later date and time specified in the statement of interest exchange.

#### SECTION 306. EFFECT OF INTEREST EXCHANGE.

- (a) When an interest exchange becomes effective:
- (1) the interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 109 and the acquired entity's organic law;
  - (2) the acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;
  - (3) the public organic document, if any, of the acquired entity is amended as provided in the statement of interest exchange and is binding on its interest holders; and
  - (4) the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of an acquired entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the acquired entity's private organic rules.

(b) Except as otherwise provided in the organic law or organic rules of the acquired entity, the interest exchange does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the acquired entity.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

(1) the interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability under the organic law of the domestic acquired entity for any liability that arises after the interest exchange becomes effective;

(3) the organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic acquired entity with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

## [ARTICLE] 4 CONVERSION

### SECTION 401. CONVERSION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article], a domestic entity may become:

(1) a domestic entity of a different type; or

(2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may become a domestic entity of a different type if the conversion is authorized by the law of the foreign entity's jurisdiction of organization.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this [act].

[(d) The following entities may not engage in a conversion:

(1)

(2).]

**Legislative Note:** *Many states have provisions in their corporate and unincorporated entity statutes that allow conversions. These statutes, however, vary greatly. A few allow conversion of one type of entity into any other type of entity. Most, however, allow only limited types of conversions, e.g., general partnerships to limited partnerships (and limited partnerships to general partnerships) but not to all other types of entities. If a state has conversion provisions, the recommended course of action is to repeal all those statutes. See Appendix 2. The net effect will be that this act will apply to all conversions. Leaving the existing conversion provisions in place will create confusion for practitioners because in some cases there will be two applicable conversion statutes, the existing conversion statute and Article 4 of this act, but in other situations only Article 4 of this act will apply.*

#### SECTION 402. PLAN OF CONVERSION.

(a) A domestic entity may convert to a different type of entity under this [article] by approving a plan of conversion. The plan must be in a record and contain:

- (1) the name and type of the converting entity;
- (2) the name, jurisdiction of organization, and type of the converted entity;
- (3) the manner of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed public organic document of the converted entity if it will be a filing entity;
- (5) the full text of the private organic rules of the converted entity that are proposed to be in a record;
- (6) the other terms and conditions of the conversion; and
- (7) any other provision required by the law of this state or the organic rules of the converting entity.

(b) A plan of conversion may contain any other provision not prohibited by law.

#### SECTION 403. APPROVAL OF CONVERSION.

(a) A plan of conversion is not effective unless it has been approved:

- (1) by a domestic converting entity:
  - (A) in accordance with the requirements, if any, in its organic rules for approval of a conversion;
  - (B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:
    - (i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or
    - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or
  - (C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and
- (2) in a record, by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:
  - (A) the organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest

holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

***Legislative Note:*** *The analysis of approval requirements in the Legislative Note to Section 303 should also be undertaken with respect to conversions.*

#### SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

(a) A plan of conversion of a domestic converting entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

(B) the public organic document or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of conversion becomes effective. The statement of abandonment takes effect upon filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting entity;

(2) the date on which the statement of conversion was filed; and

(3) a statement that the conversion has been abandoned in accordance with this section.

#### SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) A statement of conversion must be signed on behalf of the converting entity and filed with the [Secretary of State].

(b) A statement of conversion must contain:

(1) the name, jurisdiction of organization, and type of the converting entity;

(2) the name, jurisdiction of organization, and type of the converted entity;

(3) if the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) if the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this [article] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of organization;

(5) if the converted entity is a domestic filing entity, the text of its public organic document, as an attachment;

(6) if the converted entity is a domestic limited liability partnership, the text of its [statement of qualification], as an attachment; and

(7) if the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [act] to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion becomes effective upon the date and time of filing or the later date and time specified in the statement of conversion.

#### SECTION 406. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this [act] or the plan of conversion, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a converted entity that is not a business corporation or



nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective:

(1) the conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective;

(2) a person does not have interest holder liability under the organic law of a domestic converting entity for any liability that arises after the conversion becomes effective;

(3) the organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## [ARTICLE] 5 DOMESTICATION

### SECTION 501. DOMESTICATION AUTHORIZED.

(a) Except as otherwise provided in this section, by complying with this [article], a domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this [article] applicable to foreign entities a foreign entity may become a domestic entity of the same type in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of organization.

(c) When the term domestic entity is used in this [article] with reference to a foreign

jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign jurisdiction.

(d) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this [act].

(e) The following entities may not engage in a domestication under this [article]:

(1) [a business corporation – if the state has adopted Subchapter 9B of the Model Business Corporation Act];

(2) a limited liability company, if the state has enacted Article 10 of the Uniform Limited Liability Company Act (2006)]; or

(3).]

***Legislative Note:*** *A few states have domestication provisions in their organic laws. The only uniform or model organic laws authorizing domestications are Subchapter 9B of the Model Business Corporation Act and Article 10 of the Uniform Limited Liability Company Act (2006). Because a domestication is a transaction involving entities of the same type, as opposed to a transaction involving entities of different types, a state may choose to keep any existing domestication provisions in its organic laws and it may decide to add domestication provisions to its other organic laws. Any domestication provisions in other organic laws should be listed in subsection (e). In that case, Article 5 will apply only to domestications of an entity whose organic law does not authorize a domestication. If a state does not have domestication provisions in its organic laws, subsection (e) should be omitted.*

#### SECTION 502. PLAN OF DOMESTICATION.

(a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) the name and type of the domesticating entity;

(2) the name and jurisdiction of organization of the domesticated entity;

(3) the manner of converting the interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) the proposed public organic document of the domesticated entity if it is a filing entity;

(5) the full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) A plan of domestication may contain any other provision not prohibited by law.

#### SECTION 503. APPROVAL OF DOMESTICATION.

(a) A plan of domestication is not effective unless it has been approved:

(1) by a domestic domesticating entity:

(A) in accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) in the case of an entity that is not a business corporation, a

merger, as if the domestication were a merger; or

(ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type of merger; or

(C) if neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (B)(ii), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

***Legislative Note:*** *The analysis of approval requirements in the Legislative Note to Section 303 should also be undertaken with respect to domestications.*

#### SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating entity may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) the public organic document or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the time the statement of domestication becomes effective. The statement of abandonment takes effect upon filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of the domesticating entity;
- (2) the date on which the statement of domestication was filed; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

#### SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

(a) A statement of domestication must be signed on behalf of the domesticating entity and filed with the [Secretary of State].

(b) A statement of domestication must contain:

- (1) the name, jurisdiction of organization, and type of the domesticating entity;
- (2) the name and jurisdiction of organization of the domesticated entity;
- (3) if the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;
- (4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization;
- (5) if the domesticated entity is a domestic filing entity, its public organic document, as an attachment;
- (6) if the domesticated entity is a domestic limited liability partnership, its [statement of qualification], as an attachment; and
- (7) if the domesticated entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 506(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic document, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document.

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of subsection (b) may be filed with the [Secretary of State] instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [act] to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) A statement of domestication becomes effective upon the date and time of filing or the later date and time specified in the statement of domestication.

#### SECTION 506. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

- (1) the domesticated entity is:
  - (A) organized under and subject to the organic law of the domesticated entity; and
  - (B) the same entity without interruption as the domesticating entity;
- (2) all property of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion, or impairment;
- (3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this [act] or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) if the domesticated entity is a filing entity, its public organic document is effective and is binding on its interest holders;

(7) if the domesticated entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective and are binding on and enforceable by:

(A) its interest holders; and

(B) in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the domesticated entity's private organic rules; and

(9) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective;

(2) a person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective;

(3) the organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred; and

(4) a person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(f) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## [ARTICLE] 6 MISCELLANEOUS PROVISIONS

SECTION 601. CONSISTENCY OF APPLICATION. In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

SECTION 603. CONFORMING AMENDMENTS AND REPEALS. [See Appendix 2.]

SECTION 604. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced or right accrued before the effective date of this [act].

SECTION 605. EFFECTIVE DATE. This [act] takes effect [January 1, 20\_\_].

***Legislative Drafting Note:*** For conforming amendments to existing uniform business entity acts, please see the official final act with comments (Copyright © 2004, 2005, 2007 Jointly By the NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS and the AMERICAN BAR ASSOCIATION) at:

[http://www.law.upenn.edu/bll/archives/ulc/ueta/2007\\_final.pdf](http://www.law.upenn.edu/bll/archives/ulc/ueta/2007_final.pdf)

# Move On When Ready

This Act establishes a program to enable eleventh and twelfth grade high school students to attend postsecondary colleges and schools and get high school credit. It contains requirements for course credit and state funding.

Submitted as:

Georgia

[HB 149 \(As Passed House and Senate\)](#)

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 “Move on When Ready Act.”

2

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

4           (1) “Department” means the [department of education].

5           (2) “Eligible institution” or “institution” means any eligible postsecondary institution as  
6 defined in [insert citation].

7           (3) “Eligible student” means a student entering eleventh or twelfth grade who spent the  
8 prior school year in attendance at a public high school in this state.

9           (4) “Prior school year in attendance” means that the student was reported as enrolled in a  
10 public school for funding purposes during the preceding [October and March] Full-time  
11 Equivalent (FTE) program counts in accordance with [insert citation].

12           (5) “Program” means the arrangement authorized by this Act whereby an eligible student  
13 takes all of his or her courses at or through an eligible institution or a virtual course approved by  
14 the [state board of education] and receives secondary credit from his or her high school with the  
15 goal of completing graduation and high school diploma requirements.

16           (6) “Secondary credit” means high school credit for courses taken at an eligible  
17 institution under the program.

18

19           Section 3. [*Eligibility for Secondary Credits.*]

20           (A) Any eligible student may apply to an eligible institution to take courses at or through  
21 that institution which are approved for secondary credit pursuant to subsection (C) of this  
22 section. If accepted at an eligible institution, such eligible student may take any such approved  
23 course at that institution, whether or not the course is taught during the regular public school day,  
24 and receive secondary credit therefore under the conditions provided in this Act. An eligible  
25 institution which accepts an eligible student authorized to apply for enrollment under the  
26 program shall not receive any state funds for that student unless such institution complies with  
27 the requirements of this Act regarding eligible institutions.

28           (B) The [department] shall develop appropriate forms and counseling guidelines for the  
29 program and shall make such forms and guidelines available to local school systems and eligible  
30 institutions. No later than the [first day of April] each year, each local school system shall  
31 provide general information about the program, including such forms, to all its tenth and  
32 eleventh grade students. A local school system shall also provide counseling services in  
33 accordance with the counseling guidelines provided by the [department] to such students and

34 their parents or guardians before the students enroll in the program. Prior to participating in the  
35 program, the student and the student's parent or guardian shall sign the form provided by the  
36 school system or by an eligible institution stating that they have received the counseling  
37 specified in this subsection and that they understand the responsibilities that shall be assumed in  
38 participating in the program.

39 (C) (1) A local school system shall grant academic credit to an eligible student  
40 enrolled in a course in an eligible institution if that course has been approved by the [state board  
41 of education] and if such student successfully completes that course. The [state board of  
42 education] shall approve any such course which is substantially comparable to a state approved  
43 course. The secondary credit granted shall be for the comparable course and course hours  
44 approved by the [state board of education]. Upon completion of an eligible institution's approved  
45 course, the eligible student shall be responsible for requesting that the institution notify the  
46 student's local school system regarding his or her grade in that course.

47 (2) Secondary school credits granted for eligible institution courses under  
48 paragraph (1) of this subsection shall be counted toward [state board of education] graduation  
49 requirements and subject area requirements of the local school system. Evidence of successful  
50 completion of each course and secondary credits granted shall be included in the eligible  
51 student's secondary school records.

52 (3) The [state board of education] shall establish rules to require local school  
53 systems to award a high school diploma to any eligible student who is enrolled at an eligible  
54 institution under the program as long as the credit earned at such institution satisfies course  
55 requirements needed for the eligible student to complete high school graduation. The  
56 [department] shall consult the [board of regents of the university system of this state] and the  
57 [state board of technical and adult education] in developing rules and regulations to be  
58 recommended to the [state board of education] for approval regarding the eligibility criteria for  
59 program participation.

60 (D) (1) The [department] shall pay to eligible institutions through appropriation of  
61 state funds the lesser of the following amounts for each participating eligible student enrolled  
62 therein, less a records fee of [\$200.00] for administration costs of the local school system:

63 (a) The actual cost of tuition, materials, and fees directly related to the  
64 courses taken by the eligible student at such institution; or

65 (b) The amount that the participating eligible student would have earned  
66 under this Act if he or she had been in equivalent instructional programs in the local school  
67 system.

68 (2) The total allotment of state funds to the local school system in which a  
69 participating student is enrolled at an eligible institution pursuant to this Act shall be calculated  
70 as otherwise provided in [insert citation] with an ensuing reduction equivalent to the amount of  
71 state funds appropriated to such eligible institution pursuant to this subsection.

72 (3) The records fee contained in paragraph (1) of this subsection may be increased  
73 by the [state board of education] by up to [4 percent annually], at the [board's] sole discretion.

74 (4) An eligible institution shall not charge an eligible student for coursework  
75 taken pursuant to this program and shall accept the payment made pursuant to paragraph (1) of  
76 this subsection as full payment for such eligible student.

77 (E) The [state board of education] shall establish rules and regulations relating to  
78 applicable state and federal testing requirements for eligible students participating in the  
79 program.

80 (F) An eligible student enrolled in an eligible institution for secondary credit shall not be  
81 eligible for any other state student financial aid at an eligible institution for courses taken under  
82 the program.



83 (G) Hours for courses taken at an eligible institution pursuant to this Act by a  
84 participating eligible student shall not count against any maximum hourly caps which may be  
85 applicable for purposes of [HOPE scholarships or grants].

86 (H) Any person who knowingly makes or furnishes any false statement or  
87 misrepresentation, or who accepts such statement or misrepresentation knowing it to be false, for  
88 the purpose of enabling an eligible institution to obtain wrongfully any payment under this Act  
89 shall be guilty of a misdemeanor.

90  
91 Section 4. [*Severability*.] [Insert severability clause.]

92  
93 Section 5. [*Repealer*.] [Insert repealer clause.]

94  
95 Section 6. [*Effective Date*.] [Insert effective date.]

# Providing Call Locations During Emergencies

This Act requires wireless telecommunications carriers disclose the location of cell phone callers when such callers use their cell phones to make emergency calls. The Act directs that no cause of action shall lie in any court against any wireless telecommunications carrier, its officers, employees, agents or other specified persons for providing call location information while acting in good faith and in accordance with the provisions of the Act. The Act also directs the state bureau of investigation to collect and distribute information about wireless carriers doing business in the state to public safety answering points throughout the state.

Submitted as:

Kansas

[Section 1 of SB336](#) (excludes Section 2)

Status: Enacted into law in 2009. SB336 is a technical measure that reconciles conflicting statutes and corrects bill drafting errors that were in related 2009 legislation. As such, this draft is based upon just the language in Section 1 of SB336.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “The Wireless Caller Location  
2 Disclosure Act.”  
3

4           Section 2. [*Conditions Requiring Wireless Telecommunications Carriers to Disclose the*  
5 *Location of Telecommunications Devices*.]

6           (a) Upon request of a law enforcement agency, a wireless telecommunications carrier  
7 shall provide call location information concerning the telecommunications device of the user to  
8 the requesting law enforcement agency in order to respond to a call for emergency services or in  
9 an emergency situation that involves the risk of death or serious physical harm.

10          (b) Notwithstanding any other provision of law to the contrary, nothing in this section  
11 prohibits a wireless telecommunications carrier from establishing protocols by which the carrier  
12 could voluntarily disclose call location information.

13          (c) No cause of action shall lie in any court against any wireless telecommunications  
14 carrier, its officers, employees, agents or other specified people for providing call location  
15 information while acting in good faith and in accordance with the provisions of this section.

16          (d) (1) The [state bureau of investigation] shall obtain contact information for all  
17 wireless telecommunications carriers authorized to do business in this state or submitting to the  
18 jurisdiction thereof in order to facilitate a request from a law enforcement agency for call  
19 location information in accordance with this section.

20               (2) The [state bureau of investigation] shall disseminate the information obtained  
21 pursuant to subsection (d)(1) on a [quarterly] basis or immediately as changes occur, to all public  
22 safety answer points in the state.

23          (e) Rules and regulations shall be promulgated by the [director of the state bureau of  
24 investigation] to fulfill the requirements of this section no later than [insert date].  
25

26           Section 3. [*Severability*.] [Insert severability clause.]  
27

28           Section 4. [*Repealer*.] [Insert repealer clause.]  
29

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

# Service Charges on Telephone Bills

This Act restricts how third parties add charges to telephone bills.

Submitted as:

Illinois

[Public Act 096-0827](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Authorizing and  
2     Verifying Product and Services Charges on Telephone Bills.”  
3

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

5           (1) “Billing agent” means any entity that submits charges to the billing carrier on behalf of  
6     itself or any service provider.

7           (2) “Billing carrier” means any telecommunications carrier as defined in [insert citation],  
8     that issues a bill directly to a customer for any product or service not provided by a  
9     telecommunications carrier.

10          (3) “Service provider” means any entity that offers a product or service to a consumer and  
11     that directly or indirectly charges to or collects from a consumer's bill received from a billing  
12     carrier an amount for the product or service.  
13

14          Section 3. [*Exclusions.*] This Act does not apply to the provision of services and products  
15     by a telecommunications carrier subject to the provisions of [insert citation], by a  
16     telecommunications carrier's affiliates, or an affiliated cable or video provider, as defined in  
17     [insert citation], or by a provider of public mobile services, as defined in [insert citation].  
18

19          Section 4. [*Requirements for Submitting Charges.*]

20          (A) A service provider or billing agent may submit charges for a product or service to be  
21     billed on a consumer's telephone bill on or after the effective date of this Act only if:

22           (1) the service provider offering the product or service has clearly and  
23     conspicuously disclosed all material terms and conditions of the product or service being offered,  
24     including, but not limited to, all charges; and the fact that the charges for the product or service  
25     shall appear on the consumer's telephone bill;

26           (2) after the clear and conspicuous disclosure of all material terms and conditions  
27     as described in paragraph (1) of this subsection (A), the consumer has expressly consented to  
28     obtain the product or service offered and to have the charges appear on the consumer's telephone  
29     bill and the consent has been verified as provided in subsection (B) of this section of this Act;

30           (3) the service provider offering the product or service or any billing agent for the  
31     service provider has provided the consumer with a toll-free telephone number the consumer may  
32     call and an address to which the consumer may write to resolve any billing dispute and to answer  
33     questions; and

(4) the service provider offering the product or service or the billing agent has taken effective steps to determine that the consumer who purportedly consented to obtain the product or service offered is authorized to incur charges for the telephone number to be billed.

(B) The consumer consent required by subsection (A)(2) of this section must be verified by the service provider offering the product or service before any charges are submitted for billing on a consumer's telephone bill. A record of the consumer consent and verification must be maintained by the service provider offering the product or service for a period of at least [24 months] immediately after the consent and verification have been obtained. The method of obtaining consumer consent and verification must include one or more of the following:

(1) A writing signed and dated by the consumer to be billed that clearly and conspicuously discloses the material terms and conditions of the product or service being offered in accordance with subsection (A)(1) of this section and clearly and conspicuously states that the consumer expressly consents to be billed in accordance with subsection (A)(2) of this section as follows:

(a) if the writing is in electronic form, then it shall contain the consumer disclosures required by Section 101(c) of the federal Electronic Signatures in Global and National Commerce Act; and

(b) the writing shall be a separate document or easily separable document or located on a separate screen or webpage containing only the disclosures and consent described in section (A) of this section.

(2) Third party verification by an independent third party that:

(a) clearly and conspicuously discloses to the consumer to be billed all of the information required by subsection (A)(1) of this section;

(b) operates from a facility physically separate from that of the service provider offering the product or service;

(c) is not directly or indirectly managed, controlled, directed, or owned wholly or in part by the service provider offering the product or service;

(d) does not derive commissions or compensation based upon the number of sales confirmed;

(e) tape records the entire verification process, with prior consent of the consumer to be billed; and

(f) obtains confirmation from the consumer to be billed that he or she authorized the purchase of the offered good or service.

(C) All verifications must be conducted in the same language that was used in the underlying sales transaction.

(D) Unless verification is required by federal law or rules implementing federal law, subsection (B) of this section does not apply to customer-initiated transactions with a certificated telecommunications carrier for which the service provider has the appropriate documentation.

(E) This section does not apply to message telecommunications service charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services if the service provider has the necessary records to establish the billing for the call or service.

#### Section 5. *[Records of Disputed Charges.]*

(A) Every service provider or billing agent shall maintain records of every disputed charge for a product or service placed on a consumer's bill.

79 (B) The record required under this section shall contain for every disputed charge all of  
80 the following:

- 81 (1) any affected telephone numbers and, if available, addresses;  
82 (2) the date the consumer requested that the disputed charge be removed from the  
83 consumer's bill;  
84 (3) the date the disputed charge was removed from the consumer's telephone bill;  
85 and  
86 (4) the date action was taken to refund or credit to the consumer any money that  
87 the consumer paid for the disputed charges.

88 (C) The record required by this section shall be maintained for at least [24 months].

89 (D) Billing agents shall take reasonable steps designed to ensure that service providers on  
90 whose behalf they submit charges to a billing carrier comply with the requirements of this Act.

91 (E) Any service provider or billing agent who violates this Act commits an unlawful  
92 practice as defined in [insert citation].

93  
94 Section 6. [*Severability*.] [Insert severability clause.]

95  
96 Section 7. [*Repealer*.] [Insert repealer clause.]

97  
98 Section 8. [*Effective Date*.] [Insert effective date.]

# Small Wind Innovation Zones

This Act directs the state utilities division to establish and administer a small wind innovation zone program to optimize local, regional, and state benefits from wind energy and to facilitate and expedite interconnection of small wind energy systems with electric utilities throughout the state. “Small wind innovation zone” means a political subdivision of the state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, a local commission, or small wind energy system owners who agree to certain terms.

The Act directs the state chapters of the National League of Cities and National Association of Counties to develop a model ordinance with the state wind energy association and representatives from the utility industry that political subdivisions in the state can use to establish small wind innovation zones. The legislation also directs the state utilities board to create a model interconnection agreement that owners of small wind energy systems can use to connect to energy utilities.

Submitted as:

Iowa

[House File 810 – Enrolled](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act Providing for the  
2 Establishment of Small Wind Innovation Zones.”

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

5           (1) “Electric utility” means a public utility that furnishes electricity to the public for  
6 compensation and which enters into a model interconnection agreement with the owner of a small  
7 wind energy system as provided in Section 5 of this Act.

8           (2) “Small wind energy system” means a wind energy conversion system that collects and  
9 converts wind into energy to generate electricity which has a nameplate generating capacity of  
10 [one hundred kilowatts] or less.

11           (3) “Small wind innovation zone” means a political subdivision of this state, including but  
12 not limited to a [city, county, township, school district, community college, area education  
13 agency, institution under the control of the state board of regents, or any other local commission,  
14 association, or tribal council] which adopts, or is encompassed within a local government which  
15 adopts the [model ordinance] as provided in Section 4 of this Act.

16  
17           Section 3. [*Model Ordinance to Establish a Small Wind Innovation Zone.*] The state  
18 [league of cities], the [association of counties], the [environmental council], [wind energy  
19 association], and representatives from the utility industry shall consult and develop a [model  
20 ordinance] to be offered on both the state [league of cities’] and the state [association of  
21 counties’] Internet sites and made available for use by a local government which constitutes or  
22 encompasses a political subdivision that is applying for designation as a Small Wind Innovation  
23 Zone. A local government adopting the [model ordinance] shall establish an expedited approval

process with regard to small wind energy systems in compliance with the [ordinance] in order to qualify as a Small Wind Innovation Zone.

Section 4. [*Model Interconnection Agreement.*] The [utilities board] shall develop a [Model Interconnection Agreement] by [insert date], for utilization within a small wind innovation zone by the owner of a small wind energy system seeking to interconnect with an electric utility. The [interconnection agreement] shall ensure that the energy produced can be safely interconnected with the utility without causing any adverse or unsafe consequences and is consistent with the electric utility's resource needs. The [board] shall establish by rule procedures for modification of the [Model Interconnection Agreement] upon mutually agreeable terms and conditions in unique or unusual circumstances, subject to [board] approval. Electric utilities shall consider adopting the [Model Interconnection Agreement].

Section 5. [*Small Wind Innovation Zone Program.*]

(A) The [utilities division] shall establish and administer a Small Wind Innovation Zone Program to optimize local, regional, and state benefits from wind energy and to facilitate and expedite interconnection of small wind energy systems with electric utilities throughout this state. Pursuant to the program, the owner of a small wind energy system located within a small wind innovation zone desiring to interconnect with an electric utility shall benefit from a streamlined application process, can qualify under a [model ordinance], and may use a [model interconnection agreement].

(B) A political subdivision seeking to be designated a Small Wind Innovation Zone shall apply to the [division] upon a form developed by the [division]. The [division] shall approve an application which documents that the applicable local government has adopted the model ordinance developed under Section 3 of this Act or is in the process of amending an existing zoning ordinance to comply with the [model ordinance] developed under Section 3 of this Act and that an electric utility operating within the political subdivision has agreed to utilize the [model interconnection agreement] developed under Section 4 of this Act to contract with the small wind energy system owners who agree to its terms.

Section 6. [*Tax Credit Incentives.*] The owner of a small wind energy system operating within a Small Wind Innovation Zone shall qualify for a renewable energy tax credit pursuant to [insert citation].

Section 7. [*Reporting Requirements.*] The [division] shall prepare a report summarizing the number of applications received from political subdivisions seeking to be designated a Small Wind Innovation Zone, the number of applications granted, the number of small wind energy systems generating electricity within each Small Wind Innovation Zone, and the amount of wind energy produced, and shall submit the report to the members of the [general assembly] [annually] by [January 1].

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

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

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

# Sports Concussions

This Act requires school districts ensure coaches get annual training to recognize when players exhibit concussion symptoms and how to seek proper medical treatment for players who exhibit such symptoms. The bill prohibits coaches from allowing players to practice or play in a game if the player exhibits concussion symptoms or has been diagnosed as having had a concussion until the player is cleared to play by a health care professional.

Submitted as:

Oregon

[SB 348 / Chapter 661, 2009 Laws](#)

Status: Enacted into law in 2009.

Comment: A [U.S. Department of Health And Human Services Centers for Disease Control and Prevention Fact Sheet for Coaches](#) states “A concussion is an injury that changes how the cells in the brain normally work. Even a ‘ding,’ ‘getting your bell rung,’ or what seems to be a mild bump or blow to the head can be serious.”

## Suggested State Legislation

(Title, enacting clause, etc.)

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

3  
4           Section 2. [*School Athletics and Concussions.*]

5           (1) As used in this section, “coach” means a person who instructs or trains members on a  
6 school athletic team, as identified by criteria established by the [state board of education] by rule  
7 under [insert citation].

8           (2)   (a) Each school district shall ensure that coaches receive annual training to learn  
9 how to recognize the symptoms of a concussion and how to seek proper medical treatment for a  
10 person suspected of having a concussion.

11                   (b) The [board] shall establish by rule the requirements of the training described in  
12 paragraph (2)(a) of this section, which shall be provided by using community resources to the  
13 extent practicable and timelines to ensure that, to the extent practicable, every coach receives the  
14 training described in paragraph (2)(a) of this section before the beginning of the season for the  
15 school athletic team.

16           (3)   (a) A coach may not allow a member of a school athletic team to participate in any  
17 athletic event or training on the same day that the member exhibits signs, symptoms or behaviors  
18 consistent with a concussion following an observed or suspected blow to the head or body, or if  
19 the member has been diagnosed with a concussion.

20                   (b) A coach may allow a member of a school athletic team who is prohibited from  
21 participating in an athletic event or training, as described in paragraph (2)(a) of this section, to  
22 participate in an athletic event or training no sooner than the day after the member experienced a  
23 blow to the head or body and only after the member no longer exhibits signs, symptoms or



24 behaviors consistent with a concussion and receives a medical release form from a health care  
25 professional.

26  
27 Section 3. [*Severability*.] [Insert severability clause.]

28  
29 Section 4. [*Repealer*.] [Insert repealer clause.]

30  
31 Section 5. [*Effective Date*.] [Insert effective date.]

# State Distracted Driving Laws Note

According to the Consumer Electronics Association, over the past year, state policymakers have focused on the activities and behaviors motorists engage in while operating a motor vehicle, especially with respect to distracted driving. State policy approaches to driver distraction must be driven by well-grounded science. Recent “real-world” data is now allowing people to understand the true impact of all distractions, including in-vehicle electronics, on driver performance, and the Consumer Electronics Association maintains that “Naturalistic” studies conducted under actual driving conditions should be given greater consideration than studies used with simulators.

One of those studies the Association cites is the “[The 100-Car Naturalistic Driving Study](#)” conducted by Virginia Tech Transportation Institute and released a few years ago. The 100-Car Naturalistic Driving Study is the first instrumented-vehicle study undertaken with the primary purpose of collecting large-scale, naturalistic driving data.

This study makes several important findings including the chances of an accident significantly increases when a driver engages in an activity that requires them to take their eyes off the road for more than two seconds. Additionally, the recent naturalistic driving studies have confirmed that manual texting while driving significantly increases the risk of a crash. Therefore, any state policymaking in this area should focus on those activities that require drivers to take their eyes off the road.

According to the Consumer Electronics Association, research has also shown that younger drivers typically do not have the skill set to perform secondary tasks while driving safely. Accordingly, it is important for initiatives that restrict mobile phone use for novice drivers or drivers operating under a graduated drivers’ license.

State policy considerations must take into account both the current state of technology and the likelihood of future innovations. Policies should be carefully calibrated so as not to inadvertently prohibit new technologies that could benefit drivers. For example, regulations should not prohibit voice-operated texting where the real concern is manual entry and operation of hand-held devices.

As such, state policy approaches should focus on driver behavior and activities rather than specific technologies or products. Scientific research has demonstrated driver distraction can arise from a wide variety of sources – conversations with passengers, eating, consuming beverages, smoking, tending to children, and other such activities. Many products developed today for consumers use while driving are intended to increase safety while on the roadways. In fact, consumer electronics manufactures have developed products to reduce the amount of time a driver must spend to take their eyes away from the road and products that are aimed at increasing safety, like global positioning systems, are a much safer alternative than reading large maps and confusion when lost.

At the state level, many bills have been proposed to restrict distracted driving. The behaviors these bills target range from restricting drivers under the age of 18 from engaging in certain activities to restricting certain behaviors such as texting while operating a motor vehicle and prohibit the use of products that require the driver to excessively remove their hands from the steering wheel. To date, three states have enacted laws that target the most egregious acts of distracted driving and focus on modifying driver’s behaviors rather than singling out certain products.

The most comprehensive bill has been enacted by Maine, which addresses the overall behavior of distracted driving while acknowledging that distractions may come from multiple sources. The state legislature in Maine passed LD 6 ([Chapter Law 446](#)) in 2009 as an Act to

establish a driver distraction law and focuses on the operation of a motor vehicle while distracted. The bill is very general and sends the signal that driving while distracted is problematic. This bill could be used to educate drivers about driver distractions and demonstrates a state commitment to ensuring motorists in their state drive safely and responsibly. Distracted driving infractions are considered secondary infractions.

Other states have addressed the specific issue of handheld texting while driving and use of in-vehicle technology by young or novice drivers:

In 2009, the Maryland legislature enacted Senate Bill 98 ([Chapter Law 194](#)), an Act concerning Motor Vehicles – Use of Text Messaging Device While Driving – Prohibition, which was a broad sweeping bill to ban the behavior of texting while driving. Specifically, this law prohibits a person from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of the roadway; specifying exceptions for use of a global positioning system, or text messaging to contact a 911 system; etc. This law makes texting while driving a misdemeanor subject to a fine of not more than \$500.

In 2009, the Colorado legislature enacted House Bill 1094 ([Chapter Law 375](#)) which prohibited drivers under the age of 18 from using a wireless telephone to text or make phone calls while driving. Violations constitute a Class A traffic infraction, with a penalty of \$50. Fines increase for subsequent violations.

These three bills combined target the areas of largest concern for distracted driving and can serve as templates for other states to model. The bills target certain behaviors while driving such as texting and youth access as well as establishing a general fact that driving while distracted is dangerous. As the driver distraction issue is multifaceted, the three different pieces of legislation noted above provide reasonable, fact-based approaches to increasing roadway safety.

Interested readers can also access “[A Sample Law to Prohibit Texting While Driving](#)” and related information from [Distraction.gov](#), and a [100-Car Naturalistic Study Fact Sheet](#) by the [Virginia Tech Transportation Institute](#).

# State Employee Furloughs

This Act sets criteria for furloughing state employees.

Submitted as:

South Carolina

[H3378/Act No. 8](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Establish Guidelines for  
2 Furloughing State Employees.”

3  
4           Section 2. [*Guidelines for Furloughing State Employees.*]

5           (A) In a fiscal year in which the general funds appropriated for a state agency are less  
6 than the general funds appropriated for that agency in the prior fiscal year, or in a fiscal year in  
7 which an agency that is funded by other funds and projects the collection of those funds to be  
8 less than in the prior fiscal year, or whenever the [General Assembly] or the [state budget and  
9 control board] implements a midyear across-the-board budget reduction, agency heads may  
10 institute employee furlough programs of not more than [ten working days in the fiscal year in  
11 which the deficit is projected to occur]. The furlough program must:

12                   (1) include all employees in an agency or within a designated department or  
13 program regardless of source of funds or place of work, including all classified and unclassified  
14 employees in the designated area; or

15                   (2) be based upon pay band for classified employees and based upon pay rate for  
16 unclassified employees within the agency or designated department respectively. If the state  
17 agency will incur costs for overtime under the federal Fair Labor Standards Act, [law  
18 enforcement employees and correctional employees] may be exempted from a mandatory  
19 furlough.

20           (B) [Employees who provide direct patient or client care and front-line employees who  
21 deliver direct customer services] may be exempted from a mandatory furlough. The mandatory  
22 furlough must include the agency head. [Constitutional officers] are exempt from mandatory  
23 furlough.

24           (C) Scheduling of furlough days, or portions of days, shall be at the discretion of the  
25 agency head, but under no circumstances should the agency close completely. During this  
26 furlough, affected employees shall be entitled to participate in the same state benefits as  
27 otherwise available to them except for receiving their salaries.

28           (D) As to those benefits that require employer and employee contributions, including but  
29 not limited to contributions to the [state retirement system] or the [optional retirement program],  
30 the state agencies, institutions, and departments are responsible for making both employer and  
31 employee contributions if coverage would otherwise be interrupted; and as to those benefits  
32 which require only employee contributions, the employee remains solely responsible for making  
33 those contributions.

34           (E) Placement of an employee on furlough under this provision does not constitute a  
35 grievance or appeal under the state [Employee Grievance Procedure Act].

36 (F) In the event the reduction for the state agency, institution, or department is due solely  
37 to the [General Assembly] transferring or deleting a program, this section does not apply.

38 (G) The implementation of a furlough program authorized by this Act shall be on an  
39 agency-by-agency basis. Agencies may allocate the employee's reduction in pay over the  
40 balance of the fiscal year for payroll purposes regardless of the pay period within which the  
41 furlough occurs. In the event that an agency implements both a voluntary furlough program and a  
42 mandatory furlough program during the fiscal year, furlough days taken voluntarily shall count  
43 toward furlough days required by the mandatory furlough.

44 (H) The [state budget and control board] shall promulgate guidelines and policies, as  
45 necessary, to implement the provisions of this Act.

46 (I) State agencies shall report information about furloughs to the [office of human  
47 resources of the state budget and control board].

48 (J) The [office of human resources of the state budget and control board] must provide  
49 consultation and guidance to each state agency implementing a furlough or reduction in force  
50 regarding the long term career development of its employees and the potential financial benefit  
51 of implementing a furlough program or reduction in force.

52 (K) The provisions of this Act do not apply to employees of those state agencies or  
53 institutions covered by [insert citation], and [insert citation] continues to apply to those  
54 employees in the manner provided by law.

55  
56 Section 3. *Severability.* [Insert severability clause.]

57  
58 Section 4. *Repealer.* [Insert repealer clause.]

59  
60 Section 5. *Effective Date.* [Insert effective date.]

# Sudden Cardiac Arrest, CPR and AEDs

This Act directs the state bureau of emergency medical services to work with federal, state, and local agencies to encourage people to complete courses about Cardiopulmonary Resuscitation (CPR) and using Automatic External Defibrillators (AEDs). It permits a person to administer CPR or use an AED without a license or certificate or training to do so on someone reasonably believed to be in sudden cardiac arrest. The bill provides immunity from civil liability for certain acts or omissions relating to administering CPR or using an AED unless the actions constitute gross negligence or willful misconduct. However, the Act does not relieve a manufacturer, designer, developer, marketer, or commercial distributor from liability relating to an AED or an AED accessory.

This legislation also requires a person who owns or leases an AED to report certain information, including the location of, or removal of, the AED, to the emergency medical dispatch center that provides emergency dispatch services for that area.

Submitted as:

Utah

[HB 31](#)

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 “Sudden Cardiac Arrest Survival  
2 Act.”

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

5           (1) “Automatic external defibrillator” or “AED” means an automated or automatic  
6 computerized medical device that:

7               (a) has received pre-market notification approval from the United States Food and  
8 Drug Administration, pursuant to Section 360(k), Title 21 of the United States Code;

9               (b) is capable of recognizing the presence or absence of ventricular fibrillation or  
10 rapid ventricular tachycardia;

11               (c) is capable of determining, without intervention by an operator, whether  
12 defibrillation should be performed; and

13               (d) upon determining that defibrillation should be performed, automatically  
14 charges, enabling delivery of an electrical impulse through the chest wall and to a person's heart.

15           (2) “Bureau” means the [bureau of emergency medical services], within the [department].

16           (3) “Cardiopulmonary resuscitation” or “CPR” means artificial ventilation or external  
17 chest compression applied to a person who is in respiratory or cardiac arrest.

18           (4) “Emergency medical dispatch center” means a public safety answering point, as  
19 defined in [insert citation], that is designated as an emergency medical dispatch center by the  
20 [bureau].

21           (5) “Sudden cardiac arrest” means a life-threatening condition that results when a  
22 person's heart stops or fails to produce a pulse.

23  
24           Section 3. [*Education and Training.*]

(A) The [bureau] shall work in cooperation with federal, state, and local agencies and schools, to encourage individuals to complete courses on the administration of CPR and the use of an AED.

(B) A person who owns or leases an AED shall encourage each person who is likely to use the AED to complete courses on the administration of CPR and the use of an AED.

Section 4. *[Authority to Administer CPR or Use an AED.]*

(A) A person may administer CPR on another person without a license, certificate, or other governmental authorization if the person reasonably believes that the other person is in sudden cardiac arrest.

(B) A person may use an AED on another person without a license, certificate, or other governmental authorization if the person reasonably believes that the other person is in sudden cardiac arrest.

Section 5. *[Immunity.]*

(A) Except as provided in Subsection (C), the following people are not subject to civil liability for any act or omission relating to preparing to care for, responding to care for, or providing care to, another person who reasonably appears to be in sudden cardiac arrest:

(1) a person authorized under Section 4 (A) to administer CPR, who:

(a) gratuitously and in good faith attempts to administer or administers CPR to another person; or

(b) fails to administer CPR to another person;

(2) a person authorized under Section 4 (B) to use an AED who:

(a) gratuitously and in good faith attempts to use or uses an AED; or

(b) fails to use an AED;

(3) a person that teaches or provides a training course in administering CPR or using an AED;

(4) a person that acquires an AED;

(5) a person that owns, manages, or is otherwise responsible for the premises or conveyance where an AED is located;

(6) a person who retrieves an AED in response to a perceived or potential sudden cardiac arrest;

(7) a person that authorizes, directs, or supervises the installation or provision of an AED;

(8) a person involved with, or responsible for, the design, management, or operation of a CPR or AED program;

(9) a person involved with, or responsible for, reporting, receiving, recording, updating, giving, or distributing information relating to the ownership or location of an AED under Section 6 of this Act; or

(10) a physician who gratuitously and in good faith:

(a) provides medical oversight for a public AED program; or

(b) issues a prescription for a person to acquire or use an AED.

(B) This section does not relieve a manufacturer, designer, developer, marketer, or commercial distributor of an AED, or an accessory for an AED, of any liability.

(C) The liability protection described in Subsection (A) does not apply to an act or omission that constitutes gross negligence or willful misconduct.

Section 6. *[Reporting Location of Automatic External Defibrillators.]*

(A) Beginning [insert date], in accordance with Subsection (B) and except as provided in

74 Subsection (C):

75 (1) a person who owns or leases an AED shall report the person's name, address,  
76 and telephone number, and the exact location of the AED, in writing, to the emergency medical  
77 dispatch center that provides emergency dispatch services for the location where the AED is  
78 installed, if the person:

- 79 (a) installs the AED;  
80 (b) causes the AED to be installed; or  
81 (c) allows the AED to be installed; and

82 (2) a person who owns or leases an AED that is removed from a location where it  
83 is installed shall report the person's name, address, and telephone number, and the exact location  
84 from which the AED is removed, in writing, to the emergency medical dispatch center that  
85 provides emergency dispatch services for the location from which the AED is removed, if the  
86 person:

- 87 (a) removes the AED;  
88 (b) causes the AED to be removed; or  
89 (c) allows the AED to be removed.

90 (B) A report required under Subsection (A) shall be made within [30] days after the day  
91 on which the AED is installed or removed.

92 (C) Subsection (A) does not apply to an AED that is installed in, or removed from, a  
93 private residence.

94 (D) Beginning [insert date], a person who owns or leases an AED that is installed in, or  
95 removed from, a private residence may voluntarily report the location of, or removal of, the AED  
96 to the emergency medical dispatch center that provides emergency dispatch services for the  
97 location where the private residence is located.

98 (E) The [department] may not impose a penalty on a person for failing to comply with the  
99 requirements of this section.

100  
101 Section 7. *[Distributors to Notify of Reporting Requirements.]* A person in the business of  
102 selling or leasing an AED shall, at the time the person provides, sells, or leases an AED to  
103 another person, notify the other person, in writing, of the reporting requirements described in  
104 Section 6 of this Act.

105  
106 Section 8. *[Duties of Emergency Medical Dispatch Centers.]*

107 (A) Beginning [insert date], an emergency medical dispatch center shall:

108 (1) implement a system to receive and manage the information reported to the  
109 emergency medical dispatch center under Section 6 of this Act;

110 (2) record in the system described in Subsection (1), all information received  
111 under Section 6 of this Act;

112 (3) inform a person who calls to report a potential incident of sudden cardiac  
113 arrest of the location of any nearby AED; and

114 (4) provide the information contained in the system described in Subsection (1),  
115 upon request, to the [bureau] or another emergency medical dispatch center.

116  
117 Section 9. *[Severability.]* [Insert severability clause.]

118  
119 Section 10. *[Repealer.]* [Insert repealer clause.]

120  
121 Section 11. *[Effective Date.]* [Insert effective date.]



# Telemedicine Insurance

This Act prohibits carriers offering health plans in the state from denying coverage on the basis that the coverage is provided through telemedicine if the health care service would be covered were it provided through in-person consultation between the covered person and a health care provider. Coverage for health care services provided through telemedicine must be determined in a manner consistent with coverage for health care services provided through in-person consultation.

Submitted as:

Maine

[Chapter 169 of 2009](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Provide for Insurance  
2 Coverage of Telemedicine Services.”

3  
4           Section 2. [*Coverage for Telemedicine Services.*]

5           (A) As used in this Act “telemedicine,” as it pertains to the delivery of health care  
6 services, means the use of interactive audio, video or other electronic media for the purpose of  
7 diagnosis, consultation or treatment. “Telemedicine” does not include the use of audio-only  
8 telephone, facsimile machine or e-mail.

9           (B) A carrier offering a health plan in this state may not deny coverage on the basis that  
10 the coverage is provided through telemedicine if the health care service would be covered were it  
11 provided through in-person consultation between the covered person and a health care provider.

12           (C) Coverage for health care services provided through telemedicine must be determined  
13 in a manner consistent with coverage for health care services provided through in-person  
14 consultation.

15           (D) A carrier may offer a health plan containing a provision for a deductible, copayment  
16 or coinsurance requirement for a health care service provided through telemedicine as long as the  
17 deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance  
18 applicable to an in-person consultation.

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.]

# Uniform Assignment of Rents Act

According to the Uniform Law Commissioners (ULC), the Uniform Assignment of Rents Act establishes a comprehensive statutory model for the creation, perfection, and enforcement of security interests in rents. When a creditor takes a mortgage on rental property (whether residential, commercial or industrial), does that creditor have a protected interest in the rent (income) from that rental property in the event the debtor/owner of the property defaults on the mortgage? The answer is generally and surprisingly no. Usually a mortgagee (the creditor) takes a separate assignment of rents from the mortgagor (debtor), which provides a direct right to rent payments to the mortgagee in the event of a default. But even then, the right to payment is uncertain against other competing creditors. What happens if the tenant pays the mortgagor without notice of the assignment and the mortgagee subsequently demands another payment is not clearly set out. This may put tenants in the untenable position of having to pay twice. Given the sophistication of modern real estate transactions it is a surprise that there is so much uncertainty about this ancillary, though important issue.

For that reason, the Uniform Law Commissioners promulgated the Uniform Assignment of Rents Act (UARA) in 2005. It provides basic rules that establish the “security interest” of the creditor, the rights of tenants to notice and the effect of notice, and the priority of the security interest against other creditors.

The term “security interest” is derived from commercial secured transactions law under Article 9 of the Uniform Commercial Code. A creditor’s security interest attaches to specific collateral that the creditor may possess in the event of a default on the debt. It “arises by agreement and secures performance of an obligation.” UARA provides that a “security instrument” (a mortgage, deed of trust, etc.) creates an assignment of rents unless the instrument expressly excludes such an assignment. Further, the assignment of rents creates a “presently effective security interest” which the creditor may then perfect. “Perfection” is another term derived from commercial secured transactions law. It occurs under UARA when a security instrument is registered/filed in the pertinent real estate records. Perfection provides priority in the collateral. That is, as of the date registered/filed, the security interest has priority over any unperfected security interests or security interests that are perfected by registering/filing after that date.

The effect is to make it clear that any mortgage, deed of trust or the like that provides a creditor an interest in a piece of real estate will also provide a security interest in the rental income of that property, all enforceable in the event there is a default on the debt.

An assignee of rents may obtain direct payment of rents from tenants by providing notice. UARA has specific informational provisions and a statutory form for notice that meets the informational requirements. Once notice is received, the tenant must pay the rent to the assignee. Any payment to the assignor will risk the obligation of double payment, unless the tenant occupies the rented premises as a primary residence. A copy of the notice to a tenant must also go to the assignor.

If more than one assignee gives a tenant notice, the tenant must always honor the latest notice provided. The tenant is not obligated to sort out any disputes over priority of the security interest in the rents.

Enforcement of a perfected security interest in rents may occur in two other forms. The assignee may petition for the appointment of a receiver in the event the assignor has consented or the assignee has been made insecure about enforcement of the security interest. The receiver then takes care of obtaining the rents. The second method is by notifying the assignor directly. The assignor is then required to pay proceeds of rent collection to the assignee directly.

UARA provides a remedy for the existing insecurities involved in obtaining a security interest in rents when a debtor defaults on a real estate obligation. Its uniform enactment in the states will be a boon to interstate real estate markets and it should be enacted in every state as soon as practicable.

As of December, 2009, Nevada and Utah were the only states that had enacted The Uniform Assignment of Rents Act. Interested readers can download the approved text of the Uniform Assignment of Rents Act at [www.nccusl.org](http://www.nccusl.org).

Submitted as:

Utah

[SB 54](#)

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 Assignment of Rents  
2 Act.”

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

5           (1) “Assignee” means a person entitled to enforce an assignment of rents.

6           (2) “Assignment of rents” means a transfer of an interest in rents in connection with an  
7 obligation secured by real property located in this state and from which the rents arise.

8           (3) “Assignor” means a person that makes an assignment of rents or the successor owner  
9 of the real property from which the rents arise.

10          (4) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the  
11 like.

12          (5) “Day” means calendar day.

13          (6) “Deposit account” means a demand, time, savings, passbook, or similar account  
14 maintained with a bank, savings bank, savings and loan association, credit union, or trust  
15 company.

16          (7) “Document” means information that is inscribed on a tangible medium or that is  
17 stored on an electronic or other medium and is retrievable in perceivable form.

18          (8) “Notification” means a document containing information that this [Act] requires a  
19 person to provide to another, signed by the person required to provide the information.

20          (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,  
21 limited liability company, association, joint venture, public corporation, government, or  
22 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

23          (10) “Proceeds” means personal property that is received or collected on account of a  
24 tenant's obligation to pay rents.

25          (11) “Purchase” means to take by sale, lease, discount, negotiation, mortgage, pledge,  
26 trust deed, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating  
27 an interest in property.

28          (12) “Rents” means:

29               (a) sums payable for the right to possess or occupy, or for the actual possession or  
30 occupation of, real property of another person;

31               (b) sums payable to an assignor under a policy of rental interruption insurance

32 covering real property;

33 (c) claims arising out of a default in the payment of sums payable for the right to  
34 possess or occupy real property of another person;

35 (d) sums payable to terminate an agreement to possess or occupy real property of  
36 another person;

37 (e) sums payable to an assignor for payment or reimbursement of expenses  
38 incurred in owning, operating and maintaining, or constructing or installing improvements on,  
39 real property; or

40 (f) any other sums payable under an agreement relating to the real property of  
41 another person that constitute rents under law of this state other than this [Act].

42 (13) "Secured obligation" means an obligation the performance of which is secured by an  
43 assignment of rents.

44 (14) "Security instrument" means a document, however denominated, that creates or  
45 provides for a security interest in real property, whether or not it also creates or provides for a  
46 security interest in personal property.

47 (15) "Security interest" means an interest in property that arises by agreement and  
48 secures performance of an obligation.

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

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

51 (b) to attach to or logically associate with the document an electronic sound,  
52 symbol, or process.

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

56 (18) "Submit for recording" means to submit a document complying with applicable legal  
57 standards, with required fees and taxes, to the appropriate governmental office under [insert  
58 citation].

59 (19) "Tenant" means a person that has an obligation to pay sums for the right to possess  
60 or occupy, or for possessing or occupying, the real property of another person.

61

### 62 Section 3. *[Manner of Giving Notification.]*

63 (1) Except as otherwise provided in Subsections (3) and (4), a person gives a notification  
64 or a copy of a notification under this [Act]:

65 (a) by depositing it with the United States Postal Service or with a commercially  
66 reasonable delivery service, properly addressed to the intended recipient's address as specified in  
67 Subsection (2), with first-class postage or cost of delivery provided for; or

68 (b) if the recipient agreed to receive notification by facsimile transmission,  
69 electronic mail, or other electronic transmission, by sending it to the recipient in the agreed  
70 manner at the address specified in the agreement.

71 (2) The following rules determine the proper address for giving a notification under  
72 Subsection (1):

73 (a) A person giving a notification to an assignee shall use the address for notices  
74 to the assignee provided in the document creating the assignment of rents, but, if the assignee has  
75 provided the person giving the notification with a more recent address for notices, the person  
76 giving the notification shall use that address.

77 (b) A person giving a notification to an assignor shall use the address for notices  
78 to the assignor provided in the document creating the assignment of rents, but, if the assignor has  
79 provided the person giving the notification with a more recent address for notices, the person  
80 giving the notification shall use that address.

(c) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

(3) If a person giving a notification pursuant to this [Act] and the recipient have agreed to the method for giving a notification, any notification must be given by that method.

(4) If a notification is received by the recipient, it is effective even if it was not given in accordance with Subsection (1) or (3).

#### Section 4. [*Security Interest Creates Assignment of Rents -- Assignment of Rents Creates Security Interest.*]

(1) An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

(2) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

#### Section 5. [*Recordation -- Perfection of Security Interest in Rents -- Priority of Conflicting Interests in Rents.*]

(1) A document creating an assignment of rents may be submitted for recording in the office of the county recorder for the county in which the property is situated in the same manner as any other document evidencing a conveyance of an interest in real property.

(2) Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this state other than this [Act] would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(3) Except as otherwise provided in Subsection (4), a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(a) acquires a judicial lien against the rents or the real property from which the rents arise; or

(b) purchases an interest in the rents or the real property from which the rents arise.

(4) A perfected security interest in rents has priority over the rights of a person described in Subsection (3) with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

#### Section 6. [*Enforcement of Security Interest in Rents.*]

(1) An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8, and 9 or any other method sufficient to enforce the assignment under law of this state other than this [Act].

(2) From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under Section 7, the receiver is entitled to collect all rents that:

- (a) have accrued but remain unpaid on that date; and  
(b) accrue on or after that date, as those rents accrue.

Section 7. [*Enforcement by Appointment of Receiver.*]

(1) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

- (a) the assignor is in default and:  
(i) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;  
(ii) it appears likely that the real property may not be sufficient to satisfy the secured obligation;  
(iii) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or  
(iv) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or  
(b) other circumstances exist that would justify the appointment of a receiver under law of this state other than this [Act].

(2) An assignee may file a petition for the appointment of a receiver in connection with an action:

- (a) to foreclose the security instrument;  
(b) for specific performance of the assignment;  
(c) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or  
(d) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

(3) An assignee that files a petition under Subsection (2) shall also give a copy of the petition in the manner specified in Section 3 to any other person that, ten days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

(4) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

(5) From the date of its appointment, a receiver is entitled to collect rents as provided in Subsection 6 (2). The receiver also has the authority provided in the order of appointment and law of this state other than this [Act].

(6) The following rules govern priority among receivers:

(a) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this [Act] has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.

(b) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

Section 8. [*Enforcement by Notification to Assignor.*]

(1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under Section 6. The assignee shall also give a copy of the notification to any other person that, ten days before the notification date, held a recorded assignment of rents arising from the real property.

179 (2) If an assignee enforces an assignment of rents under this section, the date of  
180 enforcement is the date on which the assignor receives a notification under Subsection (1).

181 (3) An assignee's failure to give a notification under Subsection (1) to any person holding  
182 a recorded assignment of rents does not affect the effectiveness of the notification as to the  
183 assignor, but the other person is entitled to any relief permitted under law of this state other than  
184 this [Act].

185 (4) An assignee that holds a security interest in rents solely by virtue of Subsection (1)  
186 may not enforce the security interest under this section while the assignor occupies the real  
187 property as the assignor's primary residence.

188

189 Section 9. [*Enforcement by Notification to Tenant.*]

190 (1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may  
191 give to a tenant of the real property a notification demanding that the tenant pay to the assignee  
192 all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of  
193 the notification to the assignor and to any other person that, ten days before the notification date,  
194 held a recorded assignment of rents arising from the real property. The notification must be  
195 signed by the assignee and:

196 (a) identify the tenant, assignor, assignee, premises covered by the agreement  
197 between the tenant and the assignor, and assignment of rents being enforced;

198 (b) provide the recording data for the document creating the assignment or other  
199 reasonable proof that the assignment was made;

200 (c) state that the assignee has the right to collect rents in accordance with the  
201 assignment;

202 (d) direct the tenant to pay to the assignee all unpaid accrued rents and all  
203 unaccrued rents as they accrue;

204 (e) describe the manner in which Subsections (3) and (4) affect the tenant's  
205 payment obligations;

206 (f) provide the name and telephone number of a contact person and an address to  
207 which the tenant can direct payment of rents and any inquiry for additional information about the  
208 assignment or the assignee's right to enforce the assignment; and

209 (g) contain a statement that the tenant may consult a lawyer if the tenant has  
210 questions about its rights and obligations.

211 (2) If an assignee enforces an assignment of rents under this section, the date of  
212 enforcement is the date on which the tenant receives a notification substantially complying with  
213 Subsection (1).

214 (3) Subject to Subsection (4) and any other claim or defense that a tenant has under law  
215 of this state other than this [Act], following receipt of a notification substantially complying with  
216 Subsection (1):

217 (a) a tenant is obligated to pay to the assignee all unpaid accrued rents and all  
218 unaccrued rents as they accrue, unless the tenant has previously received a notification from  
219 another assignee of rents given by that assignee in accordance with this section and the other  
220 assignee has not canceled that notification;

221 (b) unless the tenant occupies the premises as the tenant's primary residence, a  
222 tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the  
223 assignee;

224 (c) a tenant's payment to the assignee of rents then due satisfies the tenant's  
225 obligation under the tenant's agreement with the assignor to the extent of the payment made; and

226 (d) a tenant's obligation to pay rents to the assignee continues until the tenant  
227 receives a court order directing the tenant to pay the rent in a different manner or a signed

document from the assignee canceling its notification, whichever occurs first.

(4) A tenant that has received a notification under Subsection (1) is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:

(a) ten days after the date the next regularly scheduled rental payment would be due; or

(b) 30 days after the date the tenant receives the notification.

(5) Upon receiving a notification from another creditor that is entitled to priority under Subsection 5 (3) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under Subsection (1) shall immediately give another notification to the tenant canceling the earlier notification.

(6) An assignee's failure to give a notification under Subsection (1) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this [Act].

(7) An assignee that holds a security interest in rents solely by virtue of Subsection 4 (1) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

Section 10. [*Notification to Tenant -- Form.*] No particular phrasing is required for the notification specified in Section 9. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of Section 9:

#### NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: \_\_\_\_\_  
Name of Tenant

Property Occupied by Tenant (the "Premises"): \_\_\_\_\_  
Address

Landlord: \_\_\_\_\_  
Name of landlord

Assignee: \_\_\_\_\_  
Name of assignee

Address of Assignee and Telephone Number of Contact Person:

\_\_\_\_\_  
Address of assignee

\_\_\_\_\_  
Telephone number of person to contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under \_\_\_\_\_  
Name of document  
(the "Assignment of Rents") dated \_\_\_\_\_, and recorded at \_\_\_\_\_



277 Date Recording data  
278 in the \_\_\_\_\_  
279 Appropriate governmental office under the recording act of this state  
280  
281 You may obtain additional information about the Assignment of Rents and the Assignee's right  
282 to enforce it at the address listed above.  
283 2. The Landlord is in default under the Assignment of Rents. Under the Assignment of  
284 Rents, the Assignee is entitled to collect rents from the Premises.  
285 3. This notification affects your rights and obligations under the agreement under which  
286 you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to  
287 consult with a lawyer, if your next scheduled rental payment is due within 30 days after you  
288 receive this notification, neither the Assignee nor the Landlord can hold you in default under  
289 your Agreement for nonpayment of that rental payment until ten days after the due date of that  
290 payment or 30 days following the date you receive this notification, whichever occurs first. You  
291 may consult a lawyer at your expense concerning your rights and obligations under your  
292 Agreement and the effect of this notification.  
293 4. You must pay to the Assignee at the address listed above all rents under your  
294 Agreement which are due and payable on the date you receive this notification and all rents  
295 accruing under your Agreement after you receive this notification. If you pay rents to the  
296 Assignee after receiving this notification, the payment will satisfy your rental obligation to the  
297 extent of that payment.  
298 5. Unless you occupy the Premises as your primary residence, if you pay any rents to the  
299 Landlord after receiving this notification, your payment to the Landlord will not discharge your  
300 rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding  
301 your payment to the Landlord.  
302 6. If you have previously received a notification from another person that also holds an  
303 assignment of the rents due under your Agreement, you should continue paying your rents to the  
304 person that sent that notification until that person cancels that notification. Once that notification  
305 is canceled, you must begin paying rents to the Assignee in accordance with this notification.  
306 7. Your obligation to pay rents to the Assignee will continue until you receive either:  
307 (a) a written order from a court directing you to pay the rent in a manner specified  
308 in that order; or  
309 (b) written instructions from the Assignee canceling this notification.  
310  
311 \_\_\_\_\_  
312 Name of assignee  
313  
314 \_\_\_\_\_  
315 By: Officer/authorized agent of assignee  
316  
317 Section 11. [*Effect of Enforcement.*] The enforcement of an assignment of rents by one or  
318 more of the methods identified in Sections 7, 8, and 9, the application of proceeds by the  
319 assignee under Section 12 after enforcement, the payment of expenses under Section 13, or an  
320 action under Subsection 14(4) does not:  
321 (1) make the assignee a purchaser in possession of the real property;  
322 (2) make the assignee an agent of the assignor;  
323 (3) constitute an election of remedies that precludes a later action to enforce the secured  
324 obligation;  
325 (4) make the secured obligation unenforceable;

- (5) limit any right available to the assignee with respect to the secured obligation;  
(6) limit, waive, or bar any foreclosure or power of sale remedy under the security instrument;  
(7) violate [cite the “one-action” statute of the state]; or  
(8) bar a deficiency judgment pursuant to any law of this state governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

Section 12. [*Application of Proceeds.*] Unless otherwise agreed, an assignee that collects rents under this [Act] or collects upon a judgment in an action under Subsection 14(4) shall apply the sums collected in the following order to:

- (1) the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by law of this state other than this [Act], reasonable attorney fees and costs incurred by the assignee;
- (2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;
- (3) payment of the secured obligation;
- (4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and
- (5) the assignor.

Section 13. [*Application of Proceeds to Expenses of Protecting Real Property -- Claims and Defenses of Tenant.*]

(1) Unless otherwise agreed by the assignee, and subject to Subsection (3), an assignee that collects rents following enforcement under Section 8 or 9 need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

(2) Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

(3) This [Act] does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this state other than this [Act].

Section 14. [*Turnover of Rents -- Commingling and Identifiability of Rents -- Liability of Assignor.*]

(1) In this section, “good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(2) If an assignor collects rents that the assignee is entitled to collect under this [Act]:

(a) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

(b) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

(3) For purposes of this [Act], cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted under law of this state other than this [Act] with respect to commingled funds.

(4) In addition to any other remedy available to the assignee under law of this state other than this [Act], if an assignor fails to turn over proceeds to the assignee as required by Subsection (2), the assignee may recover from the assignor in a civil action:

(a) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under Subsection (2); and

(b) reasonable attorney fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this state other than this [Act].

(5) The assignee may maintain an action under Subsection (4) without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in Section 12.

(6) Unless otherwise agreed, if an assignee entitled to priority under Subsection 5 (3) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under Section 8 or 9, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

#### Section 15. [*Perfection and Priority of Assignee's Security Interest in Proceeds.*]

(1) In this section:

(a) "Article 9" means Title 70A, Act 9a, Uniform Commercial Code – Secured Transactions, or, to the extent applicable to any particular issue, Article 9 as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Title 70A, Act 9a, Uniform Commercial Code - Secured Transactions.

(b) "Conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

(i) a security interest arising under Article 9; or

(ii) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

(2) An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

(3) Except as otherwise provided in Subsection (4), priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

(4) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.

(5) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest arising under a right of recoupment or setoff.

Section 16. [*Priority Subject to Subordination.*] This [Act] does not preclude subordination by agreement as to rents or proceeds.

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

This [Act] 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)).

Section 19. *[Application to Existing Relationships.]*

(1) Except as otherwise provided in this section, this [Act] governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before May 12, 2009.

(2) This [Act] does not affect an action or proceeding commenced before May 12, 2009.

(3) Subsection 4 (1) of this [Act] does not apply to any security instrument signed and delivered before May 12, 2009.

(4) This [Act] does not affect:

(a) the enforceability of an assignee's security interest in rents or proceeds if, immediately before May 12, 2009, that security interest was enforceable;

(b) the perfection of an assignee's security interest in rents or proceeds if, immediately before May 12, 2009, that security interest was perfected; or

(c) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before May 12, 2009, the interest of the other person was enforceable and perfected, and that priority was established.

# Uniform Collaborative Law Act

This Act establishes minimum requirements for collaborative law participation agreements, including written agreements, description of the matter submitted to a collaborative law process, and designation of collaborative lawyers. It requires that the collaborative law process be voluntary. It specifies when and how a collaborative law process begins and is terminated and creates a stay of proceedings when parties sign a participation agreement to attempt to resolve a matter related to a proceeding pending before a tribunal while allowing the tribunal to ask for periodic status reports. The legislation creates an exception to the stay of proceedings for a collaborative law process for emergency orders to protect health, safety, welfare, or interests of a party, a family member, or a dependent.

This Act authorizes courts to approve settlements arising out of a collaborative law process. It codifies the disqualification requirement of collaborative lawyers if a collaborative law process terminates and defines the scope of the disqualification requirement to both the matter specified in the collaborative law participation agreement and to matters related to the collaborative matter. The bill extends the disqualification requirement to lawyers in a law firm with which the collaborative lawyer is associated. It requires parties to a collaborative law participation agreement to voluntarily disclose relevant information during the collaborative law process without formal discovery requests and update information previously disclosed that has materially changed.

The legislation acknowledges that standards of professional responsibility and child abuse reporting for lawyers and other professionals are not changed by their participation in a collaborative law process and requires that lawyers disclose and discuss the material risks and benefits of a collaborative law process to help insure parties enter into collaborative law participation agreements with informed consent. This legislation creates an obligation on collaborative lawyers to screen clients for domestic violence and, if present, to participate in a collaborative law process only if the victim consents and the lawyer is reasonably confident that the victim will be safe and authorizes parties to reach an agreement on the scope of confidentiality of their collaborative law communications.

Submitted as:

Utah

[HB 284 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1           Section 1. [*Short Title.*] This Act may be cited as the “Uniform Collaborative Law Act.”
- 2
- 3           Section 2. [*Definitions.*] In this chapter:
- 4           (1) “Collaborative law communication” means a statement, whether oral or in a record, or
- 5 verbal or nonverbal, that:
- 6               (a) is made to conduct, participate in, continue, or reconvene a collaborative law
- 7 process; and
- 8               (b) occurs after the parties sign a collaborative law participation agreement and
- 9 before the collaborative law process is concluded.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

- (a) sign a collaborative law participation agreement; and
- (b) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement.

(6) “Law firm” means:

- (a) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association;
- (b) lawyers employed in a legal services organization;
- (c) the legal department of a corporation or other organization; or
- (d) the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeding” means:

- (a) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or
- (b) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) “Sign” means, with present intent to authenticate or adopt a record:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) “Tribunal” means:

- (a) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or
- (b) a legislative body conducting a hearing or similar process.

Section 3. [*Applicability.*] This chapter applies to a collaborative law participation agreement that meets the requirements of Section 4 of this Act.

Section 4. [*Collaborative Law Participation Agreement -- Requirements.*]

(1) A collaborative law participation agreement must:

(a) be in a record;  
(b) be signed by the parties;  
(c) state the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;  
(d) describe the nature and scope of the matter;  
(e) identify the collaborative lawyer who represents each party in the process; and  
(f) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

Section 5. *[Beginning and Concluding a Collaborative Law Process.]*

(1) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) resolution of a collaborative matter as evidenced by a signed record;  
(b) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(c) termination of the process.

(4) A collaborative law process terminates:

(a) when a party gives notice to other parties in a record that the process is ended;  
or

(b) when a party:

(i) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(ii) in a pending proceeding related to the matter:

(A) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(B) requests that the proceeding be put on the tribunal's calendar;

or

(C) takes similar action requiring notice to be sent to the parties; or

(c) except as otherwise provided by Subsection (5), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(5) A party's collaborative lawyer shall give prompt notice to all other parties of a discharge or withdrawal, in accordance with the Rules of Civil Procedure.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by Subsection (4)(c) is sent to the parties:

(a) the unrepresented party engages a successor collaborative lawyer; and

(b) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(ii) the agreement is amended to identify the successor collaborative lawyer; and

(iii) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

#### Section 6. [*Proceedings Pending Before Tribunal -- Status Report.*]

(1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to Subsection (3) and Sections 7 and 8, the filing shall include a request for a stay of the proceeding.

(2) Parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes and request the stay to be lifted. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under Subsection (1) may require parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(4) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

Section 7. [*Emergency Orders.*] During a collaborative law process, a court may issue emergency orders, including protective orders in accordance with [insert citation], to protect the health, safety, welfare, or interest of a party or member of a party's household.

Section 8. [*Approval of Agreement by Tribunal.*] A court may approve an agreement resulting from a collaborative law process.

Section 9. [*Disclosure of Information.*] Except as provided by law other than this chapter, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. Parties may define the scope of disclosure during the collaborative law process.

Section 10. [*Standards of Professional Responsibility and Mandatory Reporting Not Affected.*] This chapter does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

Section 11. [*Appropriateness of Collaborative Law Process.*] Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:



(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(a) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(b) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(c) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by the Rules of Professional Conduct.

#### Section 12. [*Coercive or Violent Relationship.*]

(1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(a) the party or the prospective party requests to begin or to continue a process; and

(b) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

Section 13. [*Confidentiality of Collaborative Law Communication.*] A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this chapter.

#### Section 14. [*Authority of Tribunal in Case of Noncompliance.*]

(1) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to comply with Section 11 or 12, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(a) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) reasonably believed they were participating in a collaborative law process.

(2) If a court makes the findings specified in Subsection (1), and the interests of justice require, the court may:

(a) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) apply the disqualification provisions of Sections 5 and 6; and  
(c) apply the privileges in the state [Rules of Evidence].

Section 15. [*Uniformity of Application and Construction.*] In applying and construing this Uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 16. [*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.A. Sec. 7001 et seq. (2009), but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.A. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Sec. 103(b) of that Act, 15 U.S.C.A. Sec. 294 7003(b).

# Uniform Debt Management Services Act Statement

Millions of Americans are in serious financial trouble at the start of the 21<sup>st</sup> Century. For example, consumer debt exceeds \$2.5 trillion, and the average American household carries more than \$8,500 credit-card debt. As a result, many people have turned to debt-counseling, debt-management, and debt-settlement firms to help them deal with their unsecured debts. These services have been available to people since the nineteen fifties. Some help debtors set up plans to pay off debts over time. Others help debtors negotiate agreements with creditors to settle for paying just a portion of the debt they owe. Most collect a percentage of the payments their debtor clients make to client creditors.

The history of debt counseling and management services is checkered. There have been numerous abuses and efforts to counter abuses statutorily in many states. These services have been criticized for their efforts to steer debtors away from bankruptcy when it may have been more advantageous and less costly to debtors to file. Many states prohibit for-profit debt management services while permitting nonprofit debt counseling services. One of the continuing controversies is whether for profit services should be allowed even if regulated.

Federal bankruptcy reform effective in 2005 changed the game for consumer debt counseling services. Now, in order to file for Chapter 7 bankruptcy, a person must, in most cases, show they have at least attempted counseling about their debts. And, because the new federal bankruptcy rules apply to every state, state laws governing debt counseling and debt management services should be consistent to ensure those comply with federal laws and protect consumers.

In 2005, the Uniform Law Commissioners promulgated the Uniform Debt-Management Services Act (UDMSA). It provides the states with a comprehensive Act governing these services that will mean national administration of debt counseling and management in a fair and effective way. UDMSA may be divided into three basic parts: registration of services, service-debtor agreements, and enforcement.

No service may enter into an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft and the like in an amount no less than \$250,000.00. It must also provide a security bond of a minimum of \$50,000.00 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application will result in a certificate to do business from the administrator. A yearly renewal is required.

In order to enter into agreements with debtors, there is a disclosure requirement respecting fees and services to be offered, and the risks and benefits of entering into such a contract. The service must offer counseling services from a certified counselor and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. There is a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days, but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. There are strict accounting requirements and periodic reporting requirements respecting funds held.

With respect to debt settlement services, the UDMSA provides for an overall fee cap based on the amount saved by the consumer (30% of the difference between the principal amount owed upon initiation of the service and the amount the debt is ultimately settled for).

The Act prohibits specific acts on the part of a service including: misappropriation of funds in trust; settlement for more than 50% of a debt with a creditor without a debtor's consent; gifts or premiums to enter into an agreement; and representation that settlement has occurred without certification from a creditor. Enforcement of the Uniform Act occurs at two levels, the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist; power to assess a civil penalty up to \$10,000.00, and the power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the Uniform Act, and may seek punitive damages and attorney's fees. A service has a good faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years, and two years for a private right of action.

Banks as regulated entities under other law are not subject to the Uniform Act, as are other kinds of activities that are incidental to other functions performed. For example, a title insurer that provides bill-paying service that is incidental to title insurance is not subject to it.

Seven states had adopted the UDMSA as of June, 2010: Colorado, Delaware, Nevada, Rhode Island, Tennessee, Utah, and the U.S Virgin Islands. Interested readers can download the approved text of the Uniform Debt-Management Services Act at <http://www.nccusl.org>.

The 2004 *SSL* volume contains a draft about Debt Management Services based on Maryland Chapter 374 of 2003. Michael Kerr, ULC *Legislative Director/Legal Counsel*, says "The Maryland Act covers the same general substantive area as the UDMSA, but it is not the same. The UDMSA is significantly more comprehensive. The Maryland law has been significantly amended since its adoption in 2003. The Maryland bill (as chaptered) limits licensure to nonprofits, bans 'debt adjusting', and doesn't provide meaningful oversight of debt settlement services (which largely arose after 2003)."

Submitted as:

Tennessee

[Chapter 469 of 2009](#)

Status: Enacted into law in 2009.

# Uniform Emergency Volunteer Health Practitioners Act Statement

According to the Uniform Law Commission (ULC), the aftermath of Hurricane Katrina demonstrated the need for a mechanism to enable health care professionals licensed in states outside a disaster area to quickly get authorized to practice in the state where the disaster occurred. While the Emergency Management Assistance Compact (EMAC) provides for the interstate recognition of licenses held by professionals responding to disasters and emergencies, that Compact cannot be solely relied on to facilitate the “surge capacity” of professionals necessary to deliver health services during emergencies. This is because EMAC primarily applies to state government employees and other emergency responders who go through a complicated process of entering into agreements with their home jurisdictions to be deployed to other states pursuant to mutual aid agreements. As a result, very few private sector volunteers were able to be deployed to the Gulf Coast through the Compact and the capacity of state and federal government agencies to immediately provide needed assistance was overwhelmed.

After Katrina, in addition to invoking EMAC, states attempted to facilitate the flow of private sector volunteer practitioners into surrounding disaster areas through executive orders and directives issued pursuant to other emergency management laws. Unfortunately, this created a system whose parameters and requirements were poorly communicated and not well understood by either volunteers or emergency relief organizations. This lack of coordination seriously delayed the delivery of needed services and left volunteers confused and justifiably anxious about their status. Furthermore, virtually no states were able to provide guidance about resolving legal issues that arose due to differences in the scope of practice authorized for many types of health professionals that exist between states. And, no rules were established to clarify the jurisdiction of “source state” or “host state” licensing boards and emergency management agencies over volunteer health practitioners.

In 2007, the ULC promulgated a Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) to enable health practitioners in future years to be quickly deployed to health care facilities and disaster relief organizations pursuant to clear and well-understood rules that will both meet the needs of volunteers and relief agencies and provide an effective framework to ensure the delivery of high quality care to disaster victims. The UEVHPA generally allows state governments during a declared emergency to give reciprocity to other states’ licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state’s licensing requirements.

UEVHPA establishes a system whereby health professionals may register either in advance of or during an emergency to provide volunteer services in an enacting state. Registration may occur in any state using either governmentally established registration systems, such as the federally funded “ESAR VHP” or Medical Reserve Corps programs, or with registration systems established by disaster relief organizations, licensing boards or national or multi-state systems established by associations of licensing boards or health professionals. “ESAR-VHP” refers to Emergency Systems for the Advance Registration Systems of Volunteer Health Professionals financed by the U.S. Department of Health and Human Services.

UEVHPA authorizes healthcare facilities and disaster relief organizations in affected states (working in cooperation with local emergency response agencies) to use professionals registered with these systems and to rely on the registration systems to confirm that registrants are appropriately licensed and in good-standing. Properly registered professionals will have their licenses recognized in affected states for the duration of emergency declarations, subject to any limitations or restrictions that host states determine may be necessary.

UEVHPA also authorizes, but does not require, states affected by disasters to utilize these registration systems to confirm that any professionals practicing during emergencies are licensed and in good-standing. In addition, licensing boards in host states are given jurisdiction over out-of-state volunteers practicing within their boundaries, and are mandated to report any disciplinary actions undertaken to each professional's home jurisdiction. The use of registration systems to confirm registration and of licensing boards to oversee the delivery of services, however, differs from the establishment of individualized credentialing systems that might create a potentially dangerous non-uniform service delivery bottleneck. Instead, the goal of UEVHPA is to establish a robust system with redundant alternatives for the deployment of volunteers that can function even during the most severe disasters in which communication systems are disrupted and government officials are unavailable to provide direction and supervision.

Under UEVHPA, a health professional licensed in another state is subject to the scope of practice for practitioners licensed in the state with the emergency. In addition, out-of-state professionals may not exceed the scope of practices as established by their licensing jurisdiction, unless expressly authorized to do so by host states. Host states are expressly authorized, however, to modify practice limits if necessary to respond to emergency conditions. Similarly, healthcare facilities and relief organizations in host states are authorized to regulate, limit or restrict the nature, scope and type of services provided by volunteers. All volunteers practicing within a state and organizations using these volunteers are further subject to management and control to the extent provided by other state emergency management laws.

The ULC has also approved amendments to the UEVHPA to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill or die while delivering emergency services. With regard to civil liability, the Act provides two options. In Alternative “A”, a volunteer health practitioner is not liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner’s acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, represents an intentional tort; involves a breach of contract, is a claim by a host or deploying entity, or is an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle. Alternative “B” utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at \$500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regard “Good Samaritan” liability protection and/or each state’s implementation of federal law on this subject. The Amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers’ compensation laws of the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state’s workers’ compensation system. The Act directs enacting states to coordinate implementation of this coverage with other enacting states.

Eleven states had enacted UEVHPA as of June 2010: Arkansas, Colorado, District of Columbia, Indiana, Kentucky, Louisiana, New Mexico, North Dakota, Tennessee, Oklahoma, U.S. Virgin Islands. The UEVHPA is pending for governor’s signature in Illinois. The approved text of the Uniform Emergency Volunteer Health Practitioners Act can be found at [www.nccusl.org](http://www.nccusl.org).

Submitted as:

North Dakota

[HB 1073/Chapter 310](#)

Status: Enacted into law in 2009.

# Uniform Foreign-Country Money Judgments Recognition Act

International trade creates litigation between countries and judgments that must be enforced from country to country. There is a strong need for uniformity between states with respect to the law governing foreign country money-judgments. If foreign country judgments are not enforced appropriately and uniformly, it may make enforcement of the judgments of American courts more difficult in foreign country courts.

The first step towards enforcement is recognition of the foreign country judgment. The recognition occurs in a state court when an appropriate action is filed for the purpose. If the judgment meets the statutory standards, the state court will recognize it. It then may be enforced as if it is a judgment of another state of the United States. Enforcement may then proceed, which means the judgment creditor may proceed against the property of the judgment debtor to satisfy the judgment amount. First, it must be shown that the judgment is conclusive, final and enforceable in the country of origin. Certain money judgments are excluded, such as judgments on taxes, fines or criminal-like penalties and judgments relating to domestic relations. Domestic relations judgments are enforced under other statutes, already existing in every state. A foreign-country judgment must not be recognized if it comes from a court system that is not impartial or that dishonors due process, or there is no personal jurisdiction over the defendant or over the subject matter of the litigation. There are a number of grounds that may make a U.S. court deny recognition, i.e., the defendant did not receive notice of the proceeding or the claim is repugnant to American public policy. A final, conclusive judgment enforceable in the country of origin, if it is not excluded for one of the enumerated reasons, must be recognized and enforced.

In 1962, the Uniform Law Commission (ULC) promulgated its Uniform Act Foreign-Country Money Judgments Recognition Act, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Under the 1962 Act, a state was required to recognize a foreign-country money judgment if the judgment satisfied the standards for recognition set out in the Act. Since its promulgation more than 40 years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out its purpose of establishing clear and uniform standards under which state courts will enforce the foreign-country money judgments that come within its scope.

New Mexico HB 690 enacts a revised version of the Uniform Foreign Money Judgments Recognition Act of 1962. The revised version, which was first promulgated by the ULC in 2005, generally provides simple court procedures for the enforcement of foreign-country money judgments. It corrects and clarifies gaps in the 1962 Act revealed in the case law over the last 40 years. The revision addresses burdens of proof for the first time, providing that a petitioner for recognition has the burden of proving a judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. It revises the grounds for denying recognition of foreign-country money judgments and establishes a statute of limitations for recognition actions. Finally, the revised Act generally updates and clarifies both the definitions and the scope section of the 1962 edition.

Specifically, the 2005 revised Act makes it clear that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under this Act. This clarifies the relationship between the ULC's Foreign-Country Money Judgments Act and the Enforcement of Foreign Judgments Act. Recognition by a court is a different procedure than enforcement of a sister state judgment from within the United States.

The 2005 revision expressly provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Uniform Act. Burden of proof was not addressed in the 1962 Act.

Conversely, the 2005 Act imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it. Again, burden of proof is not addressed in the 1962 Act.

The 2005 Act addresses the specific procedure for seeking enforcement. If recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. If recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action. The 1962 Act does not address the procedure to obtain recognition at all, leaving that to other state law.

The 2005 Act provides a statute of limitations on enforcement of a foreign-country judgment. If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of an enacting state. If there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in an enacting state after 15 years from the time the judgment is effective in the country of origin.

Thirteen states had enacted the revised Uniform Foreign-Country Money Judgments Recognition Act as of June 2010: California, Colorado, Hawaii, Idaho, Michigan, Minnesota, Montana, New Mexico, Nevada, North Carolina, Oklahoma, Oregon, and Washington. Interested readers can download the approved text of the Uniform Foreign-Country Money Judgments Recognition Act at [www.nccusl.org](http://www.nccusl.org).

Submitted as:

New Mexico

[HB 690](#)

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 Foreign-Country Money  
2 Judgments Recognition Act.”

3  
4           Section 2. [*Definitions.*] As used in the Uniform Foreign-Country Money Judgments  
5 Recognition Act:

6           A. "foreign country" means a government other than:

7                   (1) the United States;

8                   (2) a state, district, commonwealth, territory or insular possession of the United  
9 States; or

10                   (3) any other government with regard to which the decision in this state as to  
11 whether to recognize the judgments of that government's court is initially subject to  
12 determination under the full faith and credit clause of the United States Constitution;

13           B. "foreign-country judgment" means a judgment of a court of a foreign country; and

14           C. "foreign court" means a court of a foreign country.

15  
16           Section 3. [*Application.*]

17           A. Except as otherwise provided in Subsection B of this section, the Uniform Foreign-  
18 Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent



19 that the foreign-country judgment:

- 20 (1) grants or denies recovery of a sum of money; and  
21 (2) under the law of the foreign country where rendered, is final, conclusive and  
22 enforceable.

23 B. The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a  
24 foreign-country judgment, even if the foreign-country judgment grants or denies recovery of a  
25 sum of money, to the extent that the foreign-country judgment is:

- 26 (1) a judgment for taxes;  
27 (2) a fine or other penalty; or  
28 (3) a judgment for divorce, support or maintenance, or other judgment rendered in  
29 connection with domestic relations.

30 C. The party seeking recognition of a foreign-country judgment has the burden of  
31 establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the  
32 foreign-country judgment.

33  
34 Section 4. [*Standards for Recognition of Foreign-Country Judgment.*]

35 A. Except as otherwise provided in Subsections B and C of this section, a court of this  
36 state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money  
37 Judgments Recognition Act applies.

38 B. A court of this state shall not recognize a foreign-country judgment if:

- 39 (1) the foreign-country judgment was rendered under a judicial system that does  
40 not provide impartial tribunals or procedures compatible with the requirements of due process of  
41 law;  
42 (2) the foreign court did not have personal jurisdiction over the defendant; or  
43 (3) the foreign court did not have jurisdiction over the subject matter.

44 C. A court of this state need not recognize a foreign-country judgment if:

- 45 (1) the defendant in the proceeding in the foreign court did not receive notice of  
46 the proceeding in sufficient time to enable the defendant to defend;  
47 (2) the foreign-country judgment was obtained by fraud that deprived the losing  
48 party of an adequate opportunity to present its case;  
49 (3) the foreign-country judgment or the cause of action on which the foreign-  
50 country judgment is based is repugnant to the public policy of this state or of the United States;  
51 (4) the foreign-country judgment conflicts with another final and conclusive  
52 judgment;  
53 (5) the proceeding in the foreign court was contrary to an agreement between the  
54 parties under which the dispute in question was to be determined otherwise than by proceedings  
55 in that foreign court;  
56 (6) in the case of jurisdiction based only on personal service, the foreign court  
57 was a seriously inconvenient forum for the trial of the action;  
58 (7) the foreign-country judgment was rendered in circumstances that raise  
59 substantial doubt about the integrity of the rendering court with respect to the foreign-country  
60 judgment; or  
61 (8) the specific proceeding in the foreign court leading to the foreign-country  
62 judgment was not compatible with the requirements of due process of law.

63 D. The party resisting recognition of the foreign-country judgment has the burden of  
64 establishing that one of the grounds for nonrecognition stated in Subsection B or C of this section  
65 exists.

66  
67 Section 5. [*Personal Jurisdiction.*]

68 A. A foreign-country judgment shall not be refused recognition for lack of personal  
69 jurisdiction if:

70 (1) the defendant was served with process personally in the foreign country;  
71 (2) the defendant voluntarily appeared in the proceeding, other than for the  
72 purpose of protecting property seized or threatened with seizure in the proceeding or of  
73 contesting the jurisdiction of the court over the defendant;

74 (3) the defendant, before the commencement of the proceeding, had agreed to  
75 submit to the jurisdiction of the foreign court with respect to the subject matter involved;

76 (4) the defendant was domiciled in the foreign country when the proceeding was  
77 instituted or was a corporation or other form of business organization that had its principal place  
78 of business in, or was organized under the laws of, the foreign country;

79 (5) the defendant had a business office in the foreign country and the proceeding  
80 in the foreign court involved a cause of action arising out of business done by the defendant  
81 through that office in the foreign country; or

82 (6) the defendant operated a motor vehicle or airplane in the foreign country and  
83 the proceeding involved a cause of action arising out of that operation.

84 B. The list of bases for personal jurisdiction in Subsection A of this section is not  
85 exclusive, and the courts of this state may recognize bases of personal jurisdiction other than  
86 those listed in Subsection A of this section as sufficient to support a foreign-country judgment.

87  
88 Section 6. [*Procedure for Recognition of Foreign-Country Judgement.*]

89 A. If recognition of a foreign-country judgment is sought as an original matter, the issue  
90 of recognition shall be raised by filing an action seeking recognition of the foreign-country  
91 judgment.

92 B. If recognition of a foreign-country judgment is sought in a pending action, the issue of  
93 recognition may be raised by counterclaim, cross-claim or affirmative defense.

94  
95 Section 7. [*Effect of Recognition of Foreign-Country Judgment.*] If the court in a  
96 proceeding pursuant to Section 6 of the Uniform Foreign-Country Money Judgments  
97 Recognition Act finds that the foreign-country judgment is entitled to recognition under that act,  
98 then, to the extent that the foreign-country judgment grants or denies recovery of a sum of  
99 money, the foreign-country judgment is:

100 A. conclusive between the parties to the same extent as the judgment of a sister state  
101 entitled to full faith and credit in this state would be conclusive; and

102 B. enforceable in the same manner and to the same extent as a judgment rendered in this  
103 state.

104  
105 Section 8. [*Stay of Proceedings Pending Appeal of Foreign-Country Judgment.*] If a party  
106 establishes that an appeal from a foreign-country judgment is pending or will be taken, the court  
107 may stay any proceedings with regard to the foreign-country judgment until the appeal is  
108 concluded, the time for appeal expires or the party appealing has had sufficient time to prosecute  
109 the appeal and has failed to do so.

110  
111 Section 9. [*Statute of Limitations.*] An action to recognize a foreign-country judgment  
112 shall be commenced within the earlier of the time during which the foreign-country judgment is  
113 effective in the foreign country or fifteen years from the date that the foreign-country judgment  
114 became effective in the foreign country.

115  
116 Section 10. [*Uniformity of Interpretation.*] In applying and construing the Uniform

Foreign-Country Money Judgments Recognition Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 11. [*Saving Clause.*] The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of that act.

Section 12. [*Effective Date.*]

(A) This [Act] takes effect [insert date.]

(B) This [Act] applies to all actions commenced on or after the effective date of this [Act] in which the issue of recognition of a foreign-country judgment is raised.

Section 13. [*Repeal.*] The following [Acts] are repealed:

(A) Uniform Foreign Money-Judgments Recognition Act [of 1962];

(B) ...

# Virtual Visitation

This Act enables courts to put requirements into child custody orders allowing divorced parents to visit their children by electronic communication. The Act defines “electronic communication” to mean contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video teleconferencing, wired or wireless technologies by Internet, or other medium of communication.”

Submitted as:

North Carolina

[Session Law 2009-314](#)

Status: Enacted into law in 2009.

Comment: North Carolina was the fifth of six states to enact laws permitting virtual visitation as way for divorced parents to stay in contact with their children. Utah was the first. Other states include Florida, Illinois, Texas and Wisconsin.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Enable Parents to Visit  
2 Children Via Electronic Communication.”

3  
4           Section 2. [*Parental Visitation Via Electronic Communication.*]

5           (A) An order for custody of a minor child may provide for visitation rights by electronic  
6 communication. In granting visitation by electronic communication, the court shall consider the  
7 following:

8                     (1) Whether electronic communication is in the best interest of the minor child.

9                     (2) Whether equipment to communicate by electronic means is available,  
10 accessible, and affordable to the parents of the minor child.

11                    (3) Any other factor the court deems appropriate in determining whether to grant  
12 visitation by electronic communication.

13           (B) The court may set guidelines for electronic communication, including the hours in  
14 which the communication may be made, the allocation of costs between the parents in  
15 implementing electronic communication with the child, and the furnishing of access information  
16 between parents necessary to facilitate electronic communication. Electronic communication  
17 with a minor child may be used to supplement visitation with the child. Electronic  
18 communication may not be used as a replacement or substitution for custody or visitation. The  
19 amount of time electronic communication is used shall not be a factor in calculating child  
20 support or be used to justify or support relocation by the custodial parent out of the immediate  
21 area or the State. Electronic communication between the minor child and the parent may be  
22 subject to supervision as ordered by the court. As used in this subsection, “electronic  
23 communication” means contact, other than face-to-face contact, facilitated by electronic means,  
24 such as by telephone, electronic mail, instant messaging, video teleconferencing, wired or  
25 wireless technologies by Internet, or other medium of communication.”

26  
27           Section 3. [*Severability.*] [Insert severability clause.]  
28

29	Section 4. [ <i>Repealer.</i> ] [Insert repealer clause.]
30	
31	Section 5. [ <i>Effective Date.</i> ] [Insert effective date.]

# Water Rights Donation Tax Credit

This Act establishes a credit against the state income tax for people or companies that donate the right to withdraw water from streams to the state water conservation board for the purpose of reducing the amount of water that is withdrawn from the streams. The Act specifies that the state water conservation board will approve the credits by issuing certificates to water rights owners who permanently transfer water rights to the water conservation board. The bill establishes the credit at one half of the value of the donated water right, as determined by an appraisal, with a maximum value of \$250,000. It limits the total annual dollar amount of credits to \$2.0 million.

Submitted as:

Colorado

[HB 09-1067](#)

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 Water Rights Donation Tax  
2 Credit Act.”

3  
4           Section 2. [*Definitions*.]

5           (1) As used in this Act:

6                   (a) “board” means the [water conservation board] created in [insert citation].

7                   (b) “credit certificate” means a statement issued by the [board] certifying that a  
8 given water right donation qualifies for the credit authorized in this section and specifying the  
9 amount of the credit allowed.

10                  (c) “department” means the [department of revenue].

11                  (d) “owner of a water right” means a taxpayer who owns a water right.

12                  (e) “person” means any individual, firm, corporation, partnership, limited liability  
13 company, joint venture, estate, trust, or group or combination acting as a unit that donates during  
14 the taxable year all or part of a water right to the [board] with the intent that such right be  
15 converted to an instream flow right pursuant to [insert citation].

16                  (f) “taxpayer” has the same meaning as set forth in [insert citation].

17                  (g) “water right” means a right to use in accordance with its priority a certain  
18 portion of the waters of the state by reason of the appropriation of the same.

19                  (h) “waters of the state” means all surface and underground water in or tributary  
20 to all natural streams within this state, except waters referred to in [insert citation].

21  
22           Section 3. [*Instream Flow Incentive Tax Credit*.]

23           (1)   (a) Except as provided in subsection (5) of this section, for income tax years  
24 commencing on or after [January 1, 2009, but prior to January 1, 2015], there may, at the  
25 discretion of the [board], be allowed to any person an [Instream Flow Incentive Tax Credit] with  
26 respect to the income taxes imposed by [insert citation] in the amount determined by the [board]  
27 pursuant to paragraph (b) of this section (3).

28                   (b) The [board] shall have the exclusive authority to approve any [Instream Flow

Incentive Tax Credits] allowed pursuant to Paragraph (a) of this section (3). The credit shall only be available for permanent transfers of water rights acquired pursuant to the [board's] public review process specified in [insert citation], and upon a finding by the [board], in accordance with [insert citation], that the proposed donation will preserve the environment to a reasonable degree. The credit shall not be available for a water right that is decreed for irrigation on land for which a Conservation Easement Tax Credit is claimed pursuant to [insert citation] unless such water right is specifically excluded from the terms of such conservation easement. The [board] shall approve a credit by issuing to the person a credit certificate on or before [September 1 of the tax year in which the donation is accepted].

(c) The amount of a credit authorized in this section (3) shall be determined by the [board], subject to the following guidelines:

(I) the credit shall be in an amount equal to or less than [one-half of the value of the water right proposed to be donated to the board];

(II) the value of the water right shall be determined by the [board], in consultation with the proposed donor.

(III) In determining the value of the water right, the [board] may consider, in addition to other factors the [board] deems appropriate, the following:

(A) any appraisal or other documentation submitted by the donor;

(B) the seniority, historic consumptive use, and decreed use of the water right;

(C) the location of the existing point of diversion of the water right; and

(D) the extent to which aquatic and riparian habitat would be preserved by conversion of the water right to an instream flow.

(d) In no event shall the [board] issue a credit certificate if the aggregate sum of credits approved by the [board] pursuant to this section and not yet eligible to be taken as described in subsection (5) of this section exceeds [two million dollars].

(e) No later than [January 30, 2010], and no later than [January 30 each year] thereafter, the [board] shall report to the [finance committees of the senate and house, the agriculture and natural resources committee of the senate, and the agriculture, livestock, and natural resources committee of the house of representatives, or any successor committees], about instream flow rights acquired and tax credit certificates issued pursuant to this section.

(2) If a person receiving a credit authorized in this section is a partnership, limited liability company, S corporation, or similar pass-through entity, the person may allocate the credit among its partners, shareholders, members, or other constituent taxpayers in any manner agreed to by such persons. The person shall certify to the [board] and the [department] the amount of credit allocated to each constituent taxpayer, and the [board] shall issue credit certificates in the appropriate amounts to each partner, shareholder, member, or other constituent taxpayer. Each constituent taxpayer shall be allowed to claim such amount subject to any restrictions set forth in this section.

(3) If a credit authorized in this section approved by the [board] exceeds the income tax due on the income of the taxpayer for the taxable year, the excess credit may not be carried forward and shall be refunded to the taxpayer.

(4) No later than [November 30, 2009], and no later than [November 30 of each year] thereafter, the [board] shall provide the [department] an electronic report of the taxpayers receiving a credit for that income tax year that includes the following information:

(a) the taxpayer's name;

(b) the taxpayer's [state account number] or Social Security number;

(c) the amount of the credit allocated; and

78 (d) the associated pass-through entity name and state account number if the credit  
79 is allocated from a pass-through entity pursuant to subsection (2) of this section.

80 (5) If the revenue estimate prepared by the [staff of the legislative council] in [June 2009  
81 and each June thereafter] indicates that the amount of the total state [General Fund] revenues for  
82 that particular fiscal year will not be sufficient to grow the total state [General Fund]  
83 appropriations by [six percent] over such appropriations for the previous fiscal year, then the  
84 credit authorized in this Act shall not be allowed for any income tax year commencing during the  
85 calendar year in which the forecast is prepared. The credit certificate shall remain valid for the  
86 next tax year in which the revenue estimate prepared by the [staff of the legislative council]  
87 indicates that the amount of the total general fund revenues will be sufficient to grow the total  
88 state [General Fund] appropriations by [six percent] over such appropriations for the previous  
89 fiscal year.

90 (6) The [executive director of the department] may promulgate rules as may be necessary  
91 to administer and enforce any provision of this section. The rules shall be promulgated in  
92 accordance with [insert citation], and shall be included in income tax forms.

93 (7) Any taxpayer who offsets a tax deficiency with a credit that is disallowed pursuant to  
94 this section shall be liable for such tax deficiency, interest, and penalties as may be specified in  
95 [insert citation] or otherwise provided by law.

96  
97 Section 4. [*Severability.*] [Insert severability clause.]

98  
99 Section 5. [*Repealer.*] [Insert repealer clause.]

100  
101 Section 6. [*Effective Date.*] [Insert effective date.]



# Youth Sports Head Injuries

This Act limits the liability of school districts for injuries suffered by youth who participate in youth programs on school property.

The Act directs school districts to work with the state interscholastic activities association to develop guidelines and inform coaches, athletes, and parents about the dangers of concussions and head injuries. The bill requires youth athletes and their parents or guardians sign a concussion and head injury information sheet for the athlete to be eligible to play in a program using school facilities.

The Act requires a youth athlete who is suspected of sustaining a concussion or head injury be removed from a practice or game. The athlete cannot return to play until the athlete has been evaluated by a licensed health care provider and received a written clearance to play.

Submitted as:

Washington

[Chapter 475, Laws of 2009](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Head Injuries in  
2 Youth Sports.]

3  
4           Section 2. [*School District Liability for Injuries to Youths Participating in Youth  
5 Programs on School Property.*]

6           (A) As used in this section, “youth programs” means any program or service, offered by a  
7 private nonprofit group that is operated primarily to provide people under the age of [eighteen]  
8 with opportunities to participate in services or programs.

9           (B) A school district shall not be liable for an injury to or the death of a person due to  
10 action or inaction of people employed by, or under contract with, a youth program if:

11               (1) The action or inaction takes place on school property and during the delivery  
12 of services of the youth program;

13               (2) The private nonprofit group provides proof of being insured, under an accident  
14 and liability policy issued by an insurance company authorized to do business in this state, that  
15 covers any injury or damage arising from delivery of its services. Coverage for a policy meeting  
16 the requirements of this section must be at least [fifty thousand] dollars due to bodily injury or  
17 death of one person, or at least [one hundred thousand] dollars due to bodily injury or death of  
18 two or more people in any incident. The private nonprofit shall also provide a statement of  
19 compliance with the policies for the management of concussion and head injury in youth sports  
20 as set forth in section 3 of this Act; and

21               (3) The group provides proof of such insurance before the first use of the school  
22 facilities. The immunity granted shall last only as long as the insurance remains in effect.

23           (C) Immunity under this section does not apply to any school district before [insert  
24 citation].

25           (D) This section does not impair or change the ability of any person to recover damages  
26 for harm done by any contractor or employee of a school district acting in his or her capacity as a

contractor or employee or the existence of unsafe facilities or structures or programs of any school district.

Section 3. [*Guidelines about Concussions and Brain Injuries.*]

(A) (1) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The Centers for Disease Control and Prevention estimate that as many as three million nine hundred thousand sports-related and recreation-related concussions occur in the United States each year. A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death are significant when a concussion or head injury is not properly evaluated and managed.

(2) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occurs without loss of consciousness.

(3) Continuing to play with a concussion or symptoms of head injury leaves the young athlete especially vulnerable to greater injury and even death. The [legislature] recognizes that, despite having generally recognized return to play standards for concussion and head injury, some affected youth athletes are prematurely returned to play resulting in actual or potential physical injury or death to youth athletes in this state.

(B) Each school district's board of directors shall work in concert with the [state interscholastic activities association] to develop the guidelines and other pertinent information and forms to inform and educate coaches, youth athletes, and their parents and/or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury. On a [yearly] basis, a concussion and head injury information sheet shall be signed and returned by the youth athlete and the athlete's parent and/or guardian prior to the youth athlete's initiating practice or competition.

(C) A youth athlete who is suspected of sustaining a concussion or head injury in a practice or game shall be removed from competition at that time.

(D) A youth athlete who has been removed from play may not return to play until the athlete is evaluated by a licensed health care provider trained in the evaluation and management of concussion and receives written clearance to return to play from that health care provider. The health care provider may be a volunteer. A volunteer who authorizes a youth athlete to return to play is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

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

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

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

# Zombies and Botnets

The Act defines a computer “zombie” as a “computer that, without the knowledge and consent of the computer's owner or operator, has been compromised to give access or control to a program or person other than the computer's owner or operator.” It defines a “botnet” as a “collection of two or more zombies.” The Act prohibits people from creating or using zombies and botnets to perform actions such as damaging other computers or collecting personal information about computer users. It permits Internet service providers and people who have suffered losses because of violations of the Act to bring civil actions against people who violate the Act.

Submitted as:

Texas

[SB 28](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Computer Zombies  
2 and Botnets.”

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

5           (1) “Botnet” means a collection of two or more zombies.

6           (2) “Internet service provider” means a person providing connectivity to the Internet or  
7 another wide area network.

8           (3) “Person” has the meaning defined in [insert citation].

9           (4) “Zombie” means a computer that, without the knowledge and consent of the  
10 computer ’s owner or operator, has been compromised to give access or control to a program or  
11 person other than the computer ’s owner or operator.

12  
13           Section 3. [*Unauthorized Creation of, Access to, or Use of Zombies or Botnets; Private*  
14 *Action.*]

15           (A) A person who is not the owner or operator of the computer may not knowingly cause  
16 or offer to cause a computer to become a zombie or part of a botnet.

17           (B) A person may not knowingly create, have created, use, or offer to use a zombie or  
18 botnet to:

19                   (1) send an unsolicited commercial electronic mail message, as defined by [insert  
20 citation];

21                   (2) send a signal to a computer system or network that causes a loss of service to  
22 users;

23                   (3) send data from a computer without authorization by the owner or operator of  
24 the computer;

25                   (4) forward computer software designed to damage or disrupt another computer or  
26 system;

27                   (5) collect personally identifiable information; or

(6) perform an act for another purpose not authorized by the owner or operator of the computer.

(C) A person may not:

(1) purchase, rent, or otherwise gain control of a zombie or botnet created by another person; or

(2) sell, lease, offer for sale or lease, or otherwise provide to another person access to or use of a zombie or botnet.

(D) The following persons may bring a civil action against a person who violates this section of this Act:

(1) a person who is acting as an Internet Service Provider and whose network is used to commit a violation under this section; or

(2) a person who has incurred a loss or disruption of the conduct of the person's business, including for-profit or not-for-profit activities, as a result of the violation.

(E) A person bringing an action under this section may, for each violation:

(1) seek injunctive relief to restrain a violator from continuing the violation;

(2) subject to Subsection (F), recover damages in an amount equal to the greater of:

(a) actual damages arising from the violation; or

(b) [\$100,000] for each zombie used to commit the violation; or

(c) obtain both injunctive relief and damages.

(F) The court may increase an award of damages, statutory or otherwise, in an action brought under this section to an amount not to exceed three times the applicable damages if the court finds that the violations have occurred with such a frequency as to constitute a pattern or practice.

(G) A plaintiff who prevails in an action brought under this section is entitled to recover court costs and reasonable attorney's fees, reasonable fees of experts, and other reasonable costs of litigation.

(H) A remedy authorized by this section is not exclusive but is in addition to any other procedure or remedy provided for by other statutory or common law.

(I) Nothing in this section may be construed to impose liability on the following persons with respect to a violation of this section committed by another person:

(1) an Internet Service Provider;

(2) a provider of interactive computer service, as defined by Section 230, Communications Act of 1934 (47 U.S.C. Section 230);

(3) a telecommunications provider, as defined by [insert citation]; or

(4) a video service provider or cable service provider, as defined by [insert citation].

Section 4. [*Knowing Violations.*] A person knowingly violates [insert citations] or this Act if the person:

(1) acts with actual knowledge of the facts that constitute the violation; or

(2) consciously avoids information that would establish actual knowledge of those facts.

Section 5. [*Severability.*] [Insert severability clause.]

Section 6. [*Repealer.*] [Insert repealer clause.]

Section 7. [*Effective Date.*] [Insert effective date.]

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