



**SUGGESTED  
STATE  
LEGISLATION  
2012  
Volume 71**

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 offer the **2012 *Suggested State Legislation*** volume, a valued series of compilations of draft legislation about topics of 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 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 70 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 three to four 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 are often 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. SSL drafts entries list the originating states and bill numbers to enable readers to compare SSL drafts with the state bills the drafts are based on.

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, Lexington, Kentucky 40511, (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 advocate 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.]

# Affidavit of Caregiver Consent for a Minor's Health Care

This Act enables caregivers to consent to medical care of minors under their care under certain conditions. It provides for an Affidavit of Caregiver Consent for a Minor's Health Care and for revoking or terminating such consent. The Act defines caregivers and the duties of health care facilities and practitioners concerning such consent.

Submitted as:

West Virginia

[Enrolled Committee Substitute for HB 4374](#)

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 “Caregiver Consent Act.”

2

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

4

5           (1) “Caregiver” means any person who is at least [eighteen] years of age and is related by  
6 blood, marriage or adoption to the minor, but who is not the legal custodian or guardian of the  
7 minor or has resided with the minor continuously during the immediately preceding period of  
8 [six] months or more.

8

9           (2) “Health care and treatment” means:

9

10           (a) Developmental screening;

10

11           (b) Mental health screening;

11

12           (c) Mental health treatment;

12

13           (d) Ordinary and necessary medical and dental examination and treatment;

13

14           (e) Preventive care including ordinary immunizations, tuberculin testing and well-  
15 child care; and

15

16           (f) Non-emergency diagnosis and treatment, provided that non-emergency  
17 diagnosis and treatment does not include an abortion.

17

18           Section 3. [*Caregiver Consent for Minor's Health Care.*]

18

19           (A) Except for minor children placed under the custody of the [department of health and  
20 human resources] pursuant to [insert citation], a caregiver who possesses and presents a  
21 notarized affidavit pursuant to section four of this Act may consent on behalf of a minor to health  
22 care and treatment.

22

23           (B) Examination and treatment shall be prescribed by or under the supervision of a  
24 physician, advanced practice nurse, dentist or mental health professional licensed to practice in  
25 the state.

25

26           (C) The consent authorized by this Act shall not be applicable for purposes of the  
27 Individuals with Disabilities Education Act, 20 U. S. C. §1400 et seq., or Section 504 of the  
28 Rehabilitation Act of 1973, 29 U. S. C. §791.

28

29           Section 4. [*Duty of Health Care Facility or Practitioner.*] The decision of a caregiver  
30 who possesses and presents a notarized Affidavit of Caregiver Consent for a Minor's Health  
31

Care pursuant to section five of this Act shall be honored by a health care facility or practitioner unless the health care facility or practitioner has actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening decision to consent to or to refuse medical treatment for the minor.

Section 5. [*Affidavit of Caregiver Consent.*] An Affidavit of Caregiver Consent for a Minor's Health Care shall include the following:

- (1) The caregiver's name and current home address;
- (2) The caregiver's birth date;
- (3) The relationship of the caregiver to the minor;
- (4) The minor's name;
- (5) The minor's birth date;
- (6) The length of time the minor has resided with the caregiver;
- (7) The caregiver's signature under oath affirming the truth of the matter asserted in the Affidavit;
- (8) The signature of the minor's parent, guardian or legal custodian consenting to the caregiver's authority over the minor's health care, provided, that the signature of the minor's parent, guardian or legal custodian is not necessary if the Affidavit includes the following:
  - (a) a statement that the caregiver has attempted, but has been unable to obtain, the signature of the minor's parent, guardian or legal custodian;
  - (b) a statement that the minor's parent, guardian or legal custodian has not refused to give consent for health care and treatment of the minor child; and
  - (c) a description, in detail, of the attempts the caregiver made to obtain the signature of the minor's parent, guardian or legal custodian; and
- (9) A statement, as follows:

"General Notices:

This declaration does not affect the rights of the minor's parent, guardian or legal custodian regarding the care, custody and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

This Affidavit is valid for one year unless the minor no longer resides in the caregiver's home. Furthermore, the minor's parent, guardian or legal custodian may at any time rescind this Affidavit of Caregiver Consent for a Minor's Health Care by providing written notification of the rescission to the appropriate health care professional.

A person who relies in good faith on this Affidavit of Caregiver Consent for a Minor's Health Care has no obligation to conduct any further inquiry or investigation and shall not be subject to civil or criminal liability or to professional disciplinary action because of that reliance."

Section 6. [*Revocation and Termination of Consent.*]

(A) The Affidavit of Caregiver Consent for a Minor's Health Care is superseded by written notification from the minor's parent, guardian or legal custodian to the health care professionals providing services to the minor that the Affidavit has been rescinded.

(B) The Affidavit of Caregiver Consent for a Minor's Health Care is valid for [one] year unless the minor no longer resides in the caregiver's home or a parent, guardian or legal custodian revokes his or her approval by written notification to the health care professionals

81 providing services to the minor that the Affidavit has been rescinded. If a parent, guardian or  
82 legal custodian revokes approval, the caregiver shall notify any health care provider or health  
83 service plans with which the minor has been involved through the caregiver.

84  
85 Section 7. [*Good Faith Reliance on Affidavit.*]

86 (A) Any person who relies in good faith on the Affidavit of Caregiver Consent for a  
87 Minor's Health Care has no obligation to conduct any further inquiry or investigation and is not  
88 subject to civil or criminal liability or to professional disciplinary action because of the reliance.

89 (B) The provisions of subsection (A) of this section apply even if medical treatment is  
90 provided to a minor in contravention of a decision of a parent, legal custodian or guardian of the  
91 minor who signed the Affidavit if the person providing care has no actual knowledge of the  
92 decision of the parent, legal custodian or guardian.

93  
94 Section 8. [*Penalty for False Statement.*] A person who knowingly makes a false  
95 statement in an Affidavit under this Act is guilty of a misdemeanor and, upon conviction thereof,  
96 shall be fined not more than [\$1,000].

97  
98 Section 9. [*Rules.*] The [secretary of the department of health and human resources] is  
99 authorized to propose rules necessary to implement the provisions of this Act in accordance with  
100 [insert citation].

101  
102 Section 10. [*Severability.*] [Insert severability clause.]

103  
104 Section 11. [*Repealer.*] [Insert repealer clause.]

105  
106 Section 12. [*Effective Date.*] [Insert effective date.]

# Agricultural Operations and Sustainable Agriculture

This Act enables agricultural operations to incorporate sustainable agricultural practices without necessarily being deemed a nuisance by local ordinances or zoning regulations. The Act requires any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner be based on practices outlined in the Act. Those are science-based practices that are supported by research and the use of technology, demonstrated to lead to broad outcomes-based performance improvements that meet the needs of the present, and that improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.

Submitted as:

Kentucky

[HB 486 \(Enrolled version\)](#)

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 to Enable Agricultural  
2 Operations to Adopt Sustainable Agricultural Practices.”

3  
4           Section 2. [*Agricultural Operations and Sustainable Agriculture Practices*.]

5           (A) It is the declared policy of [this state] to conserve, protect, and encourage the  
6 development and improvement of its agricultural land and silvicultural land for the production of  
7 food, timber, and other agricultural and silvicultural products. When nonagricultural land uses  
8 extend into agricultural and silvicultural areas, agricultural and silvicultural operations often  
9 become the subject of nuisance suits or legal actions restricting agricultural or silvicultural  
10 operations. As a result, agricultural and silvicultural operations are sometimes either curtailed or  
11 forced to cease operations. Investments in farm and timber improvements may be discouraged. It  
12 is the purpose of this section to reduce the loss to the state of its agricultural and silvicultural  
13 resources by clarifying the circumstances under which agricultural and silvicultural operations  
14 may be deemed to be a nuisance or interfered with by local ordinances or legal actions.

15           (B) No agricultural or silvicultural operation or any of its appurtenances shall be or  
16 become a nuisance or trespass, private or public, or be in violation of any zoning ordinance, or be  
17 subject to any ordinance that would restrict the right of the operator of the agricultural or  
18 silvicultural operation to utilize normal and accepted practices, by any changed conditions in or  
19 about the locality thereof after the same has been in operation for [more than one] year, when the  
20 operation was not a nuisance at the time the operation began. The provisions of this subsection  
21 shall not apply whenever a nuisance, trespass, or zoning violation results from the negligent  
22 operation of an agricultural or silvicultural operation or its appurtenances.

23           (C) (1) For the purposes of this section, “agricultural operation” includes, but is not  
24 limited to, any facility for the production of crops, livestock, equine, poultry, livestock products,  
25 poultry products, horticultural products, and any generally accepted, reasonable, and prudent  
26 method for the operation of a farm to obtain a monetary profit that complies with applicable laws  
27 and administrative regulations, and is performed in a reasonable and prudent manner customary



among farm operators. Agricultural practices protected by this section shall include, but not be limited to, fertilizer application, the application of pesticides or herbicides that have been approved by public authority, planting, cultivating, mowing, harvesting, land clearing, and constructing farm buildings, roads, lakes, and ponds associated with a farming operation.

(2) An agricultural operation may include the practice of sustainable agriculture. For purposes of this section, “sustainable agriculture” includes science-based practices that are supported by research and the use of technology, demonstrated to lead to broad outcomes-based performance improvements that meet the needs of the present, and that improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities. Sustainable agriculture may use continuous improvement principles, with goals that include increasing agricultural productivity, improving human health through access to safe, nutritious, and affordable food, and enhancing agricultural and surrounding environments, including water, soil, and air quality, biodiversity, and habitat preservation.

(D) For the purposes of this section, “silvicultural operation” includes timber harvest, site preparation, slash disposal including controlled burning, tree planting, precommercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.

(E) An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than [five] years, or [one] year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation, unless the operation is substantially changed.

(F) The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.

(G) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the negligent operation of any such agricultural operation or any of its appurtenances.

(H) Any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner shall be based on the principles outlined in this section and shall allow the use of best management practices developed under [insert citation].

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

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

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

# Aircraft Pilot and Passenger Protection

This Act regulates building near public-use airports. The Act requires owners of proposed structures within a three-mile area surrounding a public-use airport to get special permits from the state aeronautics commission before building such structures.

Submitted as:

Oklahoma

[HB 2919 \(Enrolled version\)](#)

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 “Aircraft Pilot and Passenger  
2 Protection Act.”

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

5           1. “Airport reference point” is the geometrical center of all usable runways;  
6           2. “Airport elevation” is the highest point of an airport’s usable runways measured in feet  
7 from mean sea level;

8           3. “Approach surface” is an imaginary surface shaped like a trapezoid:  
9               a. longitudinally centered on the extended runway centerline at a public-use  
10 airport,

11               b. beginning [two hundred (200)] feet beyond the end of each runway pavement  
12 and at the runway end elevation,

13               c. having an inner-edge width of [one thousand (1,000)] feet expanding outward  
14 uniformly to a width of [sixteen thousand (16,000)] feet at the outer edge, and

15               d. sloping upward for a distance of [ten thousand (10,000)] feet at a slope of [fifty  
16 (50) to one (1), with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1)];

17           4. “Commission” means the [state aeronautics commission] or a successor agency;

18           5. “Conical surface” is an imaginary surface extending outward and upward from the  
19 periphery of the horizontal surface at a slope of [twenty (20) to one (1) for a horizontal distance  
20 of four thousand (4,000) feet];

21           6. “FAA” means the Federal Aviation Administration or a successor agency to the  
22 Federal Aviation Administration;

23           7. “Horizontal surface” is an imaginary horizontal plane [one hundred fifty (150)] feet  
24 above the established airport elevation, the perimeter of which is constructed by swinging arcs of  
25 [ten thousand (10,000)] feet radii from a point located on the extended runway centerline [two  
26 hundred (200)] feet beyond each end of runway pavement and connecting the adjacent arcs by  
27 lines tangent to those arcs;

28           8. “Incompatible purpose” means the use of a building or structure as a residence,  
29 educational center (including all types of primary and secondary schools, preschools, and child-  
30 care facilities), places of worship, hospital, medical inpatient treatment facility,  
31 nursing/convalescent home, retirement home, or similar use;

32           9. “Legal representative” means a person who is authorized to legally bind an entity;

33           10. “Permit” means a permit issued by the [commission] under this Act;

34 11. "Person" means an individual, firm, partnership, corporation, association, or body  
35 politic and includes a trustee, receiver, assignee, or other similarly authorized representative of  
36 any of them;

37 12. "Primary surface" is a surface longitudinally centered on a runway. When the runway  
38 has a specially prepared hard surface, the primary surface extends [two hundred (200)] feet  
39 beyond each end of that runway; but when the runway has no specially prepared hard surface, or  
40 planned hard surface, the primary surface ends at each end of that runway. The elevation of any  
41 point on the primary surface is the same as the elevation of the nearest point on the runway  
42 centerline. The width of the primary surface is [one thousand (1,000)] feet;

43 13. "Public-use airport" means a structure or an area of land or water that is designed and  
44 set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the  
45 interest of the public for the landing and taking off of aircraft and is identified by the FAA as a  
46 public-use airport. Public-use airport shall include any military airport operated by a branch of  
47 the armed services of the United States government. Public-use airport shall not include any  
48 privately owned airport for private use as identified by the FAA, or any airport owned by a  
49 municipality with a population exceeding [five hundred thousand (500,000)] according to the  
50 most recent Federal Decennial Census;

51 14. "Runway" means the portion of an airport designated as the area used for the landing  
52 or takeoff of aircraft;

53 15. "Runway protection zone" is a trapezoidal zone centered along the extended runway  
54 centerline, beyond each end of the primary surface, [two thousand five hundred (2,500)] feet  
55 long, with an inner width of [one thousand (1,000) feet] and an outer width of [one thousand  
56 seven hundred fifty (1,750)] feet. The function of the runway protection zone is to enhance the  
57 protection of people and property on the ground;

58 16. "Structure" means any constructed or installed object, including, but not limited to  
59 buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and  
60 antennae and overhead transmission lines. The term does not include any aviation navigational  
61 aids that are fixed by function or any construction or installed object on property owned by the  
62 federal government; and

63 17. "Total structure height" means the elevation of the ground above mean sea level at  
64 the structure's location, plus the height of the structure above ground level in feet, plus the  
65 applicable survey type adjustment.

66  
67 Section 3. *[Legislative Intent.]*

68 (A) It is the intent of this Act to:

69 1. Regulate obstructions to air navigation that potentially endanger the lives and  
70 property of aircraft pilots, passengers, and people who live or work in the vicinity of public-use  
71 airports; affect existing and future instrument approaches to public-use airports; reduce the size  
72 of areas available for the landing, takeoff and maneuvering of aircraft at public use airports; or  
73 impair the utility of public-use airports and the public investment therein;

74 2. Regulate the use of land in close proximity to public-use airports to ensure  
75 compatibility with aircraft operations; and

76 3. Provide specific powers and duties to the [state aeronautics commission] in the  
77 interest of the health, safety and welfare of the public so that the state may properly fulfill its  
78 duty to ensure that land use around public-use airports is compatible with normal airport  
79 operations including the landing and takeoff of aircraft.

80 (B) All heights or surfaces set forth in this Act are from the standards set forth in Subpart  
81 C of Federal Aviation Regulations (FAR) Part 77.

(C) Depending upon the type of survey used, an adjustment will be made to the horizontal and vertical measurements of a proposed structure as follows:

Survey Type	Horizontal Adjustment	Survey Type	Vertical Adjustment
1	+20 ft (6 m)	A	+3 ft (1 m)
2	+50 ft (15 m)	B	+10 ft (3 m)
3	+100 ft (30 m)	C	+20 ft (6 m)
4	+250 ft (75 m)	D	+50 ft (15 m)
5	+500 ft (150 m)	E	+125 ft (38 m)

(D) If the survey type (horizontal and vertical) is not certified by a licensed engineer or a licensed surveyor, a horizontal adjustment of plus or minus [two hundred fifty (250)] feet and a vertical adjustment of [fifty (50)] feet will be applied to the structure measurements.

(E) Any structure or alteration to a structure is presumed to be a hazard to air navigation if its total structure height is greater than the horizontal, conical or approach surfaces, as defined in Section 2 of this Act.

(F) This Act shall neither prevent nor preempt a municipality from having ordinances or regulations governing land use that may affect public-use airports.

(G) The construction of a structure for an incompatible purpose within the primary surface or the runway protection zone is presumed to be incompatible with normal airport operations including the landing and takeoff of aircraft.

(H) Any structure or alteration to a structure is presumed to be a hazard to air navigation if its total structure height is greater than the horizontal, conical or approach surfaces, as defined in Section 2 of this Act.

(I) The [commission] further shall use its best efforts to establish regular and consistent communication with the FAA to encourage sharing of information regarding construction or alteration in a military training route or slow-speed low-altitude training route within the state with appropriate state agencies and military installations.

(J) The provisions of this Act shall not apply to structures that existed or have an approved building permit from the local authority with jurisdiction over the property that the structure is proposed to be constructed upon, prior to the effective date of this Act.

(K) The [commission] is authorized to promulgate any rules necessary to implement the provisions of this Act.

#### Section 4. *[Permits for Constructing or Installing Structures Near Public-Use Airports.]*

(A) A person shall obtain a permit from the [commission] prior to the construction or installation of any of the following near a public-use airport:

1. Any proposed structure for an incompatible purpose in the primary surface or the runway protection zone;

2. Any structure, alteration or addition to a structure within [three (3)] statute miles from the airport reference point of a public-use airport, that would result in a total structure height in excess of [one hundred fifty (150)] feet above the established airport elevation; and

3. Any structure, alteration or addition to a structure that would result in a total structure height greater than the horizontal, conical or approach surfaces, as defined in Section 2 of this Act.

(B) Applications to the [commission] for a permit in accordance with the provisions of this Act for construction near a public-use airport shall include the following:

1. For construction in a primary surface or runway protection zone under paragraph 1 of subsection A of this Section:

a. a completed application on a form prescribed by the [commission] with the following statement on the application, signed by a legal representative of the applicant:

“The applicant acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this application is located in the primary surface or the runway protection zone of a public-use airport, and that the applicant is building a structure upon this real estate, with the full knowledge and acceptance that it may be incompatible with normal airport operations including the landing and takeoff of aircraft.”

b. if required, a copy of the FAA Form 7460-1, “Notice of Proposed Construction or Alteration”, as described in 14 CFR part 77, sub-part B, Section 17, to be submitted to the FAA; and

2. For construction or alteration of a structure in a horizontal, conical, or approach surface under paragraph 2 or 3 of subsection A of this section:

a. a completed application on a form prescribed by the [commission], and

b. a copy of FAA Form 7460-1, to be submitted to the FAA.

(C) If FAA Form 7460-1 is required, then the application for a permit pursuant to this Act Section shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or any time before that. If FAA Form 7460-1 is not required, then the application shall be filed at least [thirty (30)] days before the earlier of the following:

1. The date the proposed construction or alteration is to begin; or

2. The date an application for a construction or building permit is to be filed with a municipality as required under [insert citation].

(D) Any person required to notify the FAA of any proposed construction or alteration pursuant to Subpart B of Section 77.13 of the Federal Aviation Regulations Part 77, that in response receives an acknowledgement from the FAA that further aeronautical study is required to determine whether the proposed construction or alteration would be a hazard to air navigation, shall, upon requesting further aeronautical study by the FAA, concurrently notify the [commission] of the request and shall provide the [commission] with true and correct copies of all relevant filings made with the FAA.

(E) Upon receipt of such notification of the filing of a request for further aeronautical study, the [commission] shall give timely notice thereof to the [state strategic military planning commission], or any successor agency, and to any military airport within this state potentially affected by the proposed construction or alteration.

(F) Upon receiving an application, the [commission] shall notify a legal representative of the public-use airport owner affected by the application and solicit comments from the airport owner.

(G) In determining whether to issue a permit, the [commission] shall consider:

1. The nature of the terrain and height of existing structures;

2. Public and private interests and investments;

3. The character of flying operations and planned developments of the affected airport;

4. Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport;

5. Technological advances;

6. The safety of people on the ground and in the air;

- 179 7. Land use density;
- 180 8. Comments from all interested people; and
- 181 9. Applicable findings and determinations of other government agencies.

182 (H) If FAA Form 7460-1 is required, then the [commission] shall notify the applicant of  
183 its determination within [thirty (30)] days of the FAA completing its aeronautical study. If the  
184 applicant has not been notified by the [commission] of its determination within [thirty (30)] days  
185 of the FAA completing its aeronautical study, then the applicant shall notify the [commission]  
186 that it has not received notice of the [commission's] determination. The [commission] shall then  
187 have [seven (7)] working days from the date of the applicant's notice to notify the applicant of its  
188 determination. Nothing herein precludes the [commission] from making its determination before  
189 the FAA completes its aeronautical study.

190 (I) If FAA Form 7460-1 is not required, then the [commission] shall notify the applicant  
191 of its determination within [sixty (60)] days of filing the application. If the applicant has not been  
192 notified by the [commission] of its determination within [sixty (60)] days of filing the  
193 application, then the applicant shall notify the [commission] that it has not received notice of the  
194 [commission's] determination. The [commission] shall then have [seven (7)] working days from  
195 the date of the applicant's notice to notify the applicant of its determination.

196 (J) Once a permit is issued by the [commission], the applicant shall be required to  
197 complete the following steps to complete the permit process:

198 1. The applicant for a permit under this Act shall record each permit issued by the  
199 [commission] in the office of the county clerk for the county where the structure is located not  
200 later than [thirty (30)] business days after the [commission] issues the permit. If a structure is  
201 located in more than one county, the county that contains the majority of the structure is the  
202 county in which the permit must be filed. A permit issued under paragraph 1 of subsection A of  
203 Section 3 of this Act shall contain the following statement:

204  
205 "The permittee acknowledges for itself, its heirs, its successors, and its assigns,  
206 that the real estate described in this permit is located within the primary surface or  
207 the runway protection zone of a public-use airport, and that the permittee is  
208 building a structure upon this real estate with the full knowledge and acceptance  
209 that it may be incompatible with normal airport operations including the landing  
210 and takeoff of aircraft."  
211

212 2. A permit issued in accordance with the provisions of this Act is valid only after  
213 the [commission] receives a certified copy of the recorded permit with the recording data from  
214 the county clerk of the county in which the structure is located; and

215 3. Every permit granted by the [commission] shall specify that obstruction  
216 markers, markings, lighting, or other visual or aural identification required to be installed on or  
217 in the vicinity of the structure shall conform to federal laws and regulations.

218 (K) A permit issued in accordance with the provisions of this Act is valid only if the  
219 proposed structure has been constructed within [ten (10)] years of the issuance of a permit by the  
220 [commission] pursuant to this Act.

221 (L) 1. If the [commission] determines that a permit should not be issued under the  
222 provisions of this Act, the [commission] shall notify the applicant in writing of its determination.  
223 The notification may be served by delivering it personally to the applicant or by sending it by  
224 certified or registered mail to the applicant at the address specified in the application.

225 2. The determination is final [thirty (30)] days after notification of the  
226 determination is served, unless the applicant, within the [thirty-day] period, requests  
227 reconsideration in writing to the [commission] and provides written evidence showing why the

application should have been granted. The [commission] has up to a period of [thirty (30)] days from the receipt of the request. The [commission] shall notify the applicant of its determination as specified in paragraph 1 of subsection L of this section. In the event of a second denial by the [commission] of the permit request, the applicant can request a hearing before the [commission] with reference to the application. A hearing under this section shall be open to the public. The applicant may appear and be heard either in person or by counsel and may present pertinent evidence and testimony. At the hearing, the applicant has the burden to show cause why the [commission] should have granted the permit to erect the proposed structure.

(M) The [commission] shall prepare and charge a schedule of reasonable fees for services rendered, not to exceed [two hundred dollars (\$200.00)] per permit application.

(N) No permit shall be required:

1. For mobile or temporary equipment used to construct or install a new structure or to perform routine maintenance, repairs, or replace parts of an existing structure; or

2. To repair, replace, or alter an existing structure that would not result in a total structure height greater than the horizontal, conical or approach surfaces as defined in section 2 of this Act, or change the location of an existing structure.

Section 5. [*Penalties.*] Each violation of this Act, or rulings promulgated by the [commission] pursuant to this Act, shall constitute a misdemeanor punishable by a fine of not more than [five hundred dollars (\$500.00)]. Each day that such a violation or failure continues constitutes a separate offense. In addition, the [commission] may institute in any court of general jurisdiction, an action to prevent, restrain, correct, or abate any violation of this Act, or any rules adopted or orders issued by the [commission] pursuant to this Act. A court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this Act and the applicable rules or orders of the [commission] issued under this Act.

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

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

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

# Animal Welfare

This Act creates a Equine Health and Welfare Council, a Equine Health and Welfare Fund, and a Livestock Care Standards Commission.

Submitted as:

Kentucky

[Chapter 106 of 2010](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

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

Section 2. [*Equine Health and Welfare Council.*]

(1) The [state equine health and welfare council] is hereby established and attached to the [department of agriculture] for administrative purposes.

(2) This [council] shall be composed of [thirteen (13)] voting members and [two (2)] nonvoting ex officio members as follows:

(a) The [commissioner of agriculture] or their designee;

(b) The [state veterinarian] or their designee;

(c) [One (1)] representative of the [college of agriculture equine initiative] at [insert state university] to be designated by the [dean of the college of agriculture] at [insert state university];

(d) [One (1)] representative of the [equine industry program] at [insert state university] to be designated by the [dean of the college of business] at [insert state university];

(e) [One (1)] representative of [equine education programs] chosen by [insert state university] on a rotating basis at the pleasure of the [university] to serve a [one (1)] year term;

(f) The [executive director of the state university livestock disease diagnostic center], or their designee, or the [executive director of the university veterinary center], or their designee, who shall serve [one (1)] year terms on a rotating basis;

(g) [One (1)] representative of the [Farm Bureau Federation] with an interest in equine issues;

(h) [One (1)] veterinarian representing the [Equine Health and Welfare Alliance Inc.];

(i) [One (1)] member representing the state [Veterinary Medical Association];

(j) [One (1)] member to be appointed by the [governor] from a list of [three (3)] nominees submitted by the [state horse council];

(k) [One (1)] member representing organized horse rescue entities to be selected by the [governor] from a listing of those who apply for membership on the [council];

(l) [Two (2)] members at large who live in diverse regions of the state to be appointed by the [governor]. Each member at large shall primarily represent [one (1)] of the following:

1. Equine breeders and owners; and

2. Agricultural interests;

(m) The [chair of the senate standing committee on agriculture], who shall serve as a nonvoting ex officio member; and



(n) The [chair of the house standing committee on agriculture and small business], who shall serve as a nonvoting ex officio member.

(3) Initial terms of members serving under subsection (2)(c), (d), and (g) to (l) of this section shall be staggered by the [governor]. Thereafter, terms shall be for [four (4)] years or until their successors are duly appointed and qualified. Vacancies on the [council] shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) Consideration shall be given to racial and gender equity in the appointment of [council] members.

(5) The [council] shall elect [one (1)] of its members to serve as chair for a term of [two (2)] years.

(6) The [council] shall meet [quarterly] or upon the call of the chair. The first meeting of the [council] shall occur at the beginning of the [quarter] following appointments to the [council].

(7) A quorum of the [council] shall consist of [seven (7)] voting members. A majority of the voting members present may act upon matters before the [council].

(8) Members of the [council] shall serve without compensation.

(9) The [council] shall assist, advise, and consult with the [commission] created by Section 4 of this Act on equine health and welfare issues and act to maintain the health, welfare, and safety of equines in the state.

(10) Additional duties and functions of the [council] include but are not limited to:

(a) Undertaking research, conducting public hearings, and collecting data to determine the prevalent equine health and welfare issues;

(b) Striving to develop regional centers of care for unwanted, abused, neglected, or confiscated equines. The development of the centers may be undertaken in cooperation with state and local governments, private entities, universities, or other groups;

(c) Creating a system of voluntary certification of equine rescue and retirement operations that includes, at a minimum, industry-accepted standards of care for equines;

(d) Researching and offering suggestions to the [commission] for statutory changes affecting equine health, welfare, abuse, and neglect issues;

(e) Assisting veterinarians and others in maintaining the health and welfare of equines by identifying and referring to the appropriate authorities critical areas of need; and

(f) Submitting a written report annually to the [governor], the [department of agriculture], and the [Legislative Research Commission] about its administrative, financial, and programmatic activities.

(11) Nothing in this section shall be construed to infringe upon the regulatory authority of:

(a) The [state horse racing authority] to inspect, investigate, and supervise horses and other participants in horse racing and breeders incentive funds as provided by [insert citation], administrative regulations promulgated under [insert citation], or any other law applicable to the regulation of horse racing in the state;

(b) The [state board of veterinary examiners] to license and certify veterinarians as provided by [insert citation], administrative regulations promulgated under [insert citation], or any other law applicable to the regulation of veterinarians in the state; or

(c) The [livestock care standards commission] created by this Act to make recommendations to the [board of agriculture] to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry.

### Section 3. *[Equine Health and Welfare Fund.]*

(1) An [Equine Health and Welfare Fund] is created in the [state treasury] as a trust and agency account to be administered by the [council] for the purposes provided in this Act.

(2) Notwithstanding [insert citation], any money accruing to this [fund] in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any other funds both public and private, shall not lapse but shall be carried forward to the next fiscal year.

(3) Any interest earnings of the [fund] shall become a part of the [fund] and shall not lapse.

(4) Money received in the [fund] shall be used for carrying out the provisions of this Act.

#### Section 4. *[Livestock Care Standards Commission.]*

(1) A [livestock care standards commission] is hereby created and attached to the [department of agriculture] for administrative purposes.

(2) This [commission] shall consist of [sixteen (16)] members as follows:

(a) The [state veterinarian], who shall be a nonvoting member;

(b) The [co-chairs of the interim joint committee on agriculture], who shall be nonvoting, ex officio members; and

(c) [Thirteen (13)] voting members as follows:

1. The [commissioner or their designee], who shall serve as chair;

2. The [dean of the state university college of agriculture] or the [dean's designee];

3. The [chair of the animal control advisory board] or the [chair's designee];

4. The [director of the state university livestock disease diagnostic center] or the [director of the state university veterinary center]. Each director shall serve [one (1)] year terms on a rotating basis;

5. [Four (4)] members appointed by the [governor] as follows:

(A) [One (1)] person selected from a list of [three (3)] submitted by the [Farm Bureau];

(B) [One (1)] person selected from a list of [three (3)] submitted by the [state County Judge/Executive Association];

(C) [One (1)] veterinarian selected from a list of [three (3)] submitted by the [state Veterinary Medical Association]. The veterinarian's practice shall include working on [one (1)] or more of the species named in paragraph 6 of this subsection (c); and

(D) [One (1)] citizen at large with an interest in food safety; and

6. [Five (5)] members actively engaged in farming and appointed by the [governor] with assistance by the [department]. The [department] shall contact commodity organizations named in this paragraph, collect a list of potential representatives from the organizations, and deliver the list to the [governor]. The [governor] shall appoint:

(A) [One (1)] active producer from the list submitted by commodity organizations representing bovine species in this state;

(B) [One (1)] active producer from the list submitted by commodity organizations representing ovine and caprine species in this state;

(C) [One (1)] active producer from the list submitted by commodity organizations representing porcine species in this state;

(D) [One (1)] active producer from the list submitted by commodity organizations representing equine species in this state; and

(E) [One (1)] active producer from the list submitted by commodity organizations representing poultry species in this state.

(3) Initial terms of appointed members shall be staggered by the [governor]. Thereafter, terms shall be for [four (4)] years or until their successors are duly appointed and qualified. Vacancies on the [commission] shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) The [commission] shall meet at the call of the chair or a majority of the voting members.

(5) The [governor] shall name the appointed members of the [commission] by [date].

(6) No members of the [commission] shall be a lobbyist as defined by [insert citation].

(7) No appointed member of the [commission] shall concurrently serve on this [board] as defined under [insert citation].

(8) A majority of the voting members shall constitute a quorum for conducting business and be required in order for the [commission] to take any action.

(9) The [commission] shall make recommendations to the [state board of agriculture] to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry. The [state board of agriculture] shall approve or reject recommendations within [ninety (90)] days of receiving recommendations. If approved, the [state board of agriculture] shall promulgate administrative regulations establishing the standards within [thirty (30)] days of approval. If rejected, the [state board of agriculture] shall notify the [commission] in writing within [thirty (30)] days of the rejection, and shall list the reasons for the rejection. The [state board of agriculture] shall not establish, maintain, or revise on-farm livestock and poultry care standards without a recommendation by the [commission].

(10) Before recommending on-farm livestock and poultry care standards to the [state board of agriculture], the [commission] may consult with agricultural representatives from [insert universities].

(11) When developing recommendations for on-farm livestock and poultry care standards to the [state board of agriculture], the [commission] shall consider factors that include but are not limited to:

(a) Animal well-being and agricultural best management practices;

(b) Herd health; and

(c) Safe, affordable, healthy food supplies for consumers.

(12) (a) A city, town, county, urban-county, charter county, consolidated local government, unified local government, or other political subdivision of the state shall not adopt any ordinance, resolution, rule, or regulation regarding on-farm livestock or poultry care that is more stringent than the administrative regulations promulgated by the [state board of agriculture] under subsection (9) of this section. Local legislation in violation of this subsection is void and unenforceable.

(b) Nothing in this subsection shall be construed to preempt any local ordinance or regulation affecting planning and zoning adopted in accordance with [insert citation].

(c) The provisions of paragraph (a) of this subsection shall not affect ordinances, resolutions, rules, or regulations adopted before the effective date of this Act.

(13) Nothing in this section shall be construed to abrogate the regulatory authority of:

(a) The [state horse racing authority] to inspect, investigate, and supervise horses and other participants in horse racing as provided by [insert citation] and the administrative regulations promulgated under [insert citation], or any other law applicable to the regulation of horse racing in the state;

(b) The [state board of veterinary examiners] to license and certify veterinarians as provided by [insert citation] and the administrative regulations promulgated under [insert citation], or any other law applicable to the regulation of veterinarians in the state; or

180 (c) The [state board of agriculture] to prevent, control, or eradicate any  
181 communicable disease of on-farm livestock or poultry as provided by [insert citation] and the  
182 administrative regulations promulgated under [insert citation], or any other law applicable to the  
183 prevention, control, or eradication of communicable diseases of on-farm livestock or poultry.  
184

185 Section 5. [*Severability*.] [Insert severability clause.]  
186

187 Section 6. [*Repealer*.] [Insert repealer clause.]  
188

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

# Anti-Bullying Bill of Rights

This Act defines harassment, intimidation, and bullying. It requires schools to implement bullying prevention programs. It requires school principals appoint anti-bullying specialists for their schools and it mandates forming school safety teams for each school.

This legislation requires teachers, school board members, school leaders, and other education personnel to get training about recognizing and preventing harassment, intimidation, and bullying by students. It addresses reporting such incidents to a district board of education, on school report cards, and by the state department of education. It requires the state department of education to develop guidance documents explaining how complaints about harassment, intimidation, and bullying must be resolved.

This legislation requires public institutions of higher education to adopt a policy in the code of student conduct prohibiting harassment, intimidation, and bullying.

The legislation creates a Bullying Prevention Fund within the department of education to provide grants to train school personnel about preventing harassment, intimidation, and bullying in schools.

Submitted as:

New Jersey

[P.L. 2010, CHAPTER 122](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “the “Anti-Bullying Bill of Rights  
2 Act.”

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

5           (1) “Electronic communication” means a communication transmitted by means of an  
6 electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager;

7           (2) “Board of Education” or “Board” means a local school board as defined in [insert  
8 citation].

9           (3) “Commissioner” means an official defined in [insert citation].

10          (4) “Harassment, intimidation or bullying” means any gesture, any written, verbal or  
11 physical act, or any electronic communication, whether it be a single incident or a series of  
12 incidents, that is reasonably perceived as being motivated either by any actual or perceived  
13 characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation,  
14 gender identity and expression, or a mental, physical or sensory disability, or by any other  
15 distinguishing characteristic, that takes place on school property, at any school-sponsored  
16 function, on a school bus, or off school grounds as provided for in [insert citation], that  
17 substantially disrupts or interferes with the orderly operation of the school or the rights of other  
18 students and that:

19           (a) a reasonable person should know, under the circumstances, will have the effect  
20 of physically or emotionally harming a student or damaging the student’s property, or placing a  
21 student in reasonable fear of physical or emotional harm to their person or damage to their  
22 property;

(b) has the effect of insulting or demeaning any student or group of students; or  
(c) creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

(5) "State Board of Education" means the state board of education defined in [insert citation].

Section 3. [*Harassing, Intimidating, or Bullying as Cause for Suspending or Expelling Pupils.*] Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include harassment, intimidation, or bullying.

Section 4. [*Anti-Bullying Programs and Training.*]

(A) The week beginning with the [first Monday in October] of each year shall be designated as a "Week of Respect" in this state. School districts, in order to recognize the importance of character education, shall observe the week by providing age-appropriate instruction focusing on preventing harassment, intimidation, or bullying. Throughout the school year each school district shall provide ongoing age-appropriate instruction about preventing harassment, intimidation, and bullying in accordance with the core curriculum content standards.

(B) The [commissioner of education] shall develop, in consultation with the [division on civil rights], and make available on the [department of education's] Internet site, an online tutorial about harassment, intimidation, and bullying. The online tutorial shall, at a minimum, include best practices to prevent harassment, intimidation, and bullying, applicable laws, and such other information that the [commissioner] determines to be appropriate. The online tutorial shall be accompanied by a test to assess a person's understanding of the information provided in the tutorial.

(C) Schools and school districts shall [annually] establish, implement, document, and assess bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members. The programs or approaches shall be designed to create school-wide conditions to prevent and address harassment, intimidation, and bullying.

(D) A school district may apply to the [department of education] for a grant to be used for programs or approaches established pursuant to this section, to the extent funds are appropriated for these purposes or funds are made available through the [Bullying Prevention Fund] established pursuant to this Act.

(E) Beginning with the [school year], all candidates for teaching certification who have completed a teacher preparation program at a regionally accredited institution of higher education shall have satisfactorily completed a program about harassment, intimidation, and bullying prevention.

(F) Beginning with the [school year], any person seeking certification through the alternate route established under [insert citation] shall, within [one] year of being employed, satisfactorily complete a program about harassment, intimidation, and bullying prevention.

(G) The [state board of education] shall establish the appropriate requirements of the program about harassment, intimidation, and bullying prevention. The [state board] shall, as part of the professional development requirement established by the [state board for public school teachers], require each public school teacher to complete at least [two] hours of instruction about harassment, intimidation, or bullying prevention in each professional development period.

(H) Beginning with the [school year], all candidates for administrative and supervisory certification shall have satisfactorily completed a program about harassment, intimidation, and bullying prevention.

(I) A school leader shall complete training on school ethics, school law, school governance, the prevention of harassment, intimidation, and bullying as part of the professional development for school leaders required pursuant to [state board of education] regulations. The training shall be offered through a collaborative training model as identified by the [commissioner of education], in consultation with the [state advisory committee on professional development for school leaders]. As used in this section, “school leader” means a school district staff member who holds a position that requires the possession of a chief school administrator, principal, or supervisor endorsement.

(J) Within [one year] after each re-election or re-appointment to a board of education, a board member shall complete a training program about harassment, intimidation, and bullying in schools, including a school district’s responsibilities as defined in [insert citation.] A board member shall be required to complete the program only once. This training about harassment, intimidation, and bullying in schools shall be provided by the [state school boards’ association], in consultation with recognized experts in school bullying from a cross section of academia, child advocacy organizations, nonprofit organizations, professional associations, and government agencies.

(K) The [police training commission in the division of criminal justice in the department of law and public safety], in consultation with the [attorney general], shall develop a training course for safe schools resource officers and public school employees assigned by a board of education to serve as a school liaison to law enforcement as defined under [insert citation]. The [attorney general], in conjunction with the [police training commission], shall ensure that the training course is developed within [180] days of the effective date of this Act. The course shall at a minimum provide comprehensive and consistent training in current school resource officer practices and concepts. The course shall include training in the protection of students from harassment, intimidation, and bullying, including incidents which occur through electronic communication. The course shall be made available to any law enforcement officer or public school employee referred by the board of education of the public school to which assignment as a safe schools resource officer or school liaison to law enforcement is sought and any safe schools resource officer or school liaison to law enforcement assigned to a public school prior to [insert date].

(L) The training course developed by the [police training commission] shall be offered at each school approved by the [police training commission] to provide police training courses. The [commission] shall ensure that an individual assigned to instruct the course is proficient and experienced in current school resource officer practices and concepts. The [police training commission] shall award a certificate to each individual who successfully completes the course.

(M) The [police training commission], in consultation with the [commissioner of education], shall adopt rules and regulations to implement the provisions of this section.

(N) The [state board of education], in consultation with the [youth suicide prevention advisory council] established in the [department of children and families] pursuant to [insert citation], shall, as part of the professional development requirement established by the [state board] for public school teaching staff members, require each public school teaching staff member to complete at least [two] hours of instruction in suicide prevention, to be provided by a licensed health care professional with training and experience in mental health issues, in each professional development period. The instruction in suicide prevention shall include information about the relationship between the risk of suicide and incidents of harassment, intimidation, and bullying and information on reducing the risk of suicide in students who are members of communities identified as having members at high risk of suicide.

#### Section 5. *[School Policy Prohibiting Harassment, Intimidation or Bullying.]*

(A) Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The school district shall adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

(B) A school district shall develop a process for discussing the district's harassment, intimidation or bullying policy with students and provide training about the school district's harassment, intimidation, or bullying policies to school employees and volunteers who have significant contact with students and ensure that the training includes instruction about preventing bullying on the basis of the protected categories enumerated in Section 2 (4) of this Act and other distinguishing characteristics that may incite incidents of discrimination, harassment, intimidation, or bullying.

(C) Information about a school district policy against harassment, intimidation or bullying shall be incorporated into a school's employee training program and shall be provided to full-time and part-time staff, volunteers who have significant contact with students, and those people contracted by the district to provide services to students.

(D) A school district shall have local control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

(1) a statement prohibiting harassment, intimidation or bullying of a student;  
(2) a definition of harassment, intimidation or bullying no less inclusive than that set forth in section 2 (4) of this Act;

(3) a description of the type of behavior expected from each student;  
(4) consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying, and

(5) a procedure for reporting an act of harassment, intimidation or bullying, including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

(a) All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal [on the same day] when the school employee or contracted service provider witnessed or received reliable information regarding any such incident.

(b) All acts of harassment, intimidation, or bullying shall be reported in writing to the school principal within [two] school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying.

(c) The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services.

(6) a procedure for prompt investigation of reports of violations and complaints, which procedure shall at a minimum provide that:

(a) the investigation shall be initiated by the principal or the principal's designee within [one] school day of the report of the incident and shall be conducted by a school anti-bullying specialist. The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation. The investigation shall be completed as soon as possible, but not later than [10] school days from the date of the written report of the incident of harassment, intimidation, or bullying. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the [10-day] period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information;



(b) the results of the investigation shall be reported to the superintendent of schools within [two] school days of the completion of the investigation, and in accordance with regulations promulgated by the [state board of education] pursuant to [insert citation], the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action;

(c) the results of each investigation shall be reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;

(d) parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and state law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within [5] school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within [10] days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;

(e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the [commissioner of education], in accordance with the procedures set forth in law and regulation, no later than [90] days after the issuance of the board's decision; and

(f) a parent, student, guardian, or organization may file a complaint with the [division on civil rights] within [180] days of the occurrence of any incident of harassment, intimidation, or bullying based on membership in a protected group as enumerated in [insert citation];

(7) the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the [commissioner];

(8) a statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;

(9) action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;

(10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions;

(11) a requirement that a link to the policy be prominently posted on the home page of the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district; and

(12) a requirement that the name, school phone number, school address and school email address of the district anti-bullying coordinator be listed on the home page of the school district's website and, on the home page of each school's website, the name, school phone

number, school address and school email address of the school anti-bullying specialist and the district anti-bullying coordinator. The information concerning the district anti-bullying coordinator and the school anti-bullying specialists shall also be maintained on the [department's] website.

(E) A school district shall adopt the policy required by this section and transmit a copy of that policy to the appropriate executive county superintendent of schools by [insert date]. A school district shall annually conduct a re-evaluation, reassessment, and review of its policy, making any necessary revisions and additions. The [board] shall include input from the school anti-bullying specialists in conducting its re-evaluation, reassessment, and review. The district shall transmit a copy of the revised policy to the appropriate executive county superintendent of schools within [30] school days of the revision. The first revised policy following the effective date of [insert date] shall be transmitted to the executive county superintendent of schools by [insert date].

(F) To assist school districts in developing policies for the prevention of harassment, intimidation, or bullying, the [commissioner of education] shall develop a model policy applicable to grades kindergarten through 12. This model policy shall be issued no later than [insert date]. The [commissioner] shall adopt amendments to the model policy which reflect the provisions of [insert citation] after the effective date of that Act and shall subsequently update the model policy as the [commissioner] deems necessary.

(G) Notice of the school district's policy shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook.

(H) The policy adopted by each school district shall include provisions for appropriate responses to harassment, intimidation, or bullying that occurs off school grounds, in cases in which a school employee is made aware of such actions. The responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with the [board of education's] code of student conduct and other provisions of the [board's] policy on harassment, intimidation, or bullying.

(I) Nothing in this section shall prohibit a school district from adopting a policy that includes components that are more stringent than the components set forth in this section.

#### Section 6. *[Anti-Bullying Specialist and Anti-Bullying Coordinator.]*

(A) The principal in each school in a school district shall appoint a school anti-bullying specialist. When a school guidance counselor, school psychologist, or another individual similarly trained is currently employed in the school, the principal shall appoint that individual to be the school anti-bullying specialist. If no individual meeting this criteria is currently employed in the school, the principal shall appoint a school anti-bullying specialist from currently employed school personnel. The school anti-bullying specialist shall:

(1) chair the school safety team;

(2) lead the investigation of incidents of harassment, intimidation, and bullying in the school; and

(3) act as the primary school official responsible for preventing, identifying, and addressing incidents of harassment, intimidation, and bullying in the school.

(B) The superintendent of schools shall appoint a district anti-bullying coordinator. The superintendent shall make every effort to appoint an employee of the school district to this position. The district anti-bullying coordinator shall:

(1) be responsible for coordinating and strengthening the school district's policies to prevent, identify, and address harassment, intimidation, and bullying of students;

(2) collaborate with school anti-bullying specialists in the district, the board of education, and the superintendent of schools to prevent, identify, and respond to harassment, intimidation, and bullying of students in the district;

(3) provide data, in collaboration with the superintendent of schools, to the [department of education] about harassment, intimidation, and bullying of students; and

(4) execute such other duties related to school harassment, intimidation, and bullying as requested by the superintendent of schools.

(C) The district anti-bullying coordinator shall meet at least [twice] a school year, with the school anti-bullying specialists in the district to discuss and strengthen procedures and policies to prevent, identify, and address harassment, intimidation, and bullying in the district.

(D) The [commissioner of education], in consultation with recognized experts in school bullying from a cross section of academia, child advocacy organizations, nonprofit organizations, professional associations, and government agencies, shall establish in-service workshops and training programs to train selected public school employees to act as district anti-bullying coordinators and school anti-bullying specialists. The [commissioner] shall seek to make the workshops and training programs available and administered online through the [department's] website or other existing online resources. The [commissioner] shall evaluate the effectiveness of the consulting group on an [annual] basis. The in-service training programs may use the offices of the executive county superintendent of schools, or such other institutions, agencies, or people as the [commissioner] deems appropriate. Each board of education shall provide time for the in-service training during the usual school schedule in order to ensure that appropriate personnel are prepared to act in the district as district anti-bullying coordinators and school anti-bullying specialists.

(E) Upon completion of the initial in-service training program, the [commissioner] shall ensure that programs and workshops that reflect the most current information about harassment, intimidation, and bullying in schools are prepared and made available to district anti-bullying coordinators and school anti-bullying specialists at regular intervals.

#### Section 7. *[School Safety Team.]*

(A) A school district shall form a school safety team in each school in the district to develop, foster, and maintain a positive school climate by focusing on the on-going, systemic process and practices in the school and to address school climate issues such as harassment, intimidation, or bullying. A school safety team shall meet at least [two] times per school year.

(B) A school safety team shall consist of the principal or his designee who, if possible, shall be a senior administrator in the school and the following appointees of the principal: a teacher in the school; a school anti-bullying specialist; a parent of a student in the school; and other members to be determined by the principal. The school anti-bullying specialist shall serve as the chair of the school safety team.

(C) The school safety team shall:

(1) receive any complaints of harassment, intimidation, or bullying of students that have been reported to the principal;

(2) receive copies of any report prepared after an investigation of an incident of harassment, intimidation, or bullying;

(3) identify and address patterns of harassment, intimidation, or bullying of students in the school;

(4) review and strengthen school climate and the policies of the school in order to prevent and address harassment, intimidation, or bullying of students;

(5) educate the community, including students, teachers, administrative staff, and parents, to prevent and address harassment, intimidation, or bullying of students;

316 (6) participate in the training required pursuant to [insert citation] and other  
317 training which the principal or the district anti-bullying coordinator may request;

318 (7) collaborate with the district anti-bullying coordinator in the collection of  
319 district-wide data and in the development of district policies to prevent and address harassment,  
320 intimidation, or bullying of students; and

321 (8) execute such other duties related to harassment, intimidation, and bullying as  
322 requested by the principal or district anti-bullying coordinator.

323 (D) The members of a school safety team shall be provided professional development  
324 opportunities that address effective practices of successful school climate programs or  
325 approaches.

326 (E) Notwithstanding any provision of this section to the contrary, a parent who is a  
327 member of the school safety team shall not participate in the activities of the team which may  
328 compromise the confidentiality of a student.

329  
330 Section 8. *[Reporting Incidents of Harassment, Intimidation, or Bullying.]*

331 (A) Any school employee observing or having direct knowledge from a participant or  
332 victim of an act of violence, including harassment, intimidation, or bullying, shall, in accordance  
333 with standards established by the [commissioner], file a report describing the incident to the  
334 school principal in a manner prescribed by the [commissioner], and copy of same shall be  
335 forwarded to the district superintendent.

336 (B) The principal shall notify the district superintendent of schools of the action taken  
337 regarding an incident [two] times each school year, between [September 1 and January 1 and  
338 between January 1 and June 30].

339 (C) A member of a board of education, school employee, contracted service provider,  
340 student or volunteer who has witnessed, or has reliable information that a student has been  
341 subject to, harassment, intimidation, or bullying shall report the incident to the appropriate  
342 school official designated by the school district's policy, or to any school administrator or safe  
343 schools resource officer, who shall immediately initiate the school district's procedures  
344 concerning school bullying.

345 (D) A member of a board of education or a school employee who promptly reports an  
346 incident of harassment, intimidation or bullying, to the appropriate school official designated by  
347 the school district's policy, or to any school administrator or safe schools resource officer, and  
348 who makes this report in compliance with the procedures in the district's policy, is immune from  
349 a cause of action for damages arising from any failure to remedy the reported incident.

350 (E) A school administrator who receives a report of harassment, intimidation, or bullying  
351 from a district employee, and fails to initiate or conduct an investigation, or who should have  
352 known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to  
353 minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary  
354 action.

355 (F) A member of a board of education, school employee, student or volunteer shall not  
356 engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable  
357 information about an act of harassment, intimidation or bullying.

358 (G) The [commissioner of education] shall establish a formal protocol pursuant to which  
359 the office of the executive county superintendent of schools shall investigate a complaint that  
360 documents an allegation of a violation of this Act by a school district located within the county,  
361 when the complaint has not been adequately addressed on the local level. The office of the  
362 executive county superintendent shall report its findings, and if appropriate, issue an order for the  
363 school district to develop and implement corrective actions that are specific to the facts of the  
364 case.

(H) The [commissioner] shall ensure that the personnel of the office of the executive county superintendent of schools who are responsible for conducting the investigations receive training and technical support on the use of the complaint investigation protocol.

Section 9. *[Reporting About Acts of Harassment, Intimidation, or Bullying.]*

(A) Twice each year between [insert dates], at a public hearing, the superintendent of schools shall report to the [board of education] all acts of violence, vandalism, and harassment, intimidation, or bullying which occurred during the previous reporting period. The report shall include the number of reports of harassment, intimidation, or bullying, the status of all investigations, the nature of the bullying based on one of the protected categories identified in [insert citation], the names of the investigators, the type and nature of any discipline imposed on any student engaged in harassment, intimidation, or bullying, and any other measures imposed, training conducted, or programs implemented, to reduce harassment, intimidation, or bullying. The information shall also be reported [once] during each reporting period to the [department of education]. The report must include data broken down by the enumerated categories as listed in [insert citation], and data broken down by each school in the district, in addition to district-wide data. It shall be a violation to improperly release any confidential information not authorized by federal or state law for public release.

(B) The report shall be used to grade each school for the purpose of assessing its effort to implement policies and programs consistent with [insert citation]. The district shall receive a grade determined by averaging the grades of all the schools in the district. The [commissioner] shall promulgate guidelines for a program to grade schools for the purposes of this subsection.

(C) The grade received by a school and the district shall be posted on the homepage of the school's website. The grade for the district and each school of the district shall be posted on the homepage of the district's website. A link to the report shall be available on the district's website. The information shall be posted on the websites within [10] days of the receipt of a grade by the school and district.

(D) Verification of the reports about violence, vandalism, and harassment, intimidation, or bullying shall be part of the state's monitoring of the school district, and the [state board of education] shall adopt regulations that impose a penalty on a school employee who knowingly falsifies the report. A [board of education] shall provide ongoing staff training, in cooperation with the [department of education], in fulfilling the reporting requirements pursuant to this section.

(E) The majority representative of the school employees shall have access monthly to the number and disposition of all reported acts of school violence, vandalism, and harassment, intimidation, or bullying.

(F) The [commissioner of education] shall [each year] submit a report to the [education committees of the Senate and House] detailing the extent of violence, vandalism, harassment, intimidation, or bullying in the public schools in this state and making recommendations to alleviate the problem. The report shall be made available annually to the public no later than [insert date], and shall be posted on the [department's] website.

(G) Report cards issued pursuant to [insert citation] shall include data identifying the number and nature of all reports of harassment, intimidation, or bullying.

Section 10. *[School Compliance, Collective Bargaining Contracts and Employment Contracts.]*

(A) Nonpublic schools are encouraged to comply with the provisions of this Act.

(B) In the case of a faith-based nonpublic school, no provision of this Act shall be interpreted to prohibit or abridge the legitimate statement, expression or free exercise of the

beliefs or tenets of that faith by the religious organization operating the school or by the school's faculty, staff, or student body.

(C) Nothing contained in this Act shall alter or reduce the rights of a student with a disability with regard to disciplinary actions or to general or special educational services and supports.

(D) Nothing in this Act shall be construed as affecting the provisions of any collective bargaining agreement or individual contract of employment in effect on that Act's effective date.

Section 11. [*Public Institutions of Higher Education Policies about Prohibiting Harassment, Intimidation, or Bullying.*]

(A) A public institution of higher education shall adopt a policy to be included in its student code of conduct prohibiting harassment, intimidation, or bullying. The policy shall contain, at a minimum:

(1) A statement prohibiting harassment, intimidation, or bullying;

(2) Disciplinary actions which may result if a student commits an act of harassment, intimidation, or bullying; and

(3) A definition of harassment, intimidation, or bullying that at a minimum includes any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on the property of the institution of higher education or at any function sponsored by the institution of higher education, that substantially disrupts or interferes with the orderly operation of the institution or the rights of other students and that:

(a) a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

(b) has the effect of insulting or demeaning any student or group of students;

(c) creates a hostile educational environment for the student; or

(d) interferes with a student's education or by severely or pervasively causing physical or emotional harm to the student.

(B) The institution shall distribute the policy by email to each student within seven days of the start of each semester and shall post the policy on its website.

Section 12. [*Bullying Prevention Fund.*]

(A) There is created a special fund in the [department of education], which shall be designated the [Bullying Prevention Fund]. The fund shall be maintained in a separate account and administered by the [commissioner of education] to carry out the provisions of this Act. The fund shall be used to offer grants to school districts to provide training about harassment, intimidation, and bullying prevention and on the effective creation of positive school climates, and shall consist of:

(1) any monies appropriated by the state for the purposes of the fund;

(2) any monies donated for the purposes of the fund; and

(3) all interest and investment earnings received on monies in the fund.

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

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464

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

465

466

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

# Banking Development Districts

This bill authorizes the state commissioner of banking and insurance to create a program and promulgate rules to encourage banks to establish branches in geographic locations in the state where there is a demonstrated need for banking services. The criteria for such areas to be designated as banking development districts include the number of sites offering banking services that are already in the area, the need for banking services in such areas, and the potential impact that additional banking services would have on economic development in the areas.

The legislation authorizes banks in such areas to be designated depositories of public money and allows the state treasurer and municipal governments to deposit public money in such banks at a special, fixed interest rate of return.

Submitted as:

New Jersey

[Chapter 24, 2011 \(A1458\)](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Banking Development District  
2 Act.”

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

5           1. “Bank” means a state or federally chartered bank, savings bank, savings and loan  
6 association, or credit union doing business in this state.

7           2. “Banking services” means deposit taking, check cashing, sale of money orders, and  
8 origination of residential or commercial mortgages, consumer loans, and commercial loans.

9           3. “Branch” means a full service branch office of a bank, providing banking services  
10 with tellers, customer service representatives, and loan officers available at least [40] hours per  
11 week.

12           4. “Commissioner” means the [commissioner of banking and insurance].

13           5. “Department” means the [department of banking and insurance].

14           6. “District” means a banking development district approved under this Act.

15           7. “Program” means the Banking Development District Program established pursuant to  
16 this Act.

17  
18           Section 3. [*Banking Development District Program.*]

19           (A) There is established in the [department], the Banking Development District Program.

20           (B) The [commissioner] shall administer and monitor the program to encourage the  
21 establishment of bank branches in geographic locations in this state where there is a  
22 demonstrated need for banking services by the establishment of banking development districts.

23           (C) The [department] shall promulgate rules and regulations which set forth the criteria  
24 for the establishment of banking development districts. The criteria shall include, but not be  
25 limited to, the following:

26           1. The location, number, and proximity of sites where banking services are  
27 currently available within the district;



- 28 2. The identification of consumer needs for banking services within the district;  
29 3. The economic viability and local credit needs of the community within the  
30 district;  
31 4. The existing commercial development within the district;  
32 5. The impact additional banking services would have on potential economic  
33 development in the district; and  
34 6. Such other criteria that the commissioner shall identify as appropriate.  
35

36 Section 4. [*Application for Designation of Banking Development District.*]

37 (A) A municipality, in conjunction with a bank, may submit an application to the  
38 [commissioner] for the designation of a banking development district within a specified  
39 geographic area.

40 (B) The [commissioner] shall issue a determination as to an application for designation as  
41 a district within [60] days of receipt of the application. If an application is approved, the  
42 [commissioner] shall transmit notification of the approval to the municipality requesting the  
43 district, the [state treasurer], and any bank which has or will have a branch located in the district.

44 (C) A bank may submit an application to open a branch in the requested banking  
45 development district, subject to all applicable federal and state laws regarding the establishment  
46 of branch offices, simultaneously with the submission of the application for the designation of a  
47 banking development district.  
48

49 Section 5. [*Selection of Bank as Depository for Public Moneys, Funds.*]

50 (A) Notwithstanding the provisions of [insert citation] or any other law to the contrary,  
51 the [state treasurer] may select a bank in a district as a depository for public moneys or funds that  
52 are otherwise in the custody of the [state treasurer].

53 (B) Subject to an agreement between the [state treasurer] and the bank, funds of the state  
54 deposited in the bank may earn a fixed rate of interest which is at or below the bank's posted rate  
55 for a mutually agreeable depository product, for a mutually agreeable term.  
56

57 Section 6. [*Selection of Bank as Depository of Funds of Municipality.*]

58 (A) The governing body of a municipality in which a banking development district has  
59 been designated by the [commissioner] may, by resolution, select a bank in the district as a  
60 depository for funds of the municipality, provided the bank shall be subject to the requirements  
61 for a public depository established pursuant to [insert citation]. The resolution shall state the  
62 maximum amount which may be on deposit at any time with the bank and such other terms and  
63 conditions as are determined to be necessary by the governing body of the municipality.

64 (B) Subject to an agreement between the governing body of the municipality and the  
65 bank, funds of the municipality deposited in the bank may earn a fixed rate of interest which is at  
66 or below the bank's posted rate for a mutually agreeable depository product, for a mutually  
67 agreeable term.

68 (C) The selection of a bank, deposit amount, and the terms and conditions of a deposit  
69 may be changed at any time by the governing body of the municipality by further resolution.  
70

71 Section 7. [*Rules, Regulations.*] The [department of banking and insurance] shall adopt  
72 rules and regulations to effectuate the purposes of this Act.  
73

74 Section 8. [*Severability.*] [Insert severability clause.]  
75

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

77  
78

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

# Biobased Products

This Act defines a “biobased product” and directs the state director of administrative services to establish a Biobased Product Preference Program. The legislation requires state agencies and state institutions of higher education to buy biobased equipment, material, or supplies in accordance with the program. It requires the director of the state administrative services agency to develop rules and procedures state agencies and higher education institutions must use to buy biobased products in accordance with the program. The Act contains provisions allowing these agencies to buy non-biobased products when biobased products are unavailable, fail to meet related performance requirements, or are too expensive.

The Act requires vendors who offer products under the program to certify their products are biobased and provide related information as requested by the state.

Submitted as:

Ohio

[SB 131 \(Enrolled version\)](#)

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 Biobased Products Purchasing  
2 Act.”

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

5       (A) “Agricultural materials” means agricultural-based materials or residues, including  
6 plant, animal, and marine materials or residues, used in the manufacture of commercial or  
7 industrial nonfood products.

8       (B) “Biobased product” means a product determined by the United States Secretary of  
9 Agriculture to be a commercial or industrial product, other than food or feed, that is composed,  
10 in whole or significant part, of biological products, renewable domestic agricultural materials, or  
11 forestry material, or is an intermediate ingredient or feedstock.

12       (C) “Biological products” means products derived from living materials other than  
13 agricultural or forestry materials.

14       (D) “Designated item” means a generic grouping of biobased products identified in  
15 subpart B, 7 C.F.R. 2902.10 to 2902.42.

16       (E) “Director” means the [director of the state department of administrative services].

17       (F) “Forest thinnings” means woody materials removed from a dense forest to improve  
18 growth, enhance forest health, or remove trees to recover potential mortality.

19       (G) “Forestry materials” means materials derived from the practice of planting and caring  
20 for forests and the management of growing timber where such materials come from short-  
21 rotation woody crops that are [less than ten years old], sustainably managed forests, wood  
22 residues, or forest thinnings.

23       (H) “Intermediate ingredient or feedstock” means a material or compound made, in  
24 whole or in significant part, from biological products, renewable agricultural materials, or  
25 forestry materials that are subsequently used to make a more complex compound or product.

26       (I) “State agencies” [insert list].

27       (J) “State institution of higher education” means an institution as defined under [insert

28 citation].

29 (K) “Sustainably managed forests” means the practice of land stewardship that integrates  
30 the reforestation, management, growing, nurturing, and harvesting of trees for useful products  
31 while conserving soil and improving air and water quality, wildlife, fish habitat, and aesthetics.

32  
33 Section 3. *[Biobased Products Preference Program.]*

34 (A) Not later than [one hundred eighty days] after the effective date of this Act, the  
35 [director] shall establish a Biobased Products Preference Program, which shall ensure that [state  
36 agencies and state institutions of higher education] purchase biobased products by giving a  
37 preference to those designated items that are composed of the highest percentage of biobased  
38 content practicable or that comply with regulations adopted under 42 U.S.C. 6914b-1 by the  
39 Administrator of the United States Environmental Protection Agency.

40 (B) The [director] shall adopt in accordance with [insert citation] guidelines and  
41 procedures the [state agencies and state institutions of higher education] shall use to give  
42 preference to and purchase biobased products in accordance with the program.

43 (C) As part of the program, the [director] shall adopt a policy of setting minimum  
44 biobased content specifications for awarding contracts in a manner that ensures that the biobased  
45 content of biobased products is consistent with the guidelines issued under 7 U.S.C. 8102.

46 (D) For any biobased product offered under the Biobased Products Preference Program, a  
47 vendor shall certify that the product meets the biobased content requirements for the designated  
48 item of which the product is an exemplar. Upon request, a vendor shall provide to the [director]  
49 information to verify the biobased content of a biobased product qualifying for purchase in  
50 accordance with the program.

51 (E) The [director] shall maintain a list of products that qualify as designated items under  
52 the Biobased Product Preference Program.

53 (F) Except as necessary under subsection (G) of this section, when purchasing equipment,  
54 material, or supplies, [state agencies and state institutions of higher education] shall purchase  
55 designated items in accordance with guidelines and procedures established under the Biobased  
56 Products Preference Program established under this Act.

57 (G) The [director] may determine that it is not possible for a biobased product to be  
58 purchased in accordance with the Biobased Products Preference Program if the [director]  
59 determines that any of the following applies to the product:

60 (1) The product is not available within a reasonable period of time.

61 (2) The product fails to meet the performance standards set forth in the applicable  
62 specifications for the product.

63 (3) The price of the product is an unreasonable price. As used in this section,  
64 “unreasonable price” means either of the following:

65 (a) The price of the biobased product exceeds the price of a substantially  
66 equivalent nonbiobased product.

67 (b) The price of the biobased product exceeds the fair market value of a  
68 substantially equivalent nonbiobased product.

69 (4) However, the [director] may determine that the price of a biobased product  
70 may exceed up to [five percent] the price or fair market value of a substantially equivalent  
71 nonbiobased product without being considered an unreasonable price for the purpose of this  
72 section. In doing so, the [director] shall give consideration to the benefits of expanding the use of  
73 biobased products.

74 (H) If, after assessing the functions of designated items offered under the Biobased  
75 Products Preference Program established by this Act, a [state agency] determines that none of the  
76 designated items are functionally capable of meeting a specific need of the agency, that agency

77 shall notify the [director]. If, after assessing the functions of designated items, a [state institution  
78 of higher education] determines that none of the designated items are functionally capable of  
79 meeting a specific need of the institution, that institution shall notify both the [director] and the  
80 [chancellor of the board of regents]. The notifying agency or institution then may purchase a  
81 nonbiobased product that is functionally capable of meeting that specific need of that [state  
82 agency or institution of higher education] without being deemed out of compliance with the  
83 program by the [director] or being precluded from otherwise participating in the program.  
84

85 Section 4. [*Reporting Biobased Product Purchases.*]

86 (A) Not later than [insert date], and the [thirtieth day of September each year] thereafter,  
87 the [director] shall prepare and submit to the [governor, the president of the senate, and the  
88 speaker of the house of representatives] a report describing the number, types, and amount of  
89 money spent by [state agencies] to buy biobased products under the Biobased Products  
90 Preference Program established by this Act.

91 (B) Not later than [insert date], and the [fifteenth day of September each year thereafter],  
92 each [state institution of higher education] shall prepare and submit to the [chancellor of the  
93 board of regents] a report that describes the number, types, and amount of money spent by the  
94 [state institution of higher education] to buy biobased products under the Biobased Products  
95 Preference Program established by this Act.

96 (C) Not later than [insert date], and the [thirtieth day of September each year thereafter],  
97 the [chancellor of the board of regents] shall prepare and submit to the [governor, the president  
98 of the senate, and the speaker of the house of representatives] a report describing the number,  
99 types, and amount of money spent by [state institutions of higher education] to buy biobased  
100 products under the Biobased Products Preference Program established by this Act.  
101

102 Section 5. [*Severability.*] [Insert severability clause.]  
103

104 Section 6. [*Repealer.*] [Insert repealer clause.]  
105

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

# Blighted Properties

This Act grants powers to a municipality to take action against an owner of real property that is in serious violation of code or an owner who fails to correct a condition which causes the property to be regarded as a public nuisance. For example, a municipality may initiate an in personam action against an owner for a continuing violation for which the owner takes no substantial step to correct within six months of receiving an order to correct a violation. The municipality may also recover an amount equal to any penalties imposed against the owner and any costs of remediation incurred by the municipality to fix the code violation. To recover the amount, a lien may be placed against the assets of the owner.

A municipality may deny a permit to an applicant who owns real property in any municipality and has a tax, water, sewer, or refuse collection delinquency or for failing to abate a serious violation of state law or code, for which a district judge or municipal court has imposed fines or penalties.

The Act enables counties to establish a housing court to hear and decide matters arising under the Act and other laws concerning real property.

The legislation enables the administrative office of the courts to develop annual training programs for judges about state laws which address blighted and abandoned property.

Submitted as:

Pennsylvania

[SB 900](#)

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 Neighborhood Blight,  
2 Reclamation, and Revitalization Act.”

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

5           (1) “Board” shall mean a zoning hearing board or other body granted jurisdiction to  
6 render decisions in accordance with [insert citation], or a similar board in municipalities not  
7 subject to that Act.

8           (2) “Building” means a residential, commercial or industrial building or structure and the  
9 land appurtenant to it.

10           (3) “Code” means a building, housing, property maintenance, fire, health or other public  
11 safety ordinance enacted by a municipality. The term does not include a subdivision and land  
12 development ordinance or a zoning ordinance enacted by a municipality.

13           (4) “Court” means the appropriate court of common pleas.

14           (5) “Mortgage lender” means a business association defined as a “banking institution” or  
15 “mortgage lender” under [insert citation] that is in possession of or holds title to real property  
16 pursuant to, in enforcement of or to protect rights arising under, a mortgage, mortgage note, deed  
17 of trust or other transaction that created a security interest in the real property.

18           (6) “Municipality” means a city, borough, incorporated town, township or home rule,  
19 optional plan or optional charter municipality or municipal authority in this state and any entity  
20 pursuant to [insert citation].

(7) “Municipal permits” means privileges relating to real property granted by a municipality, including, but not limited to, building permits, exceptions to zoning ordinances and occupancy permits. The term includes approvals pursuant to land use ordinances other than decisions on the substantive validity of a zoning ordinance or map or the acceptance of a curative amendment.

(8) “Owner” means a holder of the title to residential, commercial or industrial real estate, other than a mortgage lender, who possesses and controls the real estate. The term includes, but is not limited to, heirs, assigns, beneficiaries and lessees, provided this ownership interest is a matter of public record.

(9) “Public nuisance” means a property which, because of its physical condition or use, is regarded as a public nuisance at common law or has been declared by the appropriate official a public nuisance in accordance with a municipal code .

(10) “Serious violation” means a violation of a state law or municipal code that poses an immediate or imminent threat to the health and safety of a dwelling occupant, occupants in surrounding structures or passersby.

(11) “State law” means a statute of this state or a regulation of an agency charged with the administration and enforcement of state law.

(12) “Substantial step” means an affirmative action as determined by a property code official or office of the court on the part of a property owner or managing agent to remedy a serious violation of a state law or municipal code, including, but not limited to, physical improvements or repairs to the property, which affirmative action is subject to appeal in accordance with applicable law.

(13) “Tax delinquent property” means tax delinquent real property as defined under [insert citation].

### Section 3. [*Actions Against Owners of Property with Serious Code Violations.*]

(A) In addition to any other remedy available at law or in equity, a municipality may institute the following actions against the owner of any real property that is in serious violation of a code for failure to correct a condition which causes the property to be regarded as a public nuisance:

(1) (a) an in personam action may be initiated for a continuing violation for which the owner takes no substantial step to correct within [six] months following receipt of an order to correct the violation, unless the order is subject to a pending appeal before the administrative agency or court.

(b) notwithstanding any law limiting the form of action for the recovery of penalties by a municipality for the violation of a code, the municipality may recover, in a single action under this section, an amount equal to any penalties imposed against the owner and any costs of remediation lawfully incurred by, or on behalf of, the municipality to remedy any code violation.

(2) a proceeding in equity.

(B) A lien may be placed against the assets of an owner of real property that is in serious violation of a code or is regarded as a public nuisance after a judgment, decree or order is entered by a court of competent jurisdiction against the owner of the property for an adjudication under [insert citation].

(C) Nothing in this section shall be construed to authorize, in the case of an owner that is an association or trust, a lien on the individual assets of the general partner or trustee, except as otherwise allowed by law, limited partner, shareholder, member or beneficiary of the association or trust.

(D) Where, after reasonable efforts, service of process for a notice or citation for any code violation for any real property owned by an association or trust cannot be accomplished by handing a copy of the notice or citation to an executive officer, partner or trustee of the association or trust or to the manager, trustee or clerk in charge of the property, the delivery of the notice or citation may occur by registered, certified or United States Express Mail, accompanied by a delivery confirmation:

(1) to the registered office of the corporation, business association, or trust.

(2) where the association or trust does not have a registered office, to the mailing address used for real estate tax collection purposes, if accompanied by the posting of a conspicuous notice to the property and by handing a copy of the notice or citation to the person in charge of the property at that time.

(E) A person who lives or has a principal place of residence outside this state, who owns property in this state against which code violations have been cited under [insert citation], and the person is charged under [insert citation], and who has been properly notified of the violations may be extradited to this state to face criminal prosecution to the full extent allowed and in the manner authorized by [insert citation].

#### Section 4. [*Conditions for Municipalities Denying Permits to Applicants Who Own Real Property.*]

(A) A municipality or a board may deny issuing to an applicant a municipal permit if the applicant owns real property in any municipality for which there exists on the real property:

(1) a final and unappealable tax, water, sewer or refuse collection delinquency on account of the actions of the owner; or

(2) a serious violation of state law or a code and the owner has taken no substantial steps to correct the violation within [six] months following notification of the violation and for which fines or a judgment to abate or correct were imposed by a [magisterial district judge] or [municipal court], or a judgment at law or in equity was imposed by a [court of common pleas]. However, no denial shall be permitted on the basis of a property for which the judgment, order or decree is subject to a stay or supersede as by an order of a court of competent jurisdiction or automatically allowed by statute or rule of court until the stay or supersede is lifted by the court or a higher court or the stay or supersede as expires as otherwise provided by law. Where a stay or supersede as is in effect, the property owner shall so advise the municipality seeking to deny a municipal permit.

(B) A municipality or board shall not deny a municipal permit to an applicant if the municipal permit is necessary to correct a violation of state law or a code.

(C) The municipal permit denial shall not apply to an applicant's delinquency on taxes, water, sewer or refuse collection charges that are under appeal or otherwise contested through a court or administrative process.

(D) In issuing a denial of a permit based on an applicant's delinquency in real property taxes or municipal charges or for failure to abate a serious violation of state law or a code on real property that the applicant owns in this state, the municipality or board shall indicate the street address, municipal corporation and county in which the property is located and the court and docket number for each parcel cited as a basis for the denial. The denial shall also state that the applicant may request a letter of compliance from the appropriate state agency, municipality or school district, in a form specified by such entity as provided in this section.

(E) All municipal permits denied in accordance with this section may be withheld until an applicant obtains a letter from the appropriate state agency, municipality or school district indicating the following:



117 (1) the property in question has no final and unappealable tax, water, sewer or  
118 refuse delinquencies;

119 (2 ) the property in question is now in state law and code compliance; or

120 (3) the owner of the property has presented and the appropriate state agency or  
121 municipality has accepted a plan to begin remediation of a serious violation of state law or a  
122 code. Acceptance of the plan may be contingent on:

123 (a) beginning the remediation plan within no fewer than [30] days  
124 following acceptance of the plan or sooner, if mutually agreeable to both the property owner and  
125 the municipality.

126 (b) completing the remediation plan within no fewer than [90] days  
127 following commencement of the plan or sooner, if mutually agreeable to both the property owner  
128 and the municipality.

129 (F) In the event that the appropriate state agency, municipality or school district fails to  
130 issue a letter indicating tax, water, sewer, refuse, state law or code compliance or  
131 noncompliance, as the case may be, within [45] days of the request, the property in question shall  
132 be deemed to be in compliance for the purpose of this section. The appropriate state agency,  
133 municipality or school district shall specify the form in which the request for a compliance letter  
134 shall be made.

135 (G) Letters required under this section shall be verified by the appropriate municipal  
136 officials before issuing to the applicant a municipal permit.

137 (H) (1) Municipal permits may be denied by a board in accordance with the  
138 requirements of this section to the extent that approval of the municipal permit is within the  
139 jurisdiction of the board.

140 (2) In any proceeding before a board other than the governing body of the  
141 municipality, the municipality may appear to present evidence that the applicant is subject to a  
142 denial by the board in accordance with this section.

143 (3) For purposes of this subsection, a municipal permit may only be denied to an  
144 applicant other than an owner if the applicant is acting under the direction, or with the  
145 permission, of an owner and the owner owns real property satisfying the conditions of subsection  
146 (A).

147 (I) A denial of a permit shall be subject to the provisions of [insert citation].

148  
149 Section 5. *[Housing Courts.]*

150 (A) The [court of common pleas of a judicial district] may establish, from available  
151 funds, a housing court which shall have jurisdiction as provided under subsection (D). The court  
152 may adopt local rules for the administration of housing courts and their related services such as  
153 housing clinics to counsel code violators on their responsibilities and procedures to bring  
154 properties into code compliance. The local rules may not be inconsistent with this section or any  
155 rules established by the [supreme court].

156 (B) To the extent that funds are available, the [supreme court] may appoint a statewide  
157 [housing courts coordinator] who may be assigned other responsibilities by the [supreme court].  
158 The [coordinator] may:

159 (1) encourage and assist in the establishment of housing courts in each judicial  
160 district where the caseload justifies the establishment of such courts.

161 (2) identify sources of funding for housing courts and their related services,  
162 including the availability of grants.

163 (3) provide coordination and technical assistance for grant applications.

164 (4) develop model guidelines for the administration of housing courts and their  
165 related services.

(5) establish procedures for monitoring housing courts and their related services and for evaluating the effectiveness of housing courts and their related services.

(C) The [supreme court] may establish, from available funds, an [interdisciplinary and inter-branch advisory committee] to advise and assist the [statewide housing courts coordinator] in monitoring and administering housing courts statewide.

(D) In a [court of common pleas] which has established a housing court pursuant to this section, the exclusive jurisdiction of the following matters may be vested in the housing court:

(1) criminal and civil actions arising within the county under any other general or special law, ordinance, rule or regulation concerned with the health, safety or welfare of an occupant of a place used, or intended for use, as a place of human habitation.

(2) land use decisions appealed to the [court of common pleas] in accordance with [insert citation], provided those relate to single family and multifamily properties, or proceedings appealed to court in accordance with [insert citation], relating to the establishment of historic districts.

(3) appeals from government agencies under [insert citation] or otherwise, relating to the housing, building, safety, plumbing, mechanical, electrical, health or fire ordinances and regulations of a municipal corporation within the county or of the county itself.

(4) matters arising under [insert citation], which involve a place used, or intended for use, as a place of human habitation.

Section 6. [*Deteriorated Real Property Education and Training Programs for Judges.*] The [administrative office of the courts] may develop and implement annual and ongoing education and training programs for judges, including magisterial district judges, regarding the laws of this state relating to blighted and abandoned property and the economic impact that blighted and abandoned properties have upon municipalities. The education and training programs shall include, but not be limited to:

(1) the importance and connection of code violations and crime.

(2) time-in-fact violations as they relate to code violations.

(3) conduct of witnesses in prosecuting code violations.

(4) limiting continuances in code violations.

(5) use of indigency hearings in the prosecution of code violations.

Section 7. [*Conflict with Other Law.*] In the event of a conflict between the requirements of this Act and federal requirements applicable to demolition, disposition or redevelopment of buildings, structures or land owned by or held in trust for the government of the United States and regulated pursuant to the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. § 1437 et seq.) and the regulations promulgated thereunder, the federal requirements shall prevail.

Section 8. [*Relief for Inherited Property.*] Where property is inherited by will or intestacy, the devisee or heir shall be given the opportunity to make payments on reasonable terms to correct code violations or to enter into a remediation agreement under [insert citation] with a municipality to avoid subjecting the devisee's or heir's other properties to asset attachment or denial of permits and approvals on other properties owned by the devisee or heir.

Section 9. [*Construction.*] Nothing in this Act shall be construed to abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies.

Section 10. [*Severability.*] [Insert severability clause.]

215

216

Section 11. [*Repealer.*] [Insert repealer clause.]

217

218

Section 12. [*Effective Date.*] [Insert effective date.]

# Charter School Collaborative

The Act permits charter schools to contract with each other to provide any function, service, or facility as authorized by law for each of the participating schools. Charter schools that contract with each other are considered a charter school collaborative, a public entity that exists separately from the participating schools.

Submitted as:

Colorado

[SB 10-161](#)

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 Charter School Collaborative  
2 Act.”

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

5       (1) “Authorizer” means a school district board of education that authorizes a charter  
6 school.

7       (2) “Charter school” means a school authorized pursuant to [insert citation].  
8

9       Section 3. [*Charter School Collaboratives.*]

10       (A) Two or more charter schools may contract with one another to form a charter school  
11 collaborative that is a legal entity separate from the contracting charter schools and is authorized  
12 to provide any function, service, or facility that is lawfully authorized for each of the contracting  
13 charter schools. A charter school need not obtain the approval of its authorizer to create or  
14 participate in a charter school collaborative.

15       (B) A charter school collaborative created pursuant to this section shall be a public entity  
16 that exists separately from the charter schools participating in the collaborative.

17       (C) A charter school collaborative shall hold and may exercise the duties, privileges,  
18 immunities, rights, liabilities, and disabilities of a public entity, including but not limited to the  
19 power to contract, to sue or be sued, and to hold title to property; except that a charter school  
20 collaborative may hold title to real property only for the use of the participating charter schools.

21       (D) A charter school collaborative shall be solely responsible for its debts, liabilities, and  
22 obligations, and said debts, liabilities, or obligations shall not be the responsibility of the  
23 participating charter schools or their authorizers.

24       (E) A charter school collaborative created pursuant to this section shall be deemed a local  
25 public body for purposes of the open meeting requirements of [insert citation].

26       (F) Except as otherwise specifically authorized in this section, a charter school  
27 collaborative shall be subject to all state statutes regulating charter schools as public entities as if  
28 the charter school collaborative were authorized by a school district board of education.

29       (G) (1) A charter school collaborative, as a separate legal entity, shall exercise  
30 administrative control or direction in providing or operating specified functions, services, or  
31 facilities for the participating charter schools. The contract creating a charter school collaborative  
32 shall set forth fully the purposes, powers, rights, obligations, and responsibilities, financial and  
33 otherwise, of the charter school collaborative and of the contracting charter schools. The

participating charter schools shall delegate to the charter school collaborative the powers necessary to enable the charter school collaborative to provide or operate the functions, services, or facilities specified in the contract.

(2) In addition to any duty required to be performed by law or by the contract creating a charter school collaborative, the collaborative shall have and perform the following duties:

(a) To act consistently with the provisions of this Act;

(b) To abide by the contract that creates and organizes the charter school collaborative; and

(c) To act consistently with the charter contract and mission of each charter school that participates in the charter school collaborative.

(H) A contract to establish a charter school collaborative shall, at a minimum, specify:

(1) The name and purpose of the charter school collaborative and the functions, services, or facilities that the charter school collaborative shall provide or operate;

(2) The establishment and organization of a board of directors of the charter school collaborative, including but not limited to:

(a) The number of directors, the manner of appointment, the terms of office, the amount of compensation, if any, and the procedures for filling vacancies;

(b) The officers of the charter school collaborative, the manner of their selection, and their duties;

(c) The voting requirements for action by the board of directors; except that, unless specifically provided otherwise in the contract, a majority of directors shall constitute a quorum and a majority of a quorum shall be necessary to authorize any action taken by the board of directors;

(3) Provisions for the disposition, division, or distribution of any property or assets of the charter school collaborative, including but not limited to distribution upon dissolution of the charter school collaborative of the equity in any real property that the charter school collaborative may hold;

(4) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that the contract may not be rescinded or terminated so long as the charter school collaborative has obligations outstanding, unless provisions for full payment of the obligations, by escrow or otherwise, are made pursuant to the terms of the obligations; and

(5) The terms, if any, under which a charter school that is not initially a participant in the charter school collaborative may join the collaborative and under which charter school participants may withdraw from the charter school collaborative.

(I) The [state board of education], by rule, may establish a fee to be paid by each charter school collaborative to offset any direct costs that the [department of education] may incur in collecting data from or regulating the charter school collaborative. The amount of the fee shall not exceed the amount of said direct costs. Any amount in fees received by the [department of education] pursuant to this section is continuously appropriated to the [department] for said direct costs.

(J) Nothing in this Act shall prohibit a charter school from participating as a member in an organization formed for the purpose of mutual support, contracting for services, participating in intergovernmental agreements otherwise authorized by law, or participating in any other form of organization authorized by law and appropriate to public or nonprofit organizations in this state.

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

83  
84  
85  
86

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

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

# Civil Protection Orders and Animals

This Act allows courts when issuing a civil protection order or emergency protection order to include restraining someone from taking or harming animals owned by the person seeking the order.

Submitted as:

Colorado

[SB 10-080 \(Enrolled version\)](#)

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 to Allow Court-Entered Civil  
2           Protection Orders to Include Directives Concerning Animals.”

3  
4           Section 2. [*Definitions*.] For purposes of this Act, unless the context otherwise requires:

5           (1) “Abuse of the elderly or of an at-risk adult” means mistreatment of a person who is  
6           [sixty years of age or older] or who is an at-risk adult as defined in [insert citation], including but  
7           not limited to repeated acts that:

8                   (a) result in the misuse of power or authority granted to a person through a power  
9           of attorney or by a court in a guardianship or conservatorship proceeding that results in  
10          unreasonable confinement or restriction of liberty; or

11                  (b) constitute threats or acts of violence against, or the taking, transferring,  
12          concealing, harming, or disposing of, an animal owned, possessed, leased, kept, or held by the  
13          elderly or at-risk adult, which threats or acts are intended to coerce, control, punish, intimidate,  
14          or exact revenge upon the elderly or at-risk adult.

15          (2) “Domestic abuse” means any act or threatened act of violence that is committed by  
16          any person against another person to whom the actor is currently or was formerly related, or with  
17          whom the actor is living or has lived in the same domicile, or with whom the actor is involved or  
18          has been involved in an intimate relationship. “Domestic abuse” may also include any act or  
19          threatened act of violence against the minor children of either of the parties or an animal owned,  
20          possessed, leased, kept, or held by either of the parties or by a minor child of either of the parties,  
21          which threat or act is intended to coerce, control, punish, intimidate, or exact revenge upon either  
22          of the parties or a minor child of either of the parties.

23          (3) “Protection order” means any order that prohibits the restrained person from  
24          contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected  
25          person, or from threatening, taking, transferring, concealing, harming, or disposing of an animal  
26          owned, possessed, leased, kept, or held by a protected person, or from entering or remaining on  
27          premises, or from coming within a specified distance of a protected person or premises or any  
28          other provision to protect the protected person from imminent danger to life or health that is  
29          issued by a court of this state or a municipal court and that is issued pursuant to any other order  
30          of a court that prohibits a person from contacting, harassing, injuring, intimidating, molesting,  
31          threatening, or touching any a person, or from threatening, taking, transferring, concealing,  
32          harming, or disposing of an animal owned, possessed, leased, kept, or held by a person, or from

entering or remaining on premises, or from coming within a specified distance of a protected person or premises.

Section 3. [*Civil Protection Orders.*] A municipal court of record that is authorized by its municipal governing body to issue protection or restraining orders and any county court, in connection with issuing a civil protection order, shall have original concurrent jurisdiction with the district court to issue such additional orders as the municipal or county court deems necessary for the protection of persons. Such additional orders may include, but are not limited to restraining a party from threatening, molesting, injuring, killing, taking, transferring, encumbering, concealing, or disposing of an animal owned, possessed, leased, kept, or held by any other party, a minor child of any other party, or an elderly or at-risk adult; or specifying arrangements for possession and care of an animal owned, possessed, leased, kept, or held by any other party, a minor child of any other party, or an elderly or at-risk adult.

Section 4. [*Emergency Protection Orders.*] An emergency protection order issued pursuant to [insert citation] may include awarding temporary care and control of any minor child of a party involved; restraining a party from threatening, molesting, injuring, killing, taking, transferring, encumbering, concealing, or disposing of an animal owned, possessed, leased, kept, or held by any other party, a minor child of either of the parties, or an elderly or at-risk adult; or specifying arrangements for possession and care of an animal owned, possessed, leased, kept, or held by any other party, a minor child of either of the parties, or an elderly or at-risk adult.

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

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

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



# Clinical Pharmacist Practitioner

This Act creates the professional classification of clinical pharmacist practitioner. The Act specifies that only a pharmacist certified by the state pharmacy board may legally be identified as a clinical pharmacist practitioner.

Submitted as:

Montana

[SB0174](#)

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 Creating the Professional  
2           Classification of Clinical Pharmacist Practitioner.”

3  
4           Section 2. [*Clinical Pharmacist Practitioner Qualifications.*]

5           (A) A clinical pharmacist practitioner is a licensed pharmacist in good standing who:

6                   (1) is certified by the [state pharmacy board], in concurrence with the [state board  
7           of medical examiners], to provide drug therapy management as defined under [insert citation],  
8           including initiating, modifying, or discontinuing therapies, identifying and managing drug-  
9           related problems, or ordering tests under the direction or supervision of a prescriber;

10                   (2) has additional education, experience, or certification as required by the [state  
11           pharmacy board] in concurrence with the [board of medical examiners]; and

12                   (3) has in place a Collaborative Pharmacy Practice Agreement.

13           (B) A “Collaborative Pharmacy Practice Agreement” means a written and signed  
14           agreement between one or more pharmacists and one or more prescribers that provides for  
15           collaborative pharmacy practice for the purpose of drug therapy management of patients.  
16           “Collaborative Pharmacy Practice” means the practice of pharmacy by a pharmacist who has  
17           agreed to work in conjunction with one or more prescribers, on a voluntary basis and under  
18           protocol, and who may perform certain patient care functions under certain specified conditions  
19           or limitations authorized by the prescriber.

20           (C) Only a pharmacist certified by the [state pharmacy board] may legally be identified as  
21           a clinical pharmacist practitioner.

22           (D) The [state pharmacy board] in concurrence with the [board of medical examiners],  
23           shall define the additional education, experience, or certification required of a licensed  
24           pharmacist to become a certified clinical pharmacist practitioner.

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.]

# College Partnership Laboratory Schools

This Act defines a college partnership laboratory school as a public, nonsectarian, nonreligious school established by a public institution of higher education that operates a teacher education program approved by the state board of education. The Act authorizes college partnership laboratory schools to stimulate the development of innovative programs for preschool through grade 12 students and provide opportunities for innovative instruction and assessment.

Submitted as:

Virginia

[Chapter 871 of 2010](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. This Act shall be cited as “An Act to Establish College Partnership Laboratory  
2 Schools.”

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

5           (1) “At-risk pupil” means a student having a physical, emotional, intellectual,  
6 socioeconomic, or cultural risk factor, as defined in [Board of Education] criteria, which research  
7 indicates may negatively influence educational success.

8           (2) “College partnership laboratory school” means a public, nonsectarian, nonreligious  
9 school established by a public institution of higher education that operates a teacher education  
10 program approved by the [board of education].

11           (3) “Governing board” means the board of a college partnership laboratory school that is  
12 party to a contract with the [board of education], with the responsibility of creating, managing,  
13 and operating the college partnership laboratory school, and whose members have been selected  
14 by the institution of higher education establishing the college partnership laboratory school. The  
15 governing board shall be under the control of the institution of higher education establishing the  
16 college partnership laboratory school.

17  
18           Section 3. [*Establishment and Operation of College Partnership Laboratory Schools;*  
19 *Requirements.*]

20           (A) College partnership laboratory schools may be established in this state as provided in  
21 this Act to stimulate the development of innovative programs for preschool through grade 12  
22 students; provide opportunities for innovative instruction and assessment; provide teachers with  
23 a vehicle for establishing schools with alternative innovative instruction and school scheduling,  
24 management, and structure; encourage the use of performance-based educational programs;  
25 establish high standards for both teachers and administrators; encourage greater collaboration  
26 between education providers from preschool to the postsecondary level; and develop models for  
27 replication in other public schools.

28           (B) A college partnership laboratory school shall be subject to all federal and state laws  
29 and regulations and constitutional provisions prohibiting discrimination on the basis of disability,  
30 race, creed, color, gender, national origin, religion, ancestry, or need for special education

31 services. Enrollment shall be open to any child who is deemed to reside within this state through  
32 a lottery process on a space-available basis. A waiting list shall be established if adequate space  
33 is not available to accommodate all students whose parents have requested to be entered in the  
34 lottery process. Such waiting list shall also be prioritized through a lottery process and parents  
35 shall be informed of their student's position on the list.

36 (C) A college partnership laboratory school shall be administered and managed by a  
37 governing board. Pursuant to a contract and as specified in [insert citation], college partnership  
38 laboratory schools shall be subject to the requirements of the [Standards of Quality, including the  
39 Standards of Learning and the Standards of Accreditation], and such regulations as determined  
40 by the [board of education].

41 (D) College partnership laboratory schools are encouraged to develop collaborative  
42 partnerships with public school divisions for the purpose of building seamless education  
43 opportunities for all such students in this state, from preschool to postsecondary education.

44 (E) Pursuant to a college partnership laboratory school agreement, a college partnership  
45 laboratory school shall be responsible for its own operations, including, but not limited to, such  
46 budget preparation, contracts for services, and personnel matters as are specified in the  
47 agreement.

48 (F) A college partnership laboratory school may negotiate and contract with a school  
49 board, the governing body of a public institution of higher education, or any third party for the  
50 use of a school building and grounds, the operation and maintenance thereof, and the provision  
51 of any service, activity, or undertaking that the college partnership laboratory school is required  
52 to perform in order to carry out the educational program described in its contract. Any services  
53 for which a college partnership laboratory school contracts with a school board or institution of  
54 higher education shall not exceed the school division's or institution's costs to provide such  
55 services.

56 (G) A college partnership laboratory school shall not charge tuition.

57 (H) An approved college partnership laboratory school shall be designated as a local  
58 education agency, but shall not constitute a school division as defined under [insert citation].  
59

#### 60 Section 4. *[College Partnership Laboratory School Application and Contract.]*

61 (A) Any public institution of higher education operating within this state and having a  
62 teacher education program approved by the [board of education] may submit an application for  
63 formation of a college partnership laboratory school.

64 (B) Each college partnership laboratory school application shall provide or describe  
65 thoroughly all of the following essential elements of the proposed school plan:

- 66 (1) An executive summary;
- 67 (2) The mission and vision of the proposed college partnership laboratory school,  
68 including identification of the targeted student population;
- 69 (3) The proposed location of the school;
- 70 (4) The grades to be served each year for the full term of the contract;
- 71 (5) Minimum, planned, and maximum enrollment per grade per year for the term  
72 of the contract;
- 73 (6) Background information on the proposed founding governing board members  
74 and, if identified, the proposed school leadership and management team;
- 75 (7) The school's proposed calendar and sample daily schedule;
- 76 (8) A description of the academic program aligned with state standards;
- 77 (9) A description of the school's educational program, including the type of  
78 learning environment (such as classroom-based or independent study), class size and structure,  
79 curriculum overview, and teaching methods;

(10) The school's plan for using internal and external assessments to measure and report student progress in accordance with the [Standards of Learning] adopted under [insert citation];

(11) The school's plans for identifying and successfully serving students with disabilities, students who are English language learners, students who are academically behind, and gifted students, including but not limited to compliance with applicable laws and regulations;

(12) A description of co-curricular and extracurricular programs and how these will be funded and delivered;

(13) Plans and timelines for student recruitment and enrollment, including lottery procedures if sufficient space is unavailable;

(14) The school's student disciplinary policies, including those for special education students;

(15) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff, any related bodies (such as advisory bodies or parent and teacher councils), [board of education], and any external organizations that will play a role in managing the school;

(16) A clear description of the roles and responsibilities for the governing board, the school's leadership and management team, and any other entities shown in the organization chart;

(17) A staffing chart for the school's first year and a staffing plan for the term of the contract;

(18) Plans for recruiting and developing school leadership and staff;

(19) The school's leadership and teacher employment policies, including performance evaluation plans;

(20) A plan for the placement of college partnership laboratory school pupils, teachers, and employees upon termination or revocation of the contract;

(21) Explanation of any partnerships or contractual relationships central to the school's operations or mission;

(22) The school's plans for providing transportation, food service, and all other significant operational or ancillary services;

(23) Opportunities and expectations for parent involvement;

(24) A detailed school start-up plan, identifying tasks, timelines, and responsible people;

(25) A description of the school's financial plan and policies, including financial controls and audit requirements;

(26) A description of the insurance coverage the school will obtain;

(27) Start-up and five-year budgets with clearly stated assumptions;

(28) Start-up and first-year cash-flow projections with clearly stated assumptions;

(29) Evidence of anticipated fundraising contributions, if claimed in the application;

(30) A sound facilities plan, including backup or contingency plans if appropriate; and

(31) Assurances that the college partnership laboratory school is nonreligious in its programs, admission policies, employment practices, and all other operations and does not charge tuition.

(C) The purposes of the college partnership laboratory school application are to present the proposed school's academic and operational vision and plans, demonstrate the applicant's capacities to execute the proposed vision and plans, and provide the [board of education] a clear

basis for assessing the applicant's plans and capacities. An approved college partnership laboratory school application shall not serve as the school's contract.

(D) The [board of education] shall establish procedures for receiving, reviewing, and ruling upon applications and shall make a copy of any such procedures available to all interested parties upon request. If the [board] finds the application is incomplete, the [board] shall request the necessary information from the applicant. The [board of education's] review procedures shall establish a review committee that may include experts with the operation of similar schools located in other states.

(E) To provide appropriate opportunity for input from parents, teachers, and other interested parties and to obtain information to assist the [board of education] in its evaluation of a college partnership laboratory school application, the [board of education] may establish a procedure for public notice, comment, or hearings on such applications.

(F) The decision of the [board of education] to grant or deny a college partnership laboratory school application or to revoke or fail to renew an agreement shall be final and not subject to appeal.

(G) Within [90] days of approval of a college partnership laboratory school application, the [board of education] and the governing board of the approved school shall execute a contract that clearly sets forth the academic and operational performance expectations and measures by which the college partnership laboratory school will be judged and the administrative relationship between the [board of education] and the college partnership laboratory school, including each party's rights and duties. The performance expectations and measures set forth in the contract shall include but need not be limited to applicable federal and state accountability requirements. The performance provisions may be refined or amended by mutual agreement after the college partnership laboratory school is operating and has collected baseline achievement data for its enrolled students.

Section 5. *[College Partnership Laboratory School Terms; Renewals And Revocations.]*

(A) A college partnership laboratory school may be approved or renewed for a period not to exceed [five] school years. A college partnership laboratory school renewal application submitted to the [board of education] shall contain:

(1) A report on the progress of the school in achieving the goals, objectives, program and performance standards for students, and such other conditions and terms as the Board of Education may require upon granting initial approval of the college partnership laboratory school application; and

(2) A financial statement, on forms prescribed by the [board], that discloses the costs of administration, instruction, and other spending categories for the school and that has been concisely and clearly written to enable the [board of education] and the public to compare such costs with those of other schools or comparable organizations.

(B) The [board of education] may revoke a contract if the college partnership laboratory school does any of the following or otherwise fails to comply with the provisions of this Act:

(1) Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the contract;

(2) Fails to meet or make sufficient progress toward the performance expectations set forth in the contract;

(3) Fails to meet generally accepted standards of fiscal management; or

(4) Substantially violates any material provision of law from which the college partnership laboratory school was not exempted.

(C) If the [board of education] revokes or does not renew a college partnership laboratory school contract, it shall clearly state, in a resolution, the reasons for the revocation or nonrenewal.

Section 6. [*Employment of Professional, Licensed Personnel.*]

(A) College partnership laboratory school personnel shall be employees of the institution of higher education establishing the school.

(B) Teachers working in a college partnership laboratory school shall hold a license issued by the [board of education] or, in the case of an instructor in the higher education institution's board-approved teacher education program, be eligible to hold a state teaching license. Teachers working in a college partnership laboratory school shall be subject to the requirements of [insert citation] applicable to teachers employed by a local school board.

(C) Professional, [licensed personnel] of a college partnership laboratory school shall be granted the same employment benefits given to professional, [licensed personnel] in public schools in accordance with the agreement between the college partnership laboratory school and the [board of education].

Section 7. [*Funding of College Partnership Laboratory Schools.*]

(A) There is hereby created in the [state treasury] a special nonreverting fund to be known as the College Partnership Laboratory School Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the [comptroller]. All funds appropriated in accordance with the [Appropriation Act] and any gifts, grants, bequests, or donations from public or private sources shall be paid into the [state treasury] and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the [General Fund] but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of establishing or supporting college partnership laboratory schools in this state that stimulate the development of alternative education programs for preschool through grade 12 students by providing opportunities for innovative instruction and greater cooperation and coordination between institutions of higher education and preschool through grade 12 education systems. Expenditures and disbursements from the Fund shall be made by the [state treasurer] on warrants issued by the [comptroller] upon written request signed by the [superintendent of public instruction]. The [board of education] shall establish criteria for making distributions from the Fund to a college partnership laboratory school requesting moneys from the Fund and may issue guidelines governing the Fund as it deems necessary and appropriate.

(B) Each college partnership laboratory school shall receive such funds as may be appropriated by the [general assembly] in accordance with the [Appropriation Act].

(C) The governing board of a college partnership laboratory school is authorized to accept gifts, donations, or grants of any kind and to spend such funds in accordance with the conditions prescribed by the donor. However, no gift, donation, or grant shall be accepted by the governing board of a college partnership laboratory school if the conditions for such funds are contrary to law or the terms of the agreement between the [board of education] and the college partnership laboratory school.

(D) Notwithstanding any other provision of law, the proportionate share of state and federal resources allocated for students with disabilities and school personnel assigned to special education programs shall be directed to college partnership laboratory schools enrolling such students. The proportionate share of moneys allocated under other federal or state categorical aid programs shall be directed to college partnership laboratory schools serving students eligible for such aid.

(E) College partnership laboratory schools shall be eligible to apply for and receive any federal or state funds otherwise allocated for college partnership laboratory schools in this state.

(F) Any educational and related fees collected from students enrolled at a college partnership laboratory school shall comply with [board of education] regulations and shall be credited to the account of such school.

(G) Each college partnership laboratory school shall be eligible to apply for and receive available funds from the College Partnership Laboratory School Fund and the establishing institution of higher education.

#### Section 8. [*Immunity.*]

(A) A college partnership laboratory school shall be immune from liability to the same extent as the public institution of higher education that established the school, and the employees and volunteers in a college partnership laboratory school are immune from liability to the same extent as the employees of the establishing institution of higher education.

(B) The contract between the college partnership laboratory school and the [board of education] shall reflect all agreements regarding the release of the college partnership laboratory school from state regulations, consistent with the requirements of [insert citation]. If the college partnership laboratory school application proposes a program to increase the educational opportunities for at-risk students, the [board of education] may approve an [Individual School Accreditation Plan] as authorized under [insert citation] for the evaluation of the performance of the school. Any material revision of the terms of the contract may be made only with the approval of the [board of education] and the governing board of the college partnership laboratory school.

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

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

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

# Community Solar Gardens

This Act generally defines community solar gardens as solar electric generation facilities with capacities of up to 2 megawatts that sell power to a larger regional utility. Non-profit organizations, for-profit companies, and retail utilities can own and operate community solar gardens under the Act. The bill establishes general requirements for retail utilities to buy power from community solar gardens and the means by which utilities can recover some of the costs of buying such power.

Submitted as:

Colorado

[HB 10-1342](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This Act shall be cited as “The Community Solar Gardens Act.”

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

(1) (a) “Community solar garden” means a solar electric generation facility as defined under [insert citation] with a nameplate rating of [two megawatts or less] that is located in or near a community served by a qualifying retail utility as defined under [insert citation] where the beneficial use of the electricity generated by the facility belongs to the subscribers to the community solar garden. There shall be at least [ten] subscribers. The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a subscriber organization organized under this section which contracts to sell the output from the community solar garden to the qualifying retail utility. A community solar garden shall be deemed to be “located on the site of customer facilities”.

(b) A community solar garden shall constitute “retail distributed generation” within the meaning of [insert citation].

(2) “Net metering credit” means a credit as defined under [insert citation].

(3) “Qualifying Retail Utility” means a utility as defined under [insert citation].

(4) “Renewable Energy Standards” means standards defined under [insert citation].

(5) “Subscriber” means a retail customer of a qualifying retail utility who owns a subscription and who has identified [one or more] physical locations to which the subscription shall be attributed. Such physical locations shall be within either the same municipality or the same county as the community solar garden; except that, if the subscriber lives in a county with a population of less than [twenty thousand], according to the most recent available census figures, such physical locations may be in another county, also with a population of less than [twenty thousand], within the service territory of the same qualifying retail utility and also adjacent to that of the community solar garden. The subscriber may change from time to time the premises to which the community solar garden electricity generation shall be attributed, so long as the premises are within the geographical limits allowed for a subscriber.

(6) “Subscription” means a proportional interest in solar electric generation facilities installed at a community solar garden, together with the renewable energy credits associated with or attributable to such facilities under [insert citation]. Each subscription shall be sized to represent at least [one] kilowatt of the community solar garden’s generating capacity and to



supply no more than [one hundred twenty percent] of the average annual consumption of electricity by each subscriber at the premises to which the subscription is attributed, with a deduction for the amount of any existing solar facilities at such premises. Subscriptions in a community solar garden may be transferred or assigned to a subscriber organization or to any person or entity who qualifies to be a subscriber under this section.

Section 3. [*Subscriber Organization, Qualifications, and Transferability of Subscriptions.*]

(A) A community solar garden may be owned by a subscriber organization, whose sole purpose shall be beneficially owning and operating a community solar garden. The subscriber organization may be any for-profit or nonprofit entity permitted by state law. The community solar garden may also be built, owned, and operated by a third party under contract with the subscriber organization.

(B) On or before [insert date], the [state public utilities commission] shall commence a rule-making proceeding to adopt rules as necessary to implement this Act, including but not limited to rules to facilitate the financing of subscriber-owned community solar gardens. Such rules shall include:

- (1) Minimum capitalization;
- (2) The share of a community solar garden's eligible solar electric generation facilities that a subscriber organization may at any time own in its own name; and
- (3) Authorizing subscriber organizations to enter into leases, sale-and-leaseback transactions, operating agreements, and other ownership arrangements with third parties.

(C) If a subscriber ceases to be a customer at the premises on which the subscription is based but, within a reasonable period as determined by the [commission], becomes a customer at another premises in the service territory of the qualifying retail utility and within the geographic area served by the community solar garden, the subscription shall continue in effect but the bill credit and other features of the subscription shall be adjusted as necessary to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.

Section 4. [*Community Solar Gardens Not Subject To Regulation.*] Neither the owners of nor the subscribers to a community solar garden shall be considered public utilities subject to regulation by the [state public utilities commission] solely as a result of their interest in the community solar garden. Prices paid for subscriptions in community solar gardens shall not be subject to regulation by the [state public utilities commission].

Section 5. [*Purchases of the Output from Community Solar Gardens.*]

(A) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a plan to purchase the electricity and renewable energy credits generated from [one or more] community solar gardens over the period covered by the plan.

(B) For the first [three] compliance years commencing with [insert compliance year], each qualifying retail utility shall issue [one or more] standard offers to purchase the output from community solar gardens of [five hundred kilowatts] or less at prices that are comparable to the prices offered by the qualifying retail utility under standard offers issued for on-site solar generation. During these [three] compliance years, the qualifying retail utility shall acquire, through these standard offers, [one-half] of the solar garden generation it plans to acquire, to the extent the qualifying retail utility receives responses to its standard offers. Notwithstanding any provision of this subparagraph to the contrary, renewable energy credits generated from solar

gardens shall not be used to achieve more than [twenty percent] of the retail distributed generation standard in years [2011 through 2013].

(C) For the first [three] compliance years commencing with the [insert compliance year], a qualifying retail utility shall not be obligated to purchase the output from more than [six] megawatts of newly installed community solar garden generation.

(D) For each qualifying retail utility's compliance years commencing in [insert date] and thereafter, the [state public utilities commission] shall determine the minimum and maximum purchases of electrical output from newly installed community solar gardens of different output capacity that the qualifying retail utility shall plan to acquire, without regard to the [six-megawatt] ceiling of the first [three] compliance years. In addition, as necessary, the [state public utilities commission] shall formulate and implement policies consistent with this section that simultaneously encourage:

(1) The ownership by customers of subscriptions in community solar gardens and of other forms of distributed generation, to the extent the [state public utilities commission] finds there to be customer demand for such ownership;

(2) Ownership in community solar gardens by residential retail customers, and agricultural producers, including low-income customers, to the extent the [state public utilities commission] finds there to be demand for such ownership;

(3) The development of community solar gardens with attributes that the [state public utilities commission] finds result in lower overall total costs for the qualifying retail utility's customers;

(4) Successful financing and operation of community solar gardens owned by subscriber organizations; and

(5) The achievement of the goals and objects to develop renewable energy in this state as defined under [insert citation].

(E) The output from a community solar garden shall be sold only to the qualifying retail utility serving the geographic area where the community solar garden is located. Once a community solar garden is part of a qualifying retail utility's plan for acquisition of renewable resources, as approved by the [state public utilities commission], the qualifying retail utility shall purchase all of the electricity and renewable energy credits generated by the community solar garden. The amount of electricity and renewable energy credits generated by each community solar garden shall be determined by a production meter installed by the qualifying retail utility or third-party system owner and paid for by the owner of the community solar garden.

(F) The purchase of the output of a community solar garden by a qualifying retail utility shall take the form of a net metering credit against the qualifying retail utility's electric bill to each community solar garden subscriber at the premises set forth in the subscriber's subscription. The net metering credit shall be calculated by multiplying the subscriber's share of the electricity production from the community solar garden by the qualifying retail utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the [state public utilities commission] to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden, integrating the solar generation with the utility's system, and administering the community solar garden's contracts and net metering credits. The [state public utilities commission] shall ensure this charge does not reflect costs that are already recovered by the utility from the subscriber through other charges. If, and to the extent that, a subscriber's net metering credit exceeds the subscriber's electric bill in any billing period, the net metering credit shall be carried forward and applied against future bills. The qualifying retail utility and the owner of the community solar garden shall agree on whether the purchase of the renewable energy credits from subscribers will be accomplished through a credit on each subscriber's electricity bill or by a payment to the owner of the community solar garden.

129 (G) The owner of the community solar garden shall provide real-time production data to  
130 the qualifying retail utility to facilitate incorporation of the community solar garden into the  
131 utility's operation of its electric system and to facilitate the provision of net metering credits.

132 (H) The owner of the community solar garden shall be responsible for providing to the  
133 qualifying retail utility, on a monthly basis and within reasonable periods set by the qualifying  
134 retail utility, the percentage shares that should be used to determine the net metering credit to  
135 each subscriber. If the electricity output of the community solar garden is not fully subscribed,  
136 the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable  
137 energy credits at a rate equal to the qualifying retail utility's average hourly incremental cost of  
138 electricity supply over the immediately preceding calendar year.

139 (I) Each qualifying retail utility shall set forth in its plan for acquisition of renewable  
140 resources a proposal for including low-income customers as subscribers to a community solar  
141 garden. The utility may give preference to community solar gardens that have low-income  
142 subscribers.

143 (J) Qualifying retail utilities shall be eligible for the incentives and subject to the  
144 ownership limitations set forth in [insert citation] for utility investments in community solar  
145 gardens and may recover through rates a margin, in an amount determined by the [state public  
146 utilities commission], on all energy and renewable energy credits purchased from community  
147 solar gardens. Such incentive payments shall be excluded from the cost analysis required by  
148 [insert citation].

149 (K) Nothing in this section shall be construed to waive or supersede the retail rate impact  
150 limitations in [insert citation]. Utility expenditures for unsubscribed energy and renewable  
151 energy credits generated by community solar gardens shall be included in the calculations of  
152 retail rate impact required by [insert citation].

153 (L) This section shall not apply to cooperative electric associations or to municipally  
154 owned utilities.

155  
156 Section 6. [*Severability.*] [Insert severability clause.]

157  
158 Section 7. [*Repealer.*] [Insert repealer clause.]

159  
160 Section 8. [*Effective Date.*] [Insert effective date.]

# Contracts with Automatic Renewal Clauses

This Act requires language that automatically renews certain contracts to sell goods or services to consumers be clearly and conspicuously noted in the contract or contract offer.

Submitted as:

Louisiana

[Act 906 of 2010](#)

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 to Address Automatic  
2   Renewal Clauses in Contracts.”  
3

4           Section 2. [*Contracts with Automatic Renewal Clauses.*]

5           A. Any person, firm, or corporation engaged in commerce that sells, leases, or offers to  
6   sell or lease, any products or services to a consumer pursuant to a contract, when the contract  
7   automatically renews unless the consumer cancels the contract, shall disclose the automatic  
8   renewal clause clearly and conspicuously in the contract or contract offer.

9           B. Any person, firm, or corporation engaged in commerce that sells, leases, or offers to  
10   sell or lease, any products or services to a consumer pursuant to a contract, when the contract  
11   automatically renews unless the consumer cancels the contract, shall disclose clearly and  
12   conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery of  
13   products or services.

14          C. A person, firm, or corporation that fails to comply with the requirements of this  
15   Section is in violation of this Section unless the person, firm, or corporation demonstrates all of  
16   the following:

17           (1) It has established and implemented written procedures to comply with this  
18   Section and enforces compliance with the procedures.

19           (2) Any failure to comply with this Section is the result of error.

20           (3) When an error has caused the failure to comply with this Section, it, as a  
21   matter of routine business practice, provides a full refund or credit for all amounts billed to or  
22   paid by the consumer from the date of the renewal until the date of the termination of the  
23   contract, or the date of the subsequent notice of renewal, whichever occurs first.

24          D. The provisions of this Section shall not apply to the following:

25           (1) A [rental-purchase agreement] defined under [insert citation].

26           (2) Banks, trust companies, savings and loan associations, savings banks, credit  
27   unions, finance or credit companies, industrial loan companies, or any other financial institution  
28   licensed or organized under the laws of any state or the United States, or any foreign bank  
29   maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or  
30   affiliate thereof.

31           (3) Insurers licensed under [insert citation].

32           (4) A contract entered into before [insert date].

33           (5) A contract that allows for cancellation by the consumer by written notice  
34   within [thirty days or within one month], after the initial period has expired.

35 E. Any contract automatically renewed in violation of this Section shall revert to a [thirty  
36 day] renewal contract in accordance with the same terms.

37  
38 Section 3. [*Severability*.] [Insert severability clause.]

39  
40 Section 4. [*Repealer*.] [Insert repealer clause.]

41  
42 Section 5. [*Effective Date*.] [Insert effective date.]

# Criminal Gangs/Gang-Free Zones

This legislation enacts a number of provisions about gang-related offenses. For example, it creates an offense for aspiring to commit or committing certain crimes as a member of a criminal street gang and it establishes penalties for directing the activities of street gangs. It also requires children who are arrested for committing crimes as gang members to participate in gang intervention programs.

The Act enhances penalties for certain organized criminal activity committed in or around a gang-free zone and provides that a map from a municipal county engineer is admissible as evidence of a gang-free zone. It requires information about gang-free zones be included in the student handbooks or equivalent publications of public or private elementary or secondary schools and institutions of higher education and also be distributed to the parents and guardians of children who attend day-cares.

It enables the state or another governmental entity to bring an action against a member of a criminal street gang for damages when the member violates a temporary or permanent injunction. A district, county, or city attorney or the attorney general can sue to recover actual damages, civil penalties, and court costs and fees.

The legislation makes the property of a criminal street gang or its members subject to seizure under certain conditions. Money received for damages or as a civil penalty must be used to benefit of the community or harmed neighborhood.

It authorizes a court to impose electronic monitoring on a member of a criminal street gang as a condition of granting community supervision. The bill authorizes a parole panel to impose on a member of a criminal street gang who is a repeat offender electronic monitoring as a condition of release on parole or mandatory supervision.

The Act establishes criteria for including evidence of membership in a criminal street gang intelligence database and allows that information to be retained for five years.

The legislation also provides for the creation of a state anti-gang grant program to support regional, multidisciplinary approaches to combat gang violence.

Submitted as:

Texas

HB 2086 (Enrolled 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 Address Criminal Gang  
2 Activity.”

3  
4           Section 2. [*Offenses for Committing Certain Acts as Part of a Criminal Street Gang*.]

5           (a) A person commits an offense if, with the intent to establish, maintain, or participate in  
6 a combination or in the profits of a combination or as a member of a criminal street gang, they  
7 commit or conspires to commit one or more of the following:

8               (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft,  
9 aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault,  
10 forgery, deadly conduct, assault punishable as a [Class A misdemeanor], burglary of a motor

vehicle, or unauthorized use of a motor vehicle; any gambling offense punishable as a [Class A misdemeanor];

(2) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(3) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(4) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same; and

(6) any offense under [insert citation], depicting or involving conduct by or directed toward a child younger than [18] years of age.

(b) An offense under [insert citation] is one category lower than the [solicited offense], except that an offense under [insert citation] is the same category as the [solicited offense] if it is shown on the trial of the offense that the actor was at the time of the offense [17] years of age or older and a member of a criminal street gang, as defined by [insert citation], and committed the offense with the intent to further the criminal activities of the criminal street gang or avoid detection as a member of a criminal street gang.

(c) A person commits an offense if the person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the interests of the criminal street gang or to increase the person's standing, position, or status in the criminal street gang.

(d) An offense under paragraph (c) of this section is a [felony of the first degree].

(e) Notwithstanding [insert citation], in this Act, "criminal street gang" means:

(1) an organization that:

(A) has more than [10] members whose names are included in an intelligence database under [insert citation];

(B) has a hierarchical structure that has been documented in an intelligence database under [insert citation];

(C) engages in profit-sharing among [two or more] members of the organization; and

(D) in [one or more] regions of this state served by different regional councils of government, continuously or regularly engages in conduct:

(i) that constitutes an offense listed in [insert citation];

(ii) in which it is alleged that a deadly weapon is used or exhibited during the commission of or immediate flight from the commission of any felony offense; or

(iii) that is punishable as a felony of the first or second degree under [insert citation]; or

(2) an organization that, in collaboration with an organization described by Subdivision (1), engages in conduct or commits an offense or conspires to engage in conduct or commit an offense described by Subdivision (1)(D).

(f) In the trial of an offense, on the motion of the attorney representing the state, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the applicable conduct was engaged in as part of the activities of a criminal street gang as defined by [insert citation].

### Section 3. *[Gang-Related Conduct by Children.]*

(a) In this section:

(1) “Criminal street gang” has the meaning assigned by [insert citation];

(2) “Gang-related conduct” means conduct that violates a penal law of the grade of [Class B misdemeanor] or higher and in which a child engages with the intent to further the criminal activities of a criminal street gang of which the child is a member; gain membership in a criminal street gang; or avoid detection as a member of a criminal street gang.

(b) A juvenile court, in a disposition hearing under [insert citation] regarding a child who has been adjudicated to have engaged in delinquent conduct that is also gang-related conduct, shall order the child to participate in a criminal street gang intervention program that is appropriate for the child based on the child’s level of involvement in the criminal activities of a criminal street gang. The intervention program must include at least [12] hours of instruction and may include voluntary tattoo removal.

(c) If a child required to attend a criminal street gang intervention program is committed to the [youth commission] as a result of the gang-related conduct, the child must complete the intervention program before being discharged from the custody of or released under supervision by the [commission].

#### Section 4. [*Gang-Free Zones.*]

(a) This section applies to an offense listed in [insert citation], other than burglary, theft, burglary of a motor vehicle, or unauthorized use of a motor vehicle.

(b) In this section:

(1) “Institution of higher education,” “playground,” “premises,” “school,” “video arcade facility,” and “youth center” have the meanings assigned by [insert citation].

(2) “Shopping mall” means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

(c) Except as provided by Subsection (d), the punishment prescribed for an offense described by Subsection (a) is increased to the punishment prescribed for the next highest category of offense if the actor is [17] years of age or older and it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was:

(1) in, on, or within 1,000 feet of any:

(A) real property that is owned, rented, or leased by a school or school board;

(B) premises owned, rented, or leased by an institution of higher education;

(C) premises of a public or private youth center; or

(D) playground;

(2) in, on, or within 300 feet of any:

(A) shopping mall;

(B) movie theater;

(C) premises of a public swimming pool; or

(D) premises of a video arcade facility; or

(3) on a school bus.

(d) The punishment for an offense described by Subsection (a) may not be increased under this section if the offense is punishable under [insert citation] as a [felony of the first degree].

(e) In a prosecution of an offense for which punishment is increased under [insert citation], a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of gang-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those zones if the governing body of the



municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those zones.

(f) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (e).

(g) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (e) with the county clerk of each county in which the zone is located.

(h) This section does not prevent the prosecution from introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under [insert citation] or using or introducing any other map or diagram otherwise admissible under the state [Rules of Evidence].

(i) The superintendent of each public school district and the administrator of each private elementary or secondary school located in the public school district shall ensure that the student handbook for each campus in the public school district includes information about gang-free zones and the consequences of engaging in organized criminal activity within those zones.

(j) The governing board of each institution of higher education shall ensure that any student handbook or similar publication for the institution includes information about gang-free zones and the consequences of engaging in organized criminal activity within those zones.

(k) Each day-care center shall, in accordance with rules adopted by the [executive commissioner], distribute to parents and guardians of children who attend the center information about gang-free zones and the consequences of engaging in organized criminal activity within those zones.

#### Section 5. [*Civil Action for Violation of Injunction.*]

(a) In this section, “governmental entity” means a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority.

(b) A criminal street gang or a member of a criminal street gang is liable to the state or a governmental entity injured by the violation of a temporary or permanent injunctive order.

(c) In an action brought against a member of a criminal street gang, the plaintiff must show that the member violated the temporary or permanent injunctive order.

(d) A district, county, or city attorney or the attorney general may sue for money damages on behalf of the state or a governmental entity. If the state or a governmental entity prevails in a suit under this section, the state or governmental entity may recover actual damages; a civil penalty in an amount not to exceed [\$20,000] for each violation; and court costs and attorney’s fees.

(e) The property of the criminal street gang or a member of the criminal street gang may be seized in execution on a judgment under this section. Property may not be seized under this section if the owner or interest holder of the property proves by a preponderance of the evidence that the owner or interest holder was not a member of the criminal street gang and did not violate the temporary or permanent injunctive order. The owner or interest holder of property that is in the possession of a criminal street gang or a member of the criminal street gang and that is subject to execution under this section must show that the property was stolen from the owner or interest holder or was used or intended to be used without the effective consent of the owner or interest holder by the criminal street gang or a member of the criminal street gang.

(f) The [attorney general] shall deposit money received under this section for damages or as a civil penalty in the [Neighborhood and Community Recovery Fund] established under [insert citation] and held by the [attorney general] outside the [state treasury]. Money in the fund is held by the [attorney general] in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the fund may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the fund shall be credited to the fund. The [attorney general] shall account for money in the fund so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the fund held for the benefit of a different community or neighborhood.

(g) A district, county, or city attorney who brings suit on behalf of a governmental entity shall deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the account may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the account shall be credited to the account. The district, county, or city attorney shall account for money in the account so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the account held for the benefit of a different community or neighborhood.

(h) An action under this section brought by the state or a governmental entity does not waive sovereign or governmental immunity for any purpose.

#### Section 6. *[Electronic Monitoring of Certain Members of a Criminal Street Gang.]*

(a) A court granting community supervision to a defendant who is identified as a member of a criminal street gang in an intelligence database established under [insert citation] and has [two] or more times been previously convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States may, on the defendant's conviction of a felony offense, require as a condition of community supervision that the defendant submit to tracking under an electronic monitoring service or other appropriate technological service designed to track a person's location.

(b) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision, alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include the conditions that the defendant shall avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang.

(c) A parole panel may require as a condition of release on parole or to mandatory supervision that a releasee who is identified as a member of a criminal street gang in an intelligence database established under [insert citation] and has [three or more] times been convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States, submit to tracking under an electronic monitoring service or other appropriate technological service designed to track a person's location.

(d) A court granting community supervision to a defendant convicted of an offense under [insert citation] may impose as a condition of community supervision restrictions on the

defendant's operation of a motor vehicle, including specifying hours during which the defendant may not operate a motor vehicle; and locations at or in which the defendant may not operate a motor vehicle.

Section 7. [*Collecting Information About Criminal Street Gangs.*]

(a) Criminal information collected under [insert citation] relating to a criminal street gang must be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity and consist of a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang; a self-admission by the individual of criminal street gang membership that is made during a judicial proceeding; or except as provided by [insert citation], any [two] of the following:

(1) a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a member of a criminal street gang;

(2) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(3) a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;

(4) evidence that the individual frequents a documented area of a criminal street gang and associates with known criminal street gang members;

(5) evidence that the individual uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of how or the means by which the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual and described by Subparagraph (4);

(6) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity;

(7) evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution; or

(8) evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members.

(b) Evidence described by [insert citation] is not sufficient to create the eligibility of a person's information to be included in an intelligence database described by [insert citation] unless the evidence is combined with information described by [insert subparagraphs].

(c) Information collected under [insert citation] relating to a criminal street gang must be removed from an intelligence database established under [insert citation] and the intelligence database maintained by the [department] under [insert citation] after [five] years if the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child and the individual who is the subject of the information has not been arrested for criminal activity reported to the [department] under [insert citation].

(d) In determining whether information is required to be removed from an intelligence database under Subparagraph (c), the [five-year] period does not include any period during which the individual who is the subject of the information is confined in a correctional facility operated by or under contract with the [department of criminal justice]; committed to a secure correctional facility operated by or under contract with the [youth commission] or confined in a county jail or confined in or committed to a facility operated by a juvenile board in lieu of being

255 confined in a correctional facility operated by or under contract with the [department of criminal  
256 justice] or being committed to a secure correctional facility operated by or under contract with  
257 the [youth commission].  
258

259 Section 8. [*Anti-Gang Grant Program.*]

260 (a) The [criminal justice division] established under [insert citation] shall administer a  
261 competitive grant program to support regional, multidisciplinary approaches to combat gang  
262 violence through the coordination of gang prevention, intervention, and suppression activities.

263 (b) The grant program administered under this section must be directed toward regions of  
264 this state that have demonstrably high levels of gang violence.

265 (c) The [criminal justice division] shall award grants to qualified applicants, as  
266 determined by the [division], that demonstrate a comprehensive approach that balances gang  
267 prevention, intervention, and suppression activities to reduce gang violence.

268 (d) The [criminal justice division] shall include in a [biennial] report required by [insert  
269 citation] detailed reporting of the results and performance of the grant program administered  
270 under this section.

271 (e) The [criminal justice division] may use any revenue available for purposes of this  
272 section.  
273

274 Section 9. [*Severability.*] [Insert severability clause.]  
275

276 Section 10. [*Repealer.*] [Insert repealer clause.]  
277

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

# Cyberbullying

This Act defines cyberbullying and establishes prison sentences and fines for people who commit cyberbullying.

Submitted as:

Louisiana

[Act 989 of 2010](#)

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 to Address Cyberbullying.”

2

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

4

5           (1) “Cable operator” means any person or group of people who provides cable service  
6 over a cable system and directly, or through one or more affiliates, owns a significant interest in  
7 such cable system, or who otherwise controls or is responsible for, through any arrangement, the  
8 management and operation of such a cable system.

9

10          (2) “Cyberbullying” is the transmission of any electronic textual, visual, written, or oral  
11 communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a  
12 person under the age of [eighteen].

13

14          (3) “Electronic textual, visual, written, or oral communication” means any  
15 communication of any kind made through the use of a computer online service, Internet service,  
16 or any other means of electronic communication, including but not limited to a local bulletin  
17 board service, Internet chat room, electronic mail, or online messaging service.

18

19          (4) “Interactive computer service” means any information service, system, or access  
20 software provider that provides or enables computer access by multiple users to a computer  
21 server, including a service or system that provides access to the Internet and such systems  
22 operated or services offered by libraries or educational institutions.

23

24          (5) “Telecommunications service” means the offering of telecommunications for a fee  
25 directly to the public, regardless of the facilities used.

26

27           Section 3. [*Penalties for Cyberbullying.*]

28

29          (A) Except as provided in paragraph (B) of this section, whoever commits the crime of  
30 cyberbullying shall be fined not more than [five hundred] dollars, imprisoned for not more than  
31 [six] months, or both.

32

33          (B) When the offender is under the age of [seventeen], the disposition of the matter shall  
34 be governed exclusively by the provisions of [insert citation].

35

36          (C) The provisions of this Act shall not apply to a cable operator, a provider of an  
37 interactive computer service, or a provider of a telecommunications service, as defined by this  
38 this Act.

39

40          (D) The provisions of this Act shall not be construed to prohibit or restrict religious free  
41 speech pursuant to the [state constitution.]

42

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

44

35  
36  
37  
38

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

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

# Cyberbullying/Electronic Bullying

This Act generally defines cyberbullying as bullying by using an electronic communication device. It incorporates cyberbullying into a general definition of bullying, and it directs local school boards to adopt plans to prohibit and address bullying on school grounds and in school vehicles.

Submitted as:

Kansas

[Chapter 77 of 2008](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Address Bullying and  
2 Cyberbullying.”

3

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

5           (1) “Bullying” means any intentional gesture or any intentional written, verbal,  
6 electronic or physical act or threat that is sufficiently severe, persistent or pervasive that it creates  
7 an intimidating, threatening or abusive educational environment for a student or staff member  
8 that a reasonable person, under the circumstances, knows or should know will have the effect of  
9 harming a student or staff member, whether physically or mentally; damaging a student’s or staff  
10 member’s property; placing a student or staff member in reasonable fear of harm to the student  
11 or staff member; placing a student or staff member in reasonable fear of damage to the student’s  
12 or staff member’s property; cyberbullying; or any other form of intimidation or harassment  
13 prohibited by the board of education of the school district in policies concerning bullying  
14 adopted pursuant to [insert citation].

15           (2) “Cyberbullying” means bullying by use of any electronic communication device  
16 through means including, but not limited to, e-mail, instant messaging, text messages, blogs,  
17 mobile phones, pagers, online games and websites.

18           (3) “School district” means any public school district organized and operating under the  
19 laws of this state.

20           (4) “School vehicle” means any school bus, school van, other school vehicle and private  
21 vehicle used to transport students or staff members to and from school or any school-sponsored  
22 activity or event.

23

24           Section 3. [*Local School Boards to Adopt Policy to Prohibit Bullying.*]

25           (a) The board of education of each school district shall adopt a policy to prohibit bullying  
26 on or while using school property, in a school vehicle, or at a school-sponsored activity or event.

27           (b) The board of education of each school district shall adopt and implement a plan to  
28 address bullying on school property, in a school vehicle, or at a school-sponsored activity or  
29 event. Such plan shall include provisions to train and educate staff members and students about  
30 bullying.

31           (c) The board of education of each school district may adopt additional policies relating  
32 to bullying pursuant to [insert citation].

33  
34  
35  
36  
37  
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Section 4. [*Severability.*] [Insert severability clause.]

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

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



# Dignity for All Students

The Act defines harassment as creating a hostile environment that unreasonably and substantially interferes with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being, or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for their physical safety.

The bill prohibits harassment and discrimination of students with respect to certain non-exclusive protected classes, including, but not limited to, a student's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

This Act requires school districts to adopt policies to create a school environment free from harassment and discrimination. School districts must also adopt guidelines for school training programs that raise awareness and sensitivity of school employees to these issues and enables them to respond appropriately. Schools must designate at least one staff member in each school to be trained in non-discriminatory instructional and counseling.

Submitted as:

New York

[Chapter 482 of 2010](#)

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 “Dignity for All Students Act.”

2

3           Section 2. [*Legislative Intent.*] The [legislature] finds that students’ ability to learn and to  
4 meet high academic standards, and a school’s ability to educate its students, are compromised by  
5 incidents of discrimination or harassment including bullying, taunting or intimidation. It is  
6 hereby declared to be the policy of the state to afford all students in public schools an  
7 environment free of discrimination and harassment. The purpose of this Act is to foster civility in  
8 public schools and to prevent and prohibit conduct which is inconsistent with a school’s  
9 educational mission.

10

11           Section 3. [*Definitions.*] As used in this Act, the following terms shall have the following  
12 meanings:

13           1. “School property” shall mean in or within any building, structure, athletic playing  
14 field, playground, parking lot, or land contained within the real property boundary line of a  
15 public elementary or secondary school; or in or on a school bus, as defined in [insert citation].

16           2. “School function” shall mean a school-sponsored extra-curricular event or activity.

17           3. “Disability” shall mean disability as defined in [insert citation].

18           4. “Employee” shall mean employee as defined in [insert citation].

19           5. “Sexual orientation” shall mean actual or perceived heterosexuality, homosexuality or  
20 bisexuality.

21           6. “Gender” shall mean actual or perceived sex and shall include a person’s gender  
22 identity or expression.

23 7. “Harassment” shall mean the creation of a hostile environment by conduct or by verbal  
24 threats, intimidation or abuse that has or would have the effect of unreasonably and substantially  
25 interfering with a student’s educational performance, opportunities or benefits, or mental,  
26 emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that  
27 reasonably causes or would reasonably be expected to cause a student to fear for their physical  
28 safety; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct,  
29 verbal threats, intimidation or abuse based on a person’s actual or perceived race, color, weight,  
30 national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or  
31 sex.

32  
33 Section 4. [*Discrimination and Harassment Prohibited.*]

34 (A) No student shall be subjected to harassment by employees or students on school  
35 property or at a school function; nor shall any student be subjected to discrimination based on a  
36 person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious  
37 practice, disability, sexual orientation, gender, or sex by school employees or students on school  
38 property or at a school function. Nothing in this subdivision shall be construed to prohibit a  
39 denial of admission into, or exclusion from, a course of instruction based on a person’s gender  
40 that would be permissible under [insert citation] and Title IX of the Education Amendments of  
41 1972 (20 U.S.C. Section 1681, et. seq.), or to prohibit, as discrimination based on disability,  
42 actions that would be permissible under Section 504 of the Rehabilitation Act of 1973.

43 (B) An age-appropriate version of the policy outlined in subdivision (A) of this section,  
44 written in plain-language, shall be included in the code of conduct adopted by boards of  
45 education and the trustees or sole trustee pursuant to [insert citation] and a summary of such  
46 policy shall be included in any summaries required by [insert citation].  
47

48 Section 5. [*Policies and Guidelines.*] The board of education and the trustees or sole  
49 trustee of every school district shall create policies and guidelines that shall include, but not be  
50 limited to:

51 1. Policies intended to create a school environment that is free from discrimination or  
52 harassment;

53 2. Guidelines to be used in school training programs to discourage the development of  
54 discrimination or harassment and that are designed to raise the awareness and sensitivity of  
55 school employees to potential discrimination or harassment, and to enable employees to prevent  
56 and respond to discrimination or harassment; and

57 3. Guidelines relating to the development of nondiscriminatory instructional and  
58 counseling methods, and requiring that at least [one] staff member at every school be thoroughly  
59 trained to handle human relations in the areas of race, color, weight, national origin, ethnic  
60 group, religion, religious practice, disability, sexual orientation, gender, and sex.  
61

62 Section 6. [*Commissioner’s Responsibilities.*] The [commissioner] shall:

63 1. Provide direction, which may include development of model policies and, to the extent  
64 possible, direct services, to school districts about preventing discrimination and harassment and  
65 that foster an environment in every school where all children can learn free of manifestations of  
66 bias;

67 2. Provide grants, from funds appropriated for such purpose, to local school districts to  
68 help the districts implement the guidelines set forth in this section; and

69 3. Promulgate regulations to help school districts implement this Act including, but not  
70 limited to, regulations to help school districts develop measured, balanced, and age-appropriate

71 responses to violations of this policy, with remedies and procedures focusing on intervention and  
72 education.

73  
74 Section 7. [*Reporting by Commissioner.*] The [commissioner] shall create a procedure  
75 under which material incidents of discrimination and harassment on school grounds or at a  
76 school function are reported to the [department] at least on an [annual] basis. Such procedure  
77 shall provide that such reports shall, wherever possible, also delineate the specific nature of such  
78 incidents of discrimination or harassment, provided that the [commissioner] may comply with  
79 the requirements of this section through use of the existing [uniform violent incident reporting  
80 system]. In addition the [department] may conduct research or undertake studies to determine  
81 compliance throughout the state with the provisions of this Act.

82  
83 Section 8. [*Protection of People Who Report Discrimination or Harassment.*] Any person  
84 having reasonable cause to suspect that a student has been subjected to discrimination or  
85 harassment by an employee or student, on school grounds or at a school function, who, acting  
86 reasonably and in good faith, either reports such information to school officials, to the  
87 [commissioner], or to law enforcement authorities or otherwise initiates, testifies, participates or  
88 assists in any formal or informal proceedings under this Act, shall have immunity from any civil  
89 liability that may arise from the making of such report or from initiating, testifying, participating  
90 or assisting in such formal or informal proceedings, and no school district or employee shall  
91 take, request or cause a retaliatory action against any such person who, acting reasonably and in  
92 good faith, either makes such a report or initiates, testifies, participates or assists in such formal  
93 or informal proceedings.

94  
95 Section 9. [*Instruction in Civility, Citizenship and Character Education.*] The [regents]  
96 shall ensure that [a] course of instruction in grades kindergarten through twelve includes a  
97 component on civility, citizenship and character education. Such component shall instruct  
98 students about the principles of honesty, tolerance, personal responsibility, respect for others,  
99 observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of  
100 their experiences in, and contributions to, the community. The [regents] shall determine how to  
101 incorporate such component in existing curricula and the [commissioner] shall promulgate any  
102 regulations needed to carry out such determination of the [regents]. For the purposes of this  
103 section, “tolerance,” “respect for others” and “dignity” shall include awareness and sensitivity to  
104 discrimination or harassment and civility in the relations of people of different races, weights,  
105 national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual  
106 orientations, genders, and sexes.

107  
108 Section 10. [*Application.*] Nothing in this Act shall apply to private, religious or  
109 denominational educational institutions or preclude or limit any right or cause of action provided  
110 under any local, state or federal ordinance, law or regulation including but not limited to any  
111 remedies or rights available under the Individuals With Disabilities Education Act, Title VII of  
112 the Civil Rights Law of 1964, Section 504 of the Rehabilitation Act of 1973 or the Americans  
113 with Disabilities Act of 1990.

114  
115 Section 11. [*Severability.*] [Insert severability clause.]

116  
117 Section 12. [*Repealer.*] [Insert repealer clause.]

118  
119 Section 13. [*Effective Date.*] [Insert effective date.]

# E-Commerce Integrity

This Act prohibits certain Internet-related conduct, including phishing, pharming, spyware, and cybersquatting. For example, the legislation prohibits a person from using electronic communications to facilitate certain types of fraud and injury and it allows for removing domain names and online content by an Internet registrar or Internet Service Provider under certain circumstances. The legislation also prohibits political subdivisions of the state from enacting conflicting laws.

Submitted as:

Utah

[SB 26 \(Enrolled Copy\)](#)

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 E-Commerce Integrity Act.”

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

4           (1)     (a) “Cause to be copied” means to distribute or transfer computer software, or any  
5 component of computer software.

6                   (b) “Cause to be copied” does not include providing:

7                         (I) transmission, routing, intermediate temporary storage, or caching of  
8 software;

9                         (II) a storage or hosting medium, such as a compact disk, website, or  
10 computer server through which the software was distributed by a third party; or

11                        (III) an information location tool, such as a directory, index, reference,  
12 pointer, or hypertext link, through which the user of the computer located the software.

13           (2)     (a) “Computer software” means a sequence of instructions written in any  
14 programming language that is executed on a computer.

15                   (b) “Computer software” does not include a data component of a webpage that is  
16 not executable independently of the webpage.

17           (3) “Computer virus” means a computer program or other set of instructions that is  
18 designed to degrade the performance of or disable a computer or computer network and is  
19 designed to have the ability to replicate itself on another computer or computer network without  
20 the authorization of the owner of the other computer or computer network.

21           (4) “Damage” means any significant impairment to the performance of a computer or  
22 integrity or availability of data, software, a system, or information.

23           (5) “Execute,” when used with respect to computer software, means the performance of  
24 the functions or the carrying out of the instructions of the computer software.

25           (6) “False pretenses” means the representation of a fact or circumstance that is not true  
26 and is calculated to mislead.

27           (7)     (a) “Identifying information” means any information that can be used to access a  
28 person’s financial accounts or to obtain goods and services, including the person’s:

29                         (I) address;

30                         (II) birth date;

31 (III) Social Security number;  
 32 (IV) driver license number;  
 33 (V) non-driver governmental identification number;  
 34 (VI) telephone number;  
 35 (VII) bank account number;  
 36 (VIII) student identification number;  
 37 (IX) credit or debit card number;  
 38 (X) personal identification number;  
 39 (XI) unique biometric data;  
 40 (XII) employee or payroll number;  
 41 (XIII) automated or electronic signature;  
 42 (XIV) computer image file;  
 43 (XV) photograph; or  
 44 (XVI) computer screen name or password.

45 (b) "Identifying information" does not include information that is lawfully  
 46 obtained from publicly available information, or from federal, state, or local government records  
 47 lawfully made available to the general public.

48 (8) "Intentionally deceptive" means any of the following:

49 (a) an intentionally and materially false or fraudulent statement;  
 50 (b) a statement or description that intentionally omits or misrepresents material  
 51 information in order to deceive an owner or operator of a computer; or  
 52 (c) an intentional and material failure to provide a notice to an owner or operator  
 53 concerning the installation or execution of computer software, for the purpose of deceiving the  
 54 owner or operator.

55 (9) "Internet" means the global information system that is logically linked together by a  
 56 globally unique address space based on the Internet protocol (IP), or its subsequent extensions,  
 57 and that is able to support communications using the transmission control protocol/Internet  
 58 protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that  
 59 provides, uses, or makes accessible, either publicly or privately, high-level services layered on  
 60 communications and related infrastructure.

61 (10) "Internet service provider" means:

62 (a) an Internet service provider, as defined in [insert citation] or a hosting  
 63 company as defined in [insert citation.]

64 (11) "Message" means a graphical or text communication presented to an authorized user  
 65 of a computer.

66 (12) (a) "Owner or operator" means the owner or lessee of a computer, or a person  
 67 using a computer with the owner's or lessee's authorization.

68 (b) "Owner or operator" does not include a person who owned a computer before  
 69 the first retail sale of the computer.

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

72 (14) "Personally identifiable information" means any of the following information if it  
 73 allows the entity holding the information to identify the owner or operator of a computer:

74 (a) the first name or first initial in combination with the last name and a home or  
 75 other physical address including street name;

76 (b) a personal identification code in conjunction with a password required to  
 77 access an identified account, other than a password, personal identification number, or other  
 78 identification number transmitted by an authorized user to the issuer of the account or its agent;

(c) a Social Security number, tax identification number, driver license number, passport number, or any other government-issued identification number; or

(d) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.

(15) “Webpage” means a location that has a single uniform resource locator (URL) with respect to the World Wide Web or another location that can be accessed on the Internet.

Section 3. [*Application.*] This Act applies to conduct involving a computer, software, or an advertisement located in, sent to, or displayed in this state.

#### Section 4. [*Phishing and Pharming.*]

(A) A person is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the person makes a communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the legitimate business and the person uses the communication to induce, request, or solicit another person to provide identifying information or property.

(B) A person is guilty of pharming if, with intent to defraud or injure another, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the person:

(1) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of the legitimate business, if that webpage may induce any user of the Internet to provide identifying information or property; or

(2) alters a setting on a user’s computer or similar device or software program through which the user may search the Internet, causing any user of the Internet to view a communication that represents itself as belonging to or being associated with a legitimate business, if the message has been created or is operated without the authority or approval of the legitimate business and induces, requests, or solicits any user of the Internet to provide identifying information or property.

(C) A civil action against a person who violates any provision of this Section may be filed by an Internet service provider that is adversely affected by the violation; an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or the [attorney general].

(D) A person permitted to bring a civil action under Subsection (C) may obtain either actual damages for a violation of this Section or a civil penalty not to exceed [\$150,000] per violation.

(E) A violation of this Section by a state-chartered or licensed financial institution is enforceable exclusively by the financial institution’s primary state regulator.

(F) This Section applies to the discovery of a phishing or pharming incident that occurs on or after [insert date].

(G) This Section does not apply to a telecommunications provider’s or Internet service provider’s good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

(H) If an Internet registrar or Internet service provider believes in good faith that an Internet domain name controlled or operated by the Internet registrar or Internet service provider, or content residing on an Internet website or other online location controlled or operated by the Internet registrar or Internet service provider, is used to engage in a violation of this Section, the Internet registrar or Internet service provider is not liable under any provision of the laws of this

state or of any political subdivision of the state for removing or disabling access to the Internet domain name or other content.

(I) The conduct prohibited by this Section is of statewide concern, and this Section's provisions supersede and preempt any provision of law of a political subdivision of the state.

Section 5. [*Spyware: Prohibitions on The Use of Computer Software.*]

(A) A person who is not an owner or operator of a computer may not cause computer software to be copied on the computer knowingly, with conscious avoidance of actual knowledge, or willfully, if the software is used to:

(1) modify, through intentionally deceptive means, settings of a computer controlling:

(a) the webpage that appears when an owner or operator launches an Internet browser or similar computer software used to access and navigate the Internet;

(b) the default provider or web proxy that an owner or operator uses to access or search the Internet; or

(c) an owner's or an operator's list of bookmarks used to access webpages;

(2) collect, through intentionally deceptive means, personally identifiable information:

(a) through the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;

(b) in a manner that correlates personally identifiable information with data concerning all or substantially all of the webpages visited by an owner or operator, other than webpages operated by the person providing the software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed; or

(c) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's Social Security number, tax identification number, driver license number, passport number, any other government-issued identification number, an account balance, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;

(3) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block or disable the installation or execution of computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;

(4) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;

(5) through intentionally deceptive means, remove, disable, or render inoperative security, antispayware, or antivirus computer software installed on an owner's or an operator's computer;

(6) enable use of an owner's or an operator's computer to:

(a) access or use a modem or Internet service for the purpose of causing damage to an owner's or an operator's computer or causing an owner or operator, or a third party affected by that conduct, to incur financial charges for a service that the owner or operator did not authorize;

(b) open multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator and with knowledge that a reasonable computer user could not close the messages without turning off the computer or

177 closing the software application in which the messages appear, unless the communication  
178 originated from the computer's operating system, a software application the user activated, or a  
179 service provider that the user chose to use, or was presented for any of the purposes described in  
180 Section 6 of this Act; or

181 (c) transmit or relay commercial electronic mail or a computer virus from  
182 the computer, if the transmission or relay is initiated by a person other than the authorized user  
183 without the authorization of an authorized user;

184 (7) modify, without the authorization of an owner or operator, any of the  
185 following settings related the computer's access to, or use of, the Internet:

186 (a) settings that protect information about an owner or operator for the  
187 purpose of taking personally identifiable information of the owner or operator;

188 (b) security settings, for the purpose of causing damage to a computer; or

189 (c) settings that protect the computer from the uses identified in  
190 Subsection (A)(6); or

191 (8) prevent, without the authorization of an owner or operator, an owner's or an  
192 operator's reasonable efforts to block the installation of, or to disable, computer software by:

193 (a) presenting the owner or operator with an option to decline installation  
194 of computer software with knowledge that, when the option is selected by the authorized user,  
195 the installation nevertheless proceeds;

196 (b) falsely representing that computer software has been disabled;

197 (c) requiring in an intentionally deceptive manner the user to access the  
198 Internet to remove the software with knowledge or reckless disregard of the fact that the software  
199 frequently operates in a manner that prevents the user from accessing the Internet;

200 (d) changing the name, location, or other designation information of the  
201 software for the purpose of preventing an authorized user from locating the software to remove  
202 it;

203 (e) using randomized or intentionally deceptive filenames, directory  
204 folders, formats, or registry entries for the purpose of avoiding detection and removal of the  
205 software by an authorized user;

206 (f) causing the installation of software in a particular computer directory  
207 or in computer memory for the purpose of evading an authorized user's attempt to remove the  
208 software from the computer; or

209 (g) requiring, without the authority of the owner of the computer, that an  
210 authorized user obtain a special code or download software from a third party to uninstall the  
211 software.

212 (B) (1) The attorney general, an Internet service provider, or a software company that  
213 expends resources in good faith assisting authorized users harmed by a violation of this Section  
214 or a trademark owner whose mark is used to deceive authorized users in violation of this Section,  
215 may bring a civil action against a person who violates this Section to recover actual damages and  
216 liquidated damages of at least [\$1,000] per violation of this Section not to exceed [\$1,000,000]  
217 for a pattern or practice of violations and attorney fees and costs.

218 (2) The court may increase a damage award to an amount equal to not more than  
219 [three] times the amount otherwise recoverable under Subsection (1) if the court determines that  
220 the defendant committed the violation willfully and knowingly.

221 (3) The court may reduce liquidated damages recoverable under Subsection (1) to  
222 a minimum of [\$100, not to exceed \$100,000] for each violation, if the court finds that the  
223 defendant established and implemented practices and procedures reasonably designed to prevent  
224 a violation of this Section.



(4) In the case of a violation of Subsection (A)(6) that causes a telecommunications carrier or provider of voice over Internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or Internet-capable device of a customer of the telecommunications carrier or provider of voice over Internet protocol as a result of the violation, the telecommunications carrier or provider of voice over Internet protocol may bring a civil action against the violator:

(a) to recover the charges the telecommunications carrier or provider of voice over Internet protocol is required to pay to another carrier or to an information service provider as a result of the violation, including charges for the origination, transport, or termination of the call;

(b) to recover the costs of handling customer inquiries or complaints with respect to amounts billed for the calls;

(c) to recover reasonable attorney fees and costs; and

(d) for injunctive relief.

(5) For purposes of a civil action under Subsections (1), (2), and (3), a single action or conduct that violates more than one provision of this Section, shall be considered as multiple violations based on the number of provisions violated.

Section 6. [*Other Prohibited Conduct.*] A person who is not an owner or operator of a computer may not, with regard to the computer induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing the computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content or use intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use the computer software component in a manner that violates any other provision of this [Act].

Section 7. [*Exceptions.*] Sections 5 and 6 of this Act do not apply to the monitoring of, or interaction with, an owner's or an operator's Internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under [insert citation].

Section 8. [*Cybersquatting.*]

(A) A person is liable in a civil action by the owner of a mark, including a personal name, which is a mark for purposes of this Section, if, without regard to the goods or services of the person or the mark's owner, the person has a bad faith intent to profit from the mark, including a personal name and for any length of time registers, acquires, traffics in, or uses a domain name in, or belonging to any person in, this state that:

(1) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to the mark;

(2) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of the mark; or

(3) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36 348 U.S.C. Sec. 220506.

(B) In determining whether a person has a bad faith intent described in Subsection (A), a court may consider all relevant factors, including:

(1) the trademark or other intellectual property rights of the person, if any, in the domain name;

(2) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(3) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(4) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(5) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(6) the person's offer to transfer, sell, or otherwise assign, or solicitation of the purchase, transfer, or assignment of the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bonafide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(7) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(8) the person's registration or acquisition of multiple domain names that the person knows are identical or confusingly similar to another's mark that is distinctive at the time of registration of the domain names, or is dilutive of another's famous mark that is famous at the time of registration of the domain names, without regard to the goods or services of the person or the mark owner; and

(9) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous.

(C) Bad faith intent described in Subsection (A) may not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(D) In a civil action involving the registration, trafficking, or use of a domain name under this section, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(E) A person is liable for using a domain name under Subsection (A) only if that person is the domain name registrant or that registrant's authorized licensee, affiliate, domain name registrar, domain name registry, or other domain name registration authority that knowingly assists a violation of this Act by the registrant.

(F) A person may not be held liable under this Section absent a showing of bad faith intent to profit from the registration or maintenance of the domain name.

(G) For purposes of this section, a "showing of bad faith intent to profit" shall be interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

(H) As used in this Section, the term "traffics in" refers to transactions that include sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(I) The owner of a mark registered with the U.S. Patent and Trademark Office or under this Act may file an in rem civil action against a domain name in the district court if the owner is located in the state and if:

(1) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office or registered under this Act; and

(2) the court finds that the owner:

(a) is not able to obtain personal jurisdiction over a person who would be a defendant in a civil action under Subsection (A); or

(b) through due diligence was not able to find a person who would be a defendant in a civil action under Subsection (A) by:

(I) sending a notice of the alleged violation and intent to proceed under this Subsection to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(III) publishing notice of the action as the court may direct promptly after filing the action.

(J) Completion of the actions required by Subsection (I) (2) (b) constitutes service of process.

(K) In an in rem action under this Subsection (I), a domain name is considered to be located in the judicial district in which the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located or documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(L) The remedies in an in rem action under this Subsection (I) are limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(M) Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in the district court under this Subsection (I), the domain name registrar, domain name registry, or other domain name authority shall expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court and not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(N) The domain name registrar or registry or other domain name authority is not liable for injunctive or monetary relief under this section, except in the case of bad faith or reckless disregard, which includes a willful failure to comply with a court order.

(O) The civil actions and remedies established by Subsection (A) and the in rem action established in Subsection (I) do not preclude any other applicable civil action or remedy.

(P) The in rem jurisdiction established under Subsection (I) does not preclude any other jurisdiction, whether in rem or personal.

#### Section 9. *[Infringement.]*

(A) Subject to [insert citation] and Subsection (B), any person is liable in a civil action brought by the registrant for any and all of the remedies provided in [insert citation], if that person:

(1) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this Act without the consent of the registrant and in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which that use is likely to cause confusion, mistake, or to deceive as to the source of origin, nature, or quality of those goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates any mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of goods or services.

(B) Under Subsection (A)(1), the registrant is not entitled to recover profits or damages unless the act described in Subsection (A)(1) has been committed with the intent to cause confusion or mistake or to deceive.

(C) In a civil action for a violation of Section 8 of this Act, the plaintiff may recover court costs and reasonable attorney fees and the plaintiff may elect, at any time before final judgment is entered by the district court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than [\$1,000] and not more than [\$100,000] per domain name, as the court considers just. Statutory damages awarded under this Subsection are presumed to be [\$100,000] per domain name if there is a pattern and practice of infringements committed willfully for commercial gain.

Section 10. [*Severability*.] [Insert severability clause.]

Section 11. [*Repealer*.] [Insert repealer clause.]

Section 12. [*Effective Date*.] [Insert effective date.]

# Educator Identifier System

This Act directs the state department of education to set up a pilot program to compile information about teachers' classroom performance over a five year timeframe. The state will use the information to help identify ways to improve teacher effectiveness and to close the "teacher gap." The Act defines "teacher gap" as the "documented phenomenon that poor or minority students are more likely to be taught by less-qualified or less-experienced teachers than those students' more advantaged peers."

Submitted as:

Colorado

[HB 09-1065](#)

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 Create an Educator  
2 Identifier System."

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

5           (1) "Department" means the [department of education] created and existing pursuant to  
6 [insert citation].

7           (2) "Educator" means a teacher or principal as defined in this section.

8           (3) "Fund" means the Educator Identifier Fund created in Section 4.

9           (4) "Identifier" means a unique educator identifier assigned to each licensed educator  
10 participating in the pilot program and system pursuant to Section 3.

11           (5) "Pilot program" means the developmental phases of the Educator Identifier System  
12 created in Section 3. This definition shall be repealed by the [legislature] after the [state board]  
13 certifies in writing the system is fully operational and available to each school district or local  
14 education agency in the state pursuant to the minimum provisions of this Act.

15           (6) "Principal" means a person who is employed as the chief executive officer or an  
16 assistant chief executive officer of a public school in the state and who administers, directs, or  
17 supervises the education instructional program in the school.

18           (7) "State board" means the [state board of education] created and existing pursuant to  
19 [insert citation].

20           (8) "System" means the [Educator Identifier System] created in Section 3.

21           (9) "Teacher" means a person who:

22               (a) Is enrolled in a teacher preparation program, has submitted their fingerprints to  
23 the [department] pursuant to [insert citation], and is employed in a local education agency;

24               (b) Holds any alternative, initial, or professional teacher license issued pursuant to  
25 [insert citation] and who is employed in a local education agency to instruct, direct, or supervise  
26 an education instructional program; or

27               (c) Is employed by a district charter school or an institute charter school to  
28 instruct, direct, or supervise an education instructional program.

29           (10) "Teacher gap" means the documented phenomenon that poor or minority students  
30 are more likely to be taught by less-qualified or less-experienced teachers than those students'  
31 more advantaged peers.

Section 3. *[Educator Identifier System and Pilot Program.]*

(A) An Educator Identifier System is created in the [department] as a Pilot Program to assign unique identifiers to educators employed in a school district or local education agency. The system shall use available current and historical data within the past [five] years and be developed in collaboration with a [Quality Teachers Commission] established under [insert citation]. The [department] shall develop the system before or during [insert academic year].

(B) Each educator's identifier shall be unique. The identifier shall not use any personal identifying information, such as Social Security Numbers or contact information, except for alignment purposes in data processing. Any such personal identifying information that is collected shall be linked in a secure data location so data sets can be matched based on the personal identifying information when the identifier is not included.

(C) The purpose of the system shall include, but is not limited to, providing information for the following uses:

- (1) Studying the teacher gap and identifying any possible solutions to that issue;
- (2) Studying educator training programs, educator professional development programs, and educator mobility and retention issues;
- (3) Improving teaching and student learning, including the use of data to recognize, reward, and develop the careers of educators;
- (4) Using data gleaned from the system in developing the state's longitudinal data system to include an educator identifier system with the ability to match educators to students;
- (5) Allowing the state to gather baseline data about the distribution of highly qualified teachers, including the number and percent of teachers in the highest-poverty and lowest-poverty schools in the state who are highly qualified, and to take actions to address any inequities in the distribution of highly qualified teachers throughout the state;
- (6) Enabling teachers to enhance their instruction by using technological resources that provide teachers with performance and longitudinal growth data for their students; and
- (7) Gathering information about the number and percent of teachers and principals rated at each performance level in each local education agency's teacher and principal evaluation system.

(D) The system shall include, at a minimum, all of the following protections for educators, school districts, and educator preparation programs:

- (1) A school district or local education agency may not use data obtained from the system concerning specific schools, classrooms, or teachers of other school districts or local education agencies to negatively sanction individual teachers;
- (2) The use of information that school districts obtain from any other source or are currently using shall not be restricted by the provisions of this subsection (D);
- (3) Nothing in this subsection (D) is intended to restrict a school district's existing authority to:
  - (a) Assign individual educators to specific grades, levels, programs, or schools;
  - (b) Direct the professional development of educators; or
  - (c) Collaboratively design and develop, with representation from the district's teachers and principals, alternative compensation plans through the procedures adopted by the district for setting educator compensation.

(E) The [department] and the [department of higher education] shall not use the data obtained from the system to sanction any school district, local education agency, or educator preparation or professional development program. However, said [departments] may provide that

81 data to districts and programs to be used for program improvement and may require that data be  
82 considered and responded to as part of the accreditation process established pursuant to [insert  
83 citation] and the approval process established pursuant to [insert citation]. The [department] and  
84 [department of higher education], in collaboration with institutions of higher education, shall set  
85 up protocols for releasing system data of graduates to their respective educator preparation  
86 programs for the purpose of self-evaluation. Protocols shall comply with all federal laws. The  
87 [department] and [department of higher education] may also use that data to identify practices  
88 that may show promise if the practices are verified by additional evidence.

89 (F) Data obtained from the system shall be available to state agencies, school districts,  
90 nongovernmental entities, and individuals, through varying degrees of access, as designed by the  
91 [Quality Teachers Commission] and in the subsequent report adopted by the [state board].

92 (G) The system shall use multiple data points.

93 (H) The system shall comply with all state and federal privacy laws in order to ensure the  
94 confidentiality and appropriate uses of information found in the system.

95 (I) Data analysis shall include the complete number of educators in each participating  
96 school district. The data shall be reported only if a school district or local education agency  
97 includes a minimum threshold in the number of educators to ensure that identifiable information  
98 of individual educators is not reported.

99 (J) Notwithstanding any provisions of this Act to the contrary, a school district or local  
100 education agency may use the system to merge, manage, or access any information that it is  
101 otherwise authorized to obtain and the use of such information shall not be restricted in any way  
102 that is otherwise permitted by statute. Information obtained through the system that school  
103 districts or local education agencies are not otherwise authorized to obtain may be used to  
104 achieve the purposes described in subsection (C) of this section, so long as it is not used in any  
105 way inconsistent with the protections defined in subsection (D) of this section.

106 (K) The [department] shall not be obligated to implement the provisions of this section  
107 until sufficient funds have been received and credited to the [fund] established under Section 4.  
108 No [general fund] money shall be appropriated to implement this Act.

109 (L) The [general assembly] shall reconsider the appropriateness of the provisions of this  
110 Act after the [state board] certifies in writing that the system is fully operational and available to  
111 each school district and local education agency in the state pursuant to the provisions of this Act.

#### 112 Section 4. *[Educator Identifier Fund.]*

113 (A) There is created an [Educator Identifier Fund].

114 (B) The [department] is authorized to seek and accept gifts, grants, or donations from  
115 private or public sources for the purposes of this Act; except that the [department] shall not  
116 accept a gift, grant, or donation if it is subject to conditions that are inconsistent with this Act or  
117 any other law of the state. The [department] shall transmit all private and public moneys received  
118 through gifts, grants, or donations to the [state treasurer], who shall credit the same to the  
119 [Educator Identifier Fund].

120 (C) The moneys credited to the [fund] shall be continuously appropriated to the  
121 [department] for the direct and indirect costs associated with implementing this Act.

122 (D) Any moneys in the [fund] not expended for the purposes of this Act may be invested  
123 by the [state treasurer] as provided by law. All interest and income derived from the investment  
124 and deposit of moneys in the [fund] shall be credited to the [fund].

125 (E) Any unexpended and unencumbered moneys remaining in the [fund] at the end of a  
126 fiscal year shall remain in the [fund] and shall not be credited or transferred to the [general fund]  
127 or another fund; except that any unexpended and unencumbered moneys remaining in the [fund]  
128 as of [insert date], shall be transferred to the [general fund].  
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135

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

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

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



# Energy Infrastructure Corridors Statement

Maine [Public Law, Chapter 655 of 2010](#) addresses energy infrastructure corridors, which it generally defines as geographic areas within the state designated for siting energy infrastructure. Energy infrastructure includes electric transmission and distribution facilities, natural gas transmission lines, and other pipelines. Energy infrastructure does not include generation interconnection transmission facilities, energy generation facilities, or electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor.

The Act addresses two types of corridors, petitioned and statutory.

The Act enables the state Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security, and developers to petition the state public utilities commission to designate a corridor. The commission designates petitioned corridors by rule. This means it must hold hearings and accept public comments and testimony about the proposed petitioned corridor. The Act also requires the commission to notify and consult with various state agencies, local governments, and Native American tribes which own land or assets within the proposed corridor when evaluating a petition to establish an energy infrastructure corridor.

The state public utilities commission can approve a new petition to establish a corridor if it determines that the future development of energy infrastructure within the petitioned corridor is reasonably likely to be in the public interest, encourages collocation of energy infrastructure, enhances the efficient use of existing energy infrastructure, has a limited impact on the landscape, and is consistent with state environmental and land use laws. The commission cannot approve a petition for a corridor on federally owned land, state park land, or certain tribal lands.

The Act creates three statutory energy infrastructure corridors. Two are along Interstate highways. The law creates an Interagency Review Panel to oversee the use of statutory corridors. It directs the panel, in consultation with a professional appraiser, to identify an initial range of value for the use of state-owned land or assets within a statutory corridor. It directs the panel to establish a process to solicit, evaluate, and approve proposals to build energy infrastructure within the statutory corridors. As part of the process the panel must provide public notice of the availability of the statutory corridors for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and opportunity for potential developers to submit proposals for use of the statutory corridors.

The Act contains provisions requiring prospective builders of energy infrastructure in the corridors to get a corridor of use certificate from the state public utilities commission and a consolidated environmental permit from the state environmental department. It authorizes those agencies to determine the information required by a certificate and consolidated permit, respectively.

The law enables the state public utilities commission and the Interagency Review Panel to approve proposals to build energy infrastructure in the corridors if:

- The proposed projects materially enhance or do not harm transmission opportunities for energy generation within the state;
- It is reasonably likely the projects will reduce electric rates or other relevant energy prices or costs for businesses and residents in the states; or
- The owner or operator of the proposed energy infrastructure agrees to annually pay to the state an amount determined by the commission or panel to reduce rates, prices or costs over the life of the proposed energy infrastructure; and

- The projects are in the long term interest of the state as defined by several other criteria, including reducing greenhouse gases.

The Act contains provisions enabling the Interagency Review Panel to negotiate long-term occupancy agreements with project developers in statutory energy infrastructure corridors.

This law establishes an Energy Infrastructure Benefits Fund and sets requirements for depositing money into that fund. It requires some of the revenues in this fund be used to provide grants and loans to projects that promote energy efficiency and alternative energy resource initiatives. The bill also directs a percentage of that money be transferred to a Transportation Efficiency Fund also created by the Act. The law specifies that the state department of transportation must use money in that fund to increase the energy efficiency of the transportation system within the state. That includes rail, public transit, car and van pooling, zero-emission vehicles, biofuel, and other alternative vehicles.

Finally, the Act contains provisions governing the eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor.

Submitted as:

Maine

[Public Law, Chapter 655 of 2010](#)

Status: Enacted into law in 2010.

# Enhanced, Special Foster Care

This Act creates a pilot program to provide enhanced, special services to children between four and ten years old who are placed in foster care. The program is intended to reduce the emotional trauma to children who enter foster care.

Submitted as:

West Virginia

[Enrolled Committee Substitute for HB4164](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Enhanced Foster Care Act.”

2

3           Section 2. [*Pilot Program for Placing Children Four to Ten Years Old in Foster Care.*]

4           (A) The [legislature] finds that:

5               (1) The needs of young children are not always adequately addressed when the  
6 state [department of health and human resources] is required to take custody of them;

7               (2) Often the behavior of young children taken from their homes poses special  
8 challenges for the [department] and other people charged with their care;

9               (3) The [department] must take extraordinary precautions to prevent serious  
10 emotional damage to these children; and

11              (4) The [department] has resources within the [department] that can be redirected  
12 to meet many of the needs of the program required by this section.

13           (B) The [department] shall choose [four] regions in which to implement a [two-year]  
14 pilot program to address children ages [four through ten] immediately after removal from their  
15 homes by the state [child protective service division] due to child abuse and neglect and who, by  
16 the nature of their removal, are in crisis.

17           (C) The program shall:

18               (1) Include early intervention for children in crisis;

19               (2) Provide for the development of a short-term and an ongoing long-term plan  
20 for each child;

21               (3) Provide that each child is evaluated for emotional and physical trauma and  
22 other medical, dental, and educational needs in a timely manner;

23               (4) Require that each child be assigned an independent advocate through the  
24 community advocacy programs as staff or volunteers are made available, and

25           (D) The plans required by subsection (C) of this section shall:

26               (1) Address abandonment, separation anxiety, post traumatic stress and other  
27 emotional and physical needs of the child;

28               (2) Be developed by appropriately trained professional staff;

29               (3) Require the participation of a child care agency, the state [department of  
30 education], community programs and other appropriate agencies providing services to children  
31 ages [four through ten]; and

32               (4) Be developed to meet the ongoing emotional needs of each child.

(E) The short-term plan required by subsection (C) of this section shall address the child's needs for the first [thirty] days under the [department's] supervision.

(F) During the initial evaluation period, and when a child is being placed into foster care, the [department] shall when possible place the child into an enhanced specialized foster care home. Providers offering enhanced specialized foster care homes shall offer crisis intervention services staffed by trained professionals and also offer specialized training to manage a child's reaction to the trauma of being removed from the custody of a parent, parents, or other guardians, with emphasis on a child's emotional needs. This program shall limit the number of children in one location to [three] foster children at a time. A greater number is permitted if all of the children are siblings.

(G) After a short-term plan and long-term plan are developed, the [department] shall:

- (1) Provide the foster family with training and education in the plan;
- (2) Evaluate the interaction between the child and foster parents or parent;
- (3) Train the foster parent or parents about how to respond to the child's emotional crisis and how to understand the child's crisis reactive behavior; and
- (4) Evaluate the foster family on its understanding of the need for this early intervention and the need for appropriate crisis management.

(H) The providers of enhanced specialized foster care services shall:

- (1) Create and train a team to provide crisis intervention;
- (2) Provide a call system that enhanced specialized foster parent or parents and their foster child can use to speak to a team member or other appropriately trained professional during a crisis; and
- (3) Require a crisis team member to visit the home if the crisis cannot adequately be resolved over the telephone and to do a follow up visit within [two] days to meet with the enhanced specialized foster parent or parents, and child, individually, to determine if the crisis was satisfactorily resolved.

(I) The [department] shall develop a system to evaluate the pilot program for outcomes and standards of care and report back to [public, private, and community partners]. In addition the evaluation shall be reported to the [Joint Committee on Government and Finance] or other designated committees every [six months for two years]. The evaluation shall be contracted by the [department] through an external entity that shall:

- (1) Establish measurable outcomes for purposes of evaluation;
- (2) Collect, analyze and report data [quarterly and annually];
- (3) Identify trends and make recommendations for program improvement;
- (4) Conduct an analysis of the impact of the pilot program on the foster child participants' emotional stability, the number of placements they experienced, and the basis for required moves;
- (5) Provide technical assistance and training to the pilot program;
- (6) Provide leadership in the development of data collection and outcome reporting models;
- (7) Provide feedback for quality improvement to those responsible for the pilot program; and
- (8) Monitor, research and present best practices through everyday communication and training opportunities.

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

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

81

82

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

# Financing Energy Efficiency Improvements

This Act enables gas and electric utility customers in the state to finance the costs of installing equipment and making repairs to their homes to conserve energy by paying an additional “Meter Conservation Charge” as part of their monthly utility bills. Utility customers must permit the utilities to perform an energy audit of their homes before they can sign a contract initiating the charge. The energy audit must be conducted by an energy auditor certified by the Building Performance Institute or similar organization. The audit must provide an estimate of the costs of the proposed energy efficiency and conservation measures and the expected savings associated with the measures, and it must recommend measures appropriately sized for the specific use contemplated.

Contracts to impose a Meter Conservation Charge must state plainly the interest rate to be charged to finance the costs of the energy efficiency and conservation measures. The interest rate must be a fixed rate over the term of the agreement and must not exceed four percent above the stated yield for one-year Treasury bills as published by the Federal Reserve at the time the agreement is entered. Customers can pay off their contracts without incurring penalties anytime before their contracts expire.

The Act requires that a utility must file a notice that a meter conservation charge has been imposed on a residential account, so that account holders will be aware of the financing arrangement. However, the Act explicitly provides that notice of a meter conservation charge does not constitute a lien on the property.

Such contracts must also specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the owner of the residence. Upon request, the electricity provider or natural gas provider must provide the owner of the residence with a list of contractors qualified to do the work.

Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor. Until the work has been remedied, funds due to the contractor must be held in escrow by the electricity provider or natural gas provider.

Submitted as:

South Carolina

[Act 141 of 2010](#)

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 to Permit Energy Meter  
2 Conservation Charges.”

3

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

5           (1) “Electricity provider” means an electric cooperative, an investor-owned electric  
6 utility, the state [public service authority], or a municipality or municipal board or commission of  
7 public works that owns and operates an electric utility system.

8           (2) “Natural gas provider” means an investor-owned natural gas utility or publicly owned

9 natural gas provider.

10 (3) "Meter conservation charge" means the charge placed on a customer's account by  
11 which electricity providers and natural gas providers recover the costs, including financing costs,  
12 of energy efficiency and conservation measures.

13 (4) "Notice of meter conservation charge" means the written notice by which subsequent  
14 purchasers or tenants will be given notice that they will be required to pay a meter conservation  
15 charge.

16 (5) "Customer" means a homeowner or tenant receiving electricity or natural gas as a  
17 retail customer.

18 (6) "Community action agency" means a nonprofit eleemosynary corporation created  
19 pursuant to [insert citation] providing, among other things, weatherization services to a  
20 homeowner or tenant.

21  
22 Section 3. [*Meter Conservation Charges for Electricity and Natural Gas Utility*  
23 *Customers.*]

24 (A) Electricity providers and natural gas providers may enter into written agreements  
25 with customers and landlords of customers for the financing of the purchase price and  
26 installation costs of energy efficiency and conservation measures. These agreements may provide  
27 that the costs must be recovered by a meter conservation charge on the customer's electricity or  
28 natural gas account, provided that the electricity providers and natural gas providers comply with  
29 the provisions of this section. A failure to pay the meter conservation charge may be treated by  
30 the electricity provider or natural gas provider as a failure to pay the electricity or natural gas  
31 account, and the electricity provider or natural gas provider may disconnect electricity or natural  
32 gas service for nonpayment of the meter conservation charge, provided the electricity provider or  
33 natural gas provider complies with the provisions of [insert citation].

34 (B) Any agreement permitted by subsection (A) must state plainly the interest rate to be  
35 charged to finance the costs of the energy efficiency and conservation measures. The interest rate  
36 must be a fixed rate over the term of the agreement and must not exceed [four percent above the  
37 stated yield for one-year Treasury bills as published by the Federal Reserve at the time the  
38 agreement is entered]. Any indebtedness created under the provisions of this section may be paid  
39 in full at any time before it is due without penalty.

40 (C) An electricity provider or natural gas provider may recover the costs, including  
41 financing costs, of these measures from its members or customers directly benefiting from the  
42 installation of the energy efficiency and conservation measures. Recovery may be through a  
43 meter conservation charge to the account of the member or customer and any such charge must  
44 be shown by a separate line item on the account.

45 (D) An electricity provider or natural gas provider shall assume no liability for the  
46 installation, operation, or maintenance of energy efficiency and conservation measures when the  
47 measures are performed by a third party, and shall not provide any warranty as to the  
48 merchantability of the measures or the fitness for a particular purpose of the measures, and no  
49 action may be maintained against the electricity provider or natural gas provider relating to the  
50 failure of the measures. An electricity provider or natural gas provider shall assume no liability  
51 for energy audits performed by third parties and shall provide no warranty relating to any energy  
52 audit done by any third party. Nothing in this section may be construed to limit any rights or  
53 remedies of utility customers and landlords of utility customers against other parties to a  
54 transaction involving the purchase and installation of energy efficiency and conservation  
55 measures.

56 (E) Before entering into an agreement contemplated by this section, the electricity  
57 provider or natural gas provider shall cause to be performed an energy audit on the residence

58 considered for the energy efficiency measures. The energy audit must be conducted by an energy  
59 auditor certified by the Building Performance Institute or similar organization. The audit must  
60 provide an estimate of the costs of the proposed energy efficiency and conservation measures  
61 and the expected savings associated with the measures, and it must recommend measures  
62 appropriately sized for the specific use contemplated. An agreement entered following  
63 completion of an energy audit shall specify the measures to be completed and the contractor  
64 responsible for completion of the measures. The choice of a contractor to perform the work must  
65 be made by the owner of the residence. Upon request, the electricity provider or natural gas  
66 provider must provide the owner of the residence with a list of contractors qualified to do the  
67 work. Upon completion of the work, it must be inspected by an energy auditor certified by the  
68 Building Performance Institute or similar organization. Any work that is determined to have been  
69 done improperly or to be inappropriately sized for the intended use must be remedied by the  
70 responsible contractor. Until the work has been remedied, funds due to the contractor must be  
71 held in escrow by the electricity provider or natural gas provider.

72 (F) An electricity provider or natural gas provider that enters into an agreement as  
73 provided in this section may recover the costs, including financing costs, of energy efficiency  
74 and conservation measures from subsequent purchasers of the residence in which the measures  
75 are installed, provided the electricity provider or natural gas provider gives record notice that the  
76 residence is subject to the agreement. Notice must be given, at the expense of the filer, by filing a  
77 notice of meter conservation charge with the appropriate office for the county in which the  
78 residence is located, pursuant to [insert citation]. The fee to file the notice of meter conservation  
79 is [ten dollars]. The notice of meter conservation charge does not constitute a lien on the property  
80 but is intended to give a purchaser of the residence notice that the residence is subject to a meter  
81 conservation charge. Notice is deemed to have been given if a search of the property records of  
82 the county discloses the existence of the charge and informs a prospective purchaser about how  
83 to ascertain the amount of the charge, the length of time it is expected to remain in effect, and of  
84 their obligation to notify a tenant if the purchaser leases the property as provided in subsection  
85 (G)(3).

86 (G) An electricity provider or natural gas provider may enter into agreements for the  
87 installation of energy efficiency and conservation measures and the recovery of the costs,  
88 including financing costs, of the measures with respect to rental properties by filing a notice of  
89 meter conservation charge as provided in subsection (F) and by complying with the provisions of  
90 this subsection:

91 (1) The energy audit required by subsection (E) must be conducted and the results  
92 provided to both the landlord and the tenant living in the rental property at the time the  
93 agreement is entered.

94 (2) If both the landlord and tenant agree, the electricity provider or natural gas  
95 provider may recover the costs of the energy efficiency and conservation measures, including  
96 financing costs, through a meter conservation charge on the account associated with the rental  
97 property occupied by the tenant. The agreement must provide notice to the landlord of the  
98 provisions contained in subsection (G)(3).

99 (3) With respect to a subsequent tenant occupying a rental unit benefiting from  
100 the installation of energy efficiency and conservation measures, the electricity provider or natural  
101 gas provider may continue to recover the costs, including financing costs, of the measures  
102 through a meter conservation charge on the account associated with the rental property occupied  
103 by the tenant. With respect to a subsequent tenant, the landlord must give a written notice of  
104 meter conservation charge in the same manner as required by [insert citation]. If the landlord  
105 fails to give the subsequent tenant the required notice of meter conservation charge, the tenant  
106 may deduct from his rent, for no more than [one-half] of the term of the rental agreement, the



amount of the meter conservation charge paid to the electricity provider or natural gas provider.

(H) Agreements entered pursuant to the provisions of this section are exempt from the provisions of [insert citation].

(I) An electricity provider or natural gas provider may contract with third parties to perform functions permitted under this section, including the financing of the costs of energy efficiency and conservation measures. A third party must comply with all applicable provisions of this section.

(J) The provisions of this section apply only to energy efficiency and conservation measures for a residence already occupied at the time the measures are taken. The procedures allowed by this section may not be used with respect to a new residence or a residence under construction. The provisions of this section may not be used to implement energy efficiency or conservation measures that result in the replacement of natural gas appliances or equipment with electric appliances or equipment, or that result in the replacement of electric appliances or equipment with natural gas appliances or equipment, unless the customer who seeks to install the energy efficiency or conservation measure is being provided electric and natural gas service by the same provider.

(K) Electricity providers or natural gas providers may offer their customers other types of financing agreements available by law, instead of the option established in this section, for the types of energy efficiency or conservation measures described in this section.

(L) (1) An electricity provider or natural gas provider must not obtain funding from the following federal programs to provide loans provided by this section:

(a) the Low Income Home Energy Assistance Program (LIHEAP), created by Title XXVI of the Omnibus Budget Reconciliation Act of 1981 and codified as Chapter 94, Title 42 of the United States Code, as amended by the Human Services Reauthorization Act of 1984, the Human Services Reauthorization Act of 1986, the Augustus F. Hawkins Human Services Reauthorization Act of 1990, the National Institutes of Health Revitalization Act of 1993, the Low Income Home Energy Amendments of 1994, the Coats Human Services Reauthorization Act of 1998, and the Energy Policy Act of 2005 which is administered and funded by the United States Department of Health and Human Services on the federal level and administered locally by community action agencies; or

(b) the Weatherization Assistance Program, created by Title IV of the Energy Conservation and Production Act of 1976 and codified as Part A, Subchapter III, Chapter 81, Title 42 of the United States Code, amended by the National Energy Conservation Policy Act, the Energy Security Act, the Human Services Reauthorization Act of 1984, and the State Energy Efficiency Programs Improvement Act of 1990 and administered and funded by the United States Department of Energy on the federal level and administered locally by community action agencies.

(2) Nothing in this section changes the exclusive administration of these programs by local community action agencies through the [governor's office of economic opportunity] pursuant to [insert citation].

(3) Nothing in this subsection prevents a customer or member of an electricity provider or natural gas provider from obtaining services under the "Low Income Home Energy Assistance Program" or the "Weatherization Assistance Program."

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

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

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

# Geothermal Energy

This Act creates a Geothermal Resource Leasing Fund to receive money from certain mineral lease revenues derived from geothermal resource development. The money in the fund will then be used to provide grants to state agencies, school districts, and political subdivisions affected by geothermal development and production. Grants are to be awarded by the state department of local affairs primarily for planning and services necessitated by geothermal development and production, and secondarily to promote geothermal energy resource development.

The Act specifies that in cases where geothermal resources are “severed,” or separated from the land and sold or leased, the geothermal resource owner must have the right to reasonably access these resources.

The bill specifies that geothermal energy facilities must be valued for property taxes in the same manner in which wind and solar energy facilities are valued. These facilities are valued using the income approach, where the value is based on the projected gross revenue from such facilities.

This Act allows municipalities and counties to designate the use of geothermal resources as an activity of state interest.

The bill allows the state public utilities commission, at a utility’s request, to give the fullest possible consideration to the cost-effective implementation of new energy technologies for geothermal energy generation.

Submitted as:

Colorado

[SB 10-174](#)

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 Geothermal  
2 Energy Production.”

3  
4           Section 2. [*Geothermal Resource Leasing Fund*.]

5           (A) The [state treasurer] shall deposit all revenues from sales, bonuses, royalties, leases,  
6 and rentals related to geothermal resources, as that term is defined in [insert citation], received  
7 by the state pursuant to 30 U.S.C. Sec. 1019, as amended, and all moneys earned from the  
8 investment of such revenues, into the Geothermal Resource Leasing Fund, which is hereby  
9 created in the state treasury, for appropriation by the [general assembly] to the [department of  
10 local affairs] for grants to state agencies, school districts, and political subdivisions of the state  
11 affected by the development and production of geothermal resources or other entities authorized  
12 by federal law:

13           (1) Primarily for use by such entities in planning for and providing facilities and  
14 services necessitated by such development and production; and

15           (2) Secondarily to the entities listed in the introductory portion to this section (A)  
16 for other state purposes as specified in subsection (B) of this section.

17           (B) After the [executive director of the department of local affairs] has allocated  
18 sufficient revenues from the fund to adequately address the needs specified in paragraph (1) of  
19 Subsection (A) of this section, the [executive director] shall, in consultation with the [governor’s

energy office] created in [insert citation], allocate revenues from the fund by competitive grants for the promotion of the development of geothermal energy resources.

(C) The [governor's energy office] shall assist the [executive director of the department of local affairs] in allocating revenues from the Geothermal Resource Leasing Fund to eligible entities pursuant to this section.

Section 3. *[Access and Reasonable Accommodation to a Severable Geothermal Resource.]*

(A) Where the property right to a severable geothermal resource as defined in [insert citation] has been severed, reserved, or transferred with the subsurface estate, its owner may enter upon the overlying surface parcel at reasonable times and in a reasonable manner to prospect for and produce the energy from such resource, if adequate compensation is paid to the owner of the surface parcel for damages and disturbance in accordance with subsection (B) of this section. This right of entry shall not include the right to construct surface utilization facilities, and such facilities may be constructed only upon agreement with the surface owner in accordance with subsection (B) of this section.

(B) (1) (a) A developer of any type of geothermal resource shall develop the resource in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land.

(b) As used in this section, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or heat exchange or generation facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the geothermal development on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the developer.

(c) The standard of conduct set forth in this subsection (B) does not prevent a developer from entering upon and using that amount of the surface as is reasonable and necessary to explore for and develop the geothermal resource.

(d) The standard of conduct set forth in this subsection (B) does not abrogate or impair a contractual provision that is binding on the parties and that expressly provides for the use of the surface for the development of geothermal resources or that releases the developer from liability for the use of the surface.

(2) A geothermal resource developer's failure to meet the requirements set forth in this subsection (B) or, if applicable, subsection (A) of this section, gives rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such failure has occurred, a surface owner may seek compensatory damages or such equitable relief as is consistent with paragraph (1) of this subsection (B) or, if applicable, subsection (A) of this section.

(3) (a) In any litigation or arbitration based upon subsection (A) of this section or paragraph (1) of this subsection (B), the surface owner shall present evidence that the developer's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the developer bears the burden of proof of showing that it met the standard set out in paragraph (1) of this subsection (B) and, if applicable, subsection (A) of this section. If a developer makes that showing, the surface owner may present rebuttal evidence.

(b) An operator may assert, as an affirmative defense, that it has conducted geothermal resource development in accordance with a regulatory requirement, contractual obligation, or land use plan provision that specifically applies to the alleged intrusion or damage.

(4) Nothing in this section precludes or impairs any person from obtaining any and all other remedies allowed by law; prevents a developer and a surface owner from addressing the use of the surface for geothermal resource development in a lease, surface use

69 agreement, or other written contract; or establishes, alters, impairs, or negates the authority of  
70 local and county governments to regulate land use related to geothermal resource development.

71  
72 Section 4. [*Regarding Materially Injure and Material Injury to a Geothermal Right.*] For  
73 purposes of [insert citation], “materially injure” and “material injury” include any diminution or  
74 alteration in the quantity, temperature, or quality of any valid, prior water or geothermal right as  
75 defined in [insert citation], except that, with regard to a geothermal right, “materially injure” and  
76 “material injury” include a diminution or alteration in the temperature of water only if the  
77 diminution or alteration adversely affects the valid, prior geothermal right.

78  
79 Section 5. [*Valuation of a Geothermal Energy Facility.*]

80 (A) As used in this Section, “Geothermal Energy Facility” means a new facility first  
81 placed in production on or after [insert date], that uses real and personal property, including but  
82 not limited to leaseholds and easements, to generate and deliver to the interconnection meter any  
83 source of electrical or mechanical energy by harnessing the heat energy of groundwater or the  
84 ground and that is not primarily designed to supply electricity for consumption on site.

85 (B) An administrator as defined in [insert citation] shall determine the actual value of the  
86 operating property and plant of each geothermal energy facility using the income approach,  
87 which is defined as [an amount equal to a tax factor times the selling price at the interconnection  
88 meter].

89 (C) For purposes of calculating the tax factor as required in subsection (B), an owner or  
90 operator of a geothermal energy facility shall provide a copy of the geothermal energy facility’s  
91 current power purchase agreement(s) to the [administrator] by [April 1] of each assessment year.  
92 The [administrator] shall also have the authority to request a copy of the current power purchase  
93 agreement(s) from the purchaser(s) of power generated at a geothermal energy facility. All  
94 agreements provided to the [administrator] pursuant to this subparagraph shall be considered  
95 private documents and shall be available only to the [administrator] and the employees of the  
96 [division of property taxation in the department of local affairs].

97 (D) The location of a geothermal energy facility on real property shall not affect the  
98 classification of that real property for purposes of determining the actual value of that real  
99 property as provided in [insert citation].

100 (E) Pursuant to [insert citation], no actual value for any personal property used in a  
101 geothermal energy facility shall be assigned until the personal property is first put into use by the  
102 facility. If any item of personal property is used in the facility and is subsequently taken out of  
103 service so that no geothermal energy is produced from that facility for the preceding calendar  
104 year, no actual value shall be assigned to that item of more than [five percent] of the installed  
105 cost of the item for that assessment year.

106  
107 Section 6. [*New Energy Technologies, Consideration by Commission, Cost-Effectiveness*  
108 *of Implementing Geothermal Energy Technologies.*] The state [public utilities commission], in its  
109 consideration of generation acquisitions for electric utilities, at a utility’s request, may give the  
110 fullest possible consideration to the cost-effective implementation of new energy technologies  
111 for the generation of electricity from geothermal resources.

112  
113 Section 7. [*Severability.*] [Insert severability clause.]

114  
115 Section 8. [*Repealer.*] [Insert repealer clause.]

116  
117 Section 9. [*Effective Date.*] [Insert effective date.]

# Health Benefit Exchange

This SSL draft combines two California laws into one bill that establishes a Health Benefit Exchange (the Exchange) within state government. The Act requires the Exchange be governed by a board composed of the state secretary of health and human services, or their designee, and four other members appointed by the governor and the legislature. The bill requires the board of the exchange, or the state health and human services agency, if a majority of the board has not been appointed, to apply for and receive federal funds for purposes of establishing the Exchange.

The bill specifies the powers and duties of the board governing the Exchange relative to determining eligibility for enrollment in the Exchange and arranging for coverage under qualified health plans, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and qualified small employers by January 1, 2014. The Act imposes various requirements on participating plans and insurers and, commencing January 1, 2014, on nonparticipating plans and insurers, as specified.

This draft Act empowers a state health facilities authority to provide a working capital loan of up to \$5 million to help establish and operate the Health Benefit Exchange.

The Act also requires the state director of the department of managed health care and the state insurance commissioner to consider using an Internet portal developed by the United States Department of Health and Human Services to publicize coverage through the Exchange. It requires the state director of the department of managed health care and the state insurance commissioner to jointly develop and maintain an electronic clearinghouse about available coverage in the individual and small employer markets if the federal Internet portal does not adequately achieve certain purposes.

Submitted as:

California

[Chapter 655 of 2010](#)

Status: Enacted into law in 2010.

California

[Chapter 659 of 2010](#)

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 to Create a Health Benefit  
2 Exchange.”

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

5           (1) “Board” means the [executive board] of the Health Benefit Exchange as defined in  
6 Section 3.

7           (2) “Carrier” means either a private health insurer holding a valid outstanding certificate  
8 of authority from the state [insurance commissioner] or a health care service plan, as defined  
9 under [insert citation], licensed by the state [department of managed health care].

10           (3) “Exchange” means the state [Health Benefit Exchange] established by this Act.

(4) “Federal Act” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments to, or regulations or guidance issued under, those Acts.

(5) “Fund” means the state [Health Trust Fund] established by Section 6 of this Act.

(6) “Health plan” and “qualified health plan” have the same meanings as those terms are defined in Section 1301 of the federal Act.

(7) “Qualified health plan” has the same meaning as that term is defined in Section 1301 of the federal Act.

(8) “SHOP Program” means the [Small Business Health Options Program] established by [insert citation].

(9) “Small employer” has the same meaning as that term is defined in [insert citation].

(10) “Supplemental coverage” means coverage through a specialized health care service plan contract, as defined in [insert citation] or a specialized health insurance policy, as defined in [insert citation].

### Section 3. *[Health Benefit Exchange and Governing Executive Board.]*

(A) There is created in state government a [Health Benefit Exchange], an independent public entity not affiliated with an agency or department, which shall be known as the Exchange. The Exchange shall be governed by an [executive board] consisting of [five] members who are residents of [this state]. Of the members of the [board], [two] shall be appointed by the [governor], [one] shall be appointed by the [senate committee on rules], and [one] shall be appointed by the [speaker of the assembly]. The [secretary of health and human services] or their designee shall serve as a voting, ex officio member of the [board].

(B) Members of the [board], other than an ex officio member, shall be appointed for a term of [four] years, except that the initial appointment by the [senate committee on rules] shall be for a term of [five] years, and the initial appointment by the [speaker of the assembly] shall be for a term of [two] years. Appointments by the [governor] made after [insert date], shall be subject to confirmation by the [senate]. A member of the [board] may continue to serve until the appointment and qualification of their successor. Vacancies shall be filled by appointment for the unexpired term. The [board] shall elect a chairperson on an [annual] basis.

(C) (1) Each individual appointed to the [board] shall have demonstrated and acknowledged expertise in at least two of the following areas:

(a) Individual health care coverage.

(b) Small employer health care coverage.

(c) Health benefits plan administration.

(d) Health care finance.

(e) Administering a public or private health care delivery system.

(f) Purchasing health plan coverage.

(2) Appointing authorities shall consider the expertise of the other members of the [board] and attempt to make appointments so that the [board’s] composition reflects a diversity of expertise.

(D) Each member of the [board] shall have the responsibility and duty to meet the requirements of this Act, the federal Patient Protection and Affordable Care Act, and all applicable state and federal laws and regulations, to serve the public interest of the individuals and small businesses seeking health care coverage through the Exchange, and to ensure the operational well-being and fiscal solvency of the Exchange.

(E) In making appointments to the [board], the appointing authorities shall take into consideration the cultural, ethnic, and geographical diversity of the state so that the [board’s]

60 composition reflects the communities of [this state].

61 (F) (1) A member of the [board] or of the staff of the Exchange shall not be employed  
62 by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a  
63 representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health  
64 care facility or health clinic while serving on the [board] or on the staff of the Exchange. A  
65 member of the [board] or of the staff of the Exchange shall not be a member, a board member, or  
66 an employee of a trade association of carriers, health facilities, health clinics, or health care  
67 providers while serving on the [board] or on the staff of the Exchange. A member of the [board]  
68 or of the staff of the Exchange shall not be a health care provider unless they receive no  
69 compensation for rendering services as a health care provider and does not have an ownership  
70 interest in a professional health care practice.

71 (2) A [board] member shall not receive compensation for their service on the  
72 [board] but may receive a per diem and reimbursement for travel and other necessary expenses,  
73 as provided in [insert citation], while engaged in the performance of official duties of the  
74 [board].

75 (3) For purposes of this subdivision, “health care provider” means a individual  
76 licensed or certified pursuant to [insert citation], or licensed pursuant to the [state Osteopathic  
77 Act or the Chiropractic Act].

78 (G) No member of the [board] shall make, participate in making, or in any way attempt to  
79 use their official position to influence the making of any decision that they know or have reason  
80 to know will have a reasonably foreseeable material financial effect, distinguishable from its  
81 effect on the public generally, on them or a member of their immediate family, or on either of the  
82 following:

83 (1) Any source of income, other than gifts and other than loans by a commercial  
84 lending institution in the regular course of business on terms available to the public without  
85 regard to official status aggregating [two hundred fifty dollars (\$250)] or more in value provided  
86 to, received by, or promised to the member within [12] months prior to the time when the  
87 decision is made.

88 (2) Any business entity in which the member is a director, officer, partner, trustee,  
89 employee, or holds any position of management.

90 (H) There shall not be any liability in a private capacity on the part of the [board] or any  
91 member of the [board], or any officer or employee of the [board], for or on account of any act  
92 performed or obligation entered into in an official capacity, when done in good faith, without  
93 intent to defraud, and in connection with the administration, management, or conduct of this Act  
94 or affairs related to this Act.

95 (I) The [board] shall hire an [executive director] to organize, administer, and manage the  
96 operations of the Exchange. The [executive director] shall be exempt from civil service and shall  
97 serve at the pleasure of the [board].

98 (J) The [board] shall be subject to state open meeting provisions as defined under [insert  
99 citation], except that the [board] may hold closed sessions when considering matters related to  
100 litigation, personnel, contracting, and rates.

101 (K) (1) The [board] shall apply for planning and establishment grants made available  
102 to the Exchange pursuant to Section 1311 of the federal Patient Protection and Affordable Care  
103 Act. If an [executive director] has not been hired under subdivision (I) when the United States  
104 Secretary of Health and Human Services makes the planning and establishment grants available,  
105 the state [health and human services agency] shall, upon request of the [board], submit the initial  
106 application for planning and establishment grants to the U.S. Secretary of Health and Human  
107 Services.

108 (2) If a majority of the [board] has not been appointed when the United States

Secretary of Health and Human Services makes the planning and establishment grants available, the state [health and human services agency] shall submit the initial application for planning and establishment grants to the United States Secretary of Health and Human Services. Any subsequent applications shall be made as described in paragraph (1) once a majority of the members have been appointed to the [board].

(3) The [board] shall be responsible for using the funds awarded by the United States Secretary of Health and Human Services for the planning and establishment of the Exchange, consistent with subdivision (b) of Section 1311 of the federal Patient Protection and Affordable Care Act.

(L) The [board] shall, at a minimum, do all of the following to implement Section 1311 of the federal Act:

(1) Implement procedures for the certification, recertification, and decertification, consistent with guidelines established by the United States Secretary of Health and Human Services, of health plans as qualified health plans. The [board] shall require health plans seeking certification as qualified health plans to submit a justification for any premium increase prior to implementation of the increase. The plans shall prominently post that information on their Internet Web sites. The [board] shall take this information, and the information and the recommendations provided to the [board] by the state [department of insurance] or the state [department of managed health care] under paragraph (1) of subdivision (b) of Section 2794 of the federal Public Health Service Act, into consideration when determining whether to make the health plan available through the Exchange. The [board] shall take into account any excess of premium growth outside the Exchange as compared to the rate of that growth inside the Exchange, including information reported by the state [department of insurance] and the state [department of managed health care].

(2) (a) Make available to the public and submit to the [board], the United States Secretary of Health and Human Services, and the state [insurance commissioner] or the state [department of managed health care], as applicable, accurate and timely disclosure of the following information:

(I) Claims payment policies and practices.

(II) Periodic financial disclosures.

(III) Data on enrollment.

(IV) Data on disenrollment.

(V) Data on the number of claims that are denied.

(VI) Data on rating practices.

(VII) Information on cost sharing and payments with respect to any out-of-network coverage.

(VIII) Information on enrollee and participant rights under Title I of the federal Act.

(IX) Other information as determined appropriate by the United States Secretary of Health and Human Services.

(b) The information required under subparagraph (a) shall be provided in plain language, as defined in subparagraph (B) of paragraph (3) of subdivision (e) of Section 1311 of the federal Act.

(3) Permit individuals to learn, in a timely manner upon the request of the individual, the amount of cost sharing, including, but not limited to, deductibles, copayments, and coinsurance, under the individual's plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider. At a minimum, this information shall be made available to the individual through an Internet Web site and through other means for individuals without access to the Internet.



(4) Provide for the operation of a toll-free telephone hotline to respond to requests for assistance.

(5) Maintain an Internet Web site through which enrollees and prospective enrollees of qualified health plans may obtain standardized comparative information on those plans.

(6) Assign a rating to each qualified health plan offered through the Exchange in accordance with the criteria developed by the United States Secretary of Health and Human Services.

(7) Use a standardized format for presenting health benefits plan options in the Exchange, including the use of the uniform outline of coverage established under Section 2715 of the federal Public Health Service Act.

(8) Inform individuals about eligibility requirements for the [state Medicaid Program] program, the state [Healthy Families Program], or any applicable state or local public program and, if, through screening of the application by the Exchange, the Exchange determines that an individual is eligible for any such program, enroll that individual in the program.

(9) Establish and make available by electronic means a calculator to determine the actual cost of coverage after the application of any premium tax credit under Section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under Section 1402 of the federal Act.

(10) Grant a certification attesting that, for purposes of the individual responsibility penalty under Section 5000A of the Internal Revenue Code of 1986, an individual is exempt from the individual requirement or from the penalty imposed by that section because of either of the following:

(a) There is no affordable qualified health plan available through the Exchange or the individual's employer covering the individual.

(b) The individual meets the requirements for any other exemption from the individual responsibility requirement or penalty.

(11) Transfer to the state [secretary of the treasury] all of the following:

(a) A list of the individuals who are issued a certification under subdivision (10), including the name and taxpayer identification number of each person.

(b) The name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under Section 36B of the Internal Revenue Code of 1986 because of either of the following:

(I) The employer did not provide minimum essential coverage.

(II) The employer provided the minimum essential coverage but it was determined under subparagraph (C) of paragraph (2) of subsection (c) of Section 36B of the Internal Revenue Code of 1986 to either be unaffordable to the employee or not provide the required minimum actuarial value.

(c) The name and taxpayer identification number of each individual who notifies the Exchange under paragraph (4) of subsection (b) of Section 1411 of the federal Act that they have changed employers and of each individual who ceases coverage under a qualified health plan during a plan year and the effective date of that cessation.

(12) Provide to each employer the name of each employee of the employer described in paragraph (b) of subdivision (11) who ceases coverage under a qualified health plan during a plan year and the effective date of that cessation.

(13) Perform duties required of, or delegated to, the Exchange by the United States Secretary of Health and Human Services or the state [secretary of the treasury] related to determining eligibility for premium tax credits, reduced cost sharing, or individual responsibility

exemptions.

(14) Establish the navigator program in accordance with subdivision (i) of Section 1311 of the federal Act. Any entity chosen by the Exchange as a navigator shall do all of the following:

(a) Conduct public education activities to raise awareness of the availability of qualified health plans.

(b) Distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under Section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under Section 1402 of the federal Act.

(c) Facilitate enrollment in qualified health plans.

(d) Provide referrals to any applicable [office of health insurance consumer assistance] or [health insurance ombudsman] established under Section 2793 of the federal Public Health Service Act, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under that plan or coverage.

(e) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange.

(15) Establish a [Small Business Health Options Program], separate from the activities of the [board] related to the individual market, to assist qualified small employers in facilitating the enrollment of their employees in qualified health plans offered through the Exchange in the small employer market in a manner consistent with paragraph (2) of subdivision (a) of Section 1312 of the federal Act.

(M) In addition to meeting the minimum requirements of Section 1311 of the federal Act, the [board] shall do all of the following:

(1) Determine the criteria and process for eligibility, enrollment, and disenrollment of enrollees and potential enrollees in the Exchange and coordinate that process with the state and local government entities administering other health care coverage programs, including the state [department of health care services], the [managed risk medical insurance board], and counties in [this state], in order to ensure consistent eligibility and enrollment processes and seamless transitions between coverage.

(2) Develop processes to coordinate with the county entities that administer eligibility for the state [Medicaid] program and the entity that determines eligibility for the [Healthy Families Program], including, but not limited to, processes for case transfer, referral, and enrollment in the Exchange of individuals applying for assistance to those entities, if allowed or required by federal law.

(3) Determine the minimum requirements a carrier must meet to be considered for participation in the Exchange, and the standards and criteria for selecting qualified health plans to be offered through the Exchange that are in the best interests of qualified individuals and qualified small employers. The [board] shall consistently and uniformly apply these requirements, standards, and criteria to all carriers. In the course of selectively contracting for health care coverage offered to qualified individuals and qualified small employers through the Exchange, the [board] shall seek to contract with carriers so as to provide health care coverage choices that offer the optimal combination of choice, value, quality, and service.

(4) Provide, in each region of the state, a choice of qualified health plans at each of the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act.

(5) Require, as a condition of participation in the Exchange, carriers to fairly and affirmatively offer, market, and sell in the Exchange at least [one] product within each of the five

levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act. The [board] may require carriers to offer additional products within each of those five levels of coverage. This subdivision shall not apply to a carrier that solely offers supplemental coverage in the Exchange under paragraph (10) of subdivision (N) of this Section.

(6) (a) Require, as a condition of participation in the Exchange, carriers that sell any products outside the Exchange to do both of the following:

(I) Fairly and affirmatively offer, market, and sell all products made available to individuals in the Exchange to individuals purchasing coverage outside the Exchange.

(II) Fairly and affirmatively offer, market, and sell all products made available to small employers in the Exchange to small employers purchasing coverage outside the Exchange.

(b) For purposes of this subdivision, “product” does not include contracts entered into pursuant to [insert citation].

(7) Determine when an enrollee’s coverage commences and the extent and scope of coverage.

(8) Provide for the processing of applications and the enrollment and disenrollment of enrollees.

(9) Determine and approve cost-sharing provisions for qualified health plans.

(10) Establish uniform billing and payment policies for qualified health plans offered in the Exchange to ensure consistent enrollment and disenrollment activities for individuals enrolled in the Exchange.

(11) Undertake activities necessary to market and publicize the availability of health care coverage and federal subsidies through the Exchange. The [board] shall also undertake outreach and enrollment activities that seek to assist enrollees and potential enrollees with enrolling and reenrolling in the Exchange in the least burdensome manner, including populations that may experience barriers to enrollment, such as the disabled and those with limited English language proficiency.

(12) Select and set performance standards and compensation for navigators selected under subdivision (L)(14).

(13) Employ necessary staff.

(a) The [board] shall hire a [chief fiscal officer, a chief operations officer, a director for the SHOP Exchange, a director of Health Plan Contracting, a chief technology and information officer, a general counsel], and other key executive positions, as determined by the [board], who shall be exempt from civil service.

(b) (I) The [board] shall set the salaries for the exempt positions described in subdivision (L)(13)(a) and subdivision (I) of this Section 3 in amounts that are reasonably necessary to attract and retain individuals of superior qualifications. The salaries shall be published by the [board] in the [board’s] annual budget. The [board’s] annual budget shall be posted on the Internet Web site of the Exchange. To determine the compensation for these positions, the [board] shall cause to be conducted, through the use of independent outside advisors, salary surveys of both of the following:

(i) Other state and federal health insurance exchanges that are most comparable to the Exchange.

(ii) Other relevant labor pools.

(II) The salaries established by the [board] under subparagraph (I) shall not exceed the highest comparable salary for a position of that type, as determined by the surveys conducted pursuant to subparagraph (I).

(III) The state [department of personnel administration]

shall review the methodology used in the surveys conducted pursuant to subparagraph (I).

(c) The positions described in paragraph (b)(I) and subdivision (I) of this Section shall not be subject to otherwise applicable provisions of [insert citation] and, for those purposes, the Exchange shall not be considered a state agency or public entity.

(14) Assess a charge on the qualified health plans offered by carriers that is reasonable and necessary to support the development, operations, and prudent cash management of the Exchange. This charge shall not affect the requirement under Section 1301 of the federal Act that carriers charge the same premium rate for each qualified health plan whether offered inside or outside the Exchange.

(15) Authorize expenditures, as necessary, from the state [Health Trust Fund] created by Section 6 of this Act to pay program expenses to administer the Exchange.

(16) Keep an accurate accounting of all activities, receipts, and expenditures, and annually submit to the United States Secretary of Health and Human Services a report concerning that accounting. Commencing [January 1, 2016], the [board] shall conduct an annual audit.

(17) (a) Annually prepare a written report on the implementation and performance of the Exchange functions during the preceding fiscal year, including, at a minimum, the manner in which funds were expended and the progress toward, and the achievement of, the requirements of this Act. This report shall be transmitted to the [legislature] and the [governor] and shall be made available to the public on the Internet Web site of the Exchange. A report made to the [legislature] pursuant to this subdivision shall be submitted pursuant to [insert citation].

(b) In addition to the report described in paragraph (a), the [board] shall be responsive to requests for additional information from the [legislature], including providing testimony and commenting on proposed state legislation or policy issues. The [legislature] finds and declares that activities including, but not limited to, responding to legislative or executive inquiries, tracking and commenting on legislation and regulatory activities, and preparing reports on the implementation of this Act and the performance of the Exchange, are necessary state requirements and are distinct from the promotion of legislative or regulatory modifications referred to in Section (6)(D) of this Act.

(18) Maintain enrollment and expenditures to ensure that expenditures do not exceed the amount of revenue in the fund established in Section 6 of this Act, and if sufficient revenue is not available to pay estimated expenditures, institute appropriate measures to ensure fiscal solvency.

(19) Exercise all powers reasonably necessary to carry out and comply with the duties, responsibilities, and requirements of this Act and the federal Act.

(20) Consult with stakeholders relevant to carrying out the activities under this Act, including, but not limited to, all of the following:

(a) Health care consumers who are enrolled in health plans.

(b) Individuals and entities with experience in facilitating enrollment in health plans.

(c) Representatives of small businesses and self-employed individuals.

(d) The state [Medicaid Director].

(e) Advocates for enrolling hard-to-reach populations.

(21) Facilitate the purchase of qualified health plans in the Exchange by qualified individuals and qualified small employers no later than [January 1, 2014].

(22) Report, or contract with an independent entity to report, to the [legislature] by [December 1, 2018], on whether to adopt the option in paragraph (3) of subdivision (c) of Section 1312 of the federal Act to merge the individual and small employer markets. In its

report, the [board] shall provide information, based on at least [two] years of data from the Exchange, on the potential impact on rates paid by individuals and by small employers in a merged individual and small employer market, as compared to the rates paid by individuals and small employers if a separate individual and small employer market is maintained. Such report shall be submitted pursuant to [insert citation].

(23) With respect to the [SHOP Program], collect premiums and administer all other necessary and related tasks, including, but not limited to, enrollment and plan payment, in order to make the offering of employee plan choice as simple as possible for qualified small employers.

(24) Require carriers participating in the Exchange to immediately notify the Exchange, under the terms and conditions established by the [board] when an individual is or will be enrolled in or disenrolled from any qualified health plan offered by the carrier.

(25) Ensure that the Exchange provides oral interpretation services in any language for individuals seeking coverage through the Exchange and makes available a toll-free telephone number for the hearing and speech impaired. The [board] shall ensure that written information made available by the Exchange is presented in a plainly worded, easily understandable format and made available in prevalent languages.

(N) The [board] may do the following:

(1) With respect to individual coverage made available in the Exchange, collect premiums and assist in the administration of subsidies.

(2) Enter into contracts.

(3) Sue and be sued.

(4) Receive and accept gifts, grants, or donations of moneys from any agency of the United States, any agency of the state, any municipality, county, or other political subdivision of the state.

(5) Receive and accept gifts, grants, or donations from individuals, associations, private foundations, or corporations, in compliance with the conflict of interest provisions to be adopted by the [board] at a public meeting.

(6) Adopt rules and regulations, as necessary. Until [January 1, 2016], any necessary rules and regulations may be adopted as emergency regulations in accordance with the state [Administrative Procedure Act] under [insert citation]. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(7) Collaborate with the [state department of health care services] and the state [managed risk medical insurance board], to the extent possible, to allow an individual the option to remain enrolled with his or her carrier and provider network in the event the individual experiences a loss of eligibility of premium tax credits and becomes eligible for the state [Medicaid] program or the [Healthy Families Program] established under [insert citation], or loses eligibility for the state [Medicaid] program or the [Healthy Families Program] and becomes eligible for premium tax credits through the Exchange.

(8) Share information with relevant state departments, consistent with the confidentiality provisions in Section 1411 of the federal Act, necessary for the administration of the Exchange.

(9) Require carriers participating in the Exchange to make available to the Exchange and regularly update an electronic directory of contracting health care providers so that individuals seeking coverage through the Exchange can search by health care provider name to determine which health plans in the Exchange include that health care provider in their network. The [board] may also require a carrier to provide regularly updated information to the Exchange as to whether a health care provider is accepting new patients for a particular health

plan. The Exchange may provide an integrated and uniform consumer directory of health care providers indicating which carriers the providers contract with and whether the providers are currently accepting new patients. The Exchange may also establish methods by which health care providers may transmit relevant information directly to the Exchange, rather than through a carrier.

(10) Make available supplemental coverage for enrollees of the Exchange to the extent permitted by the federal Act, provided that no [General Fund] money is used to pay the cost of that coverage. Any supplemental coverage offered in the Exchange shall be subject to the charge imposed under subdivision (M)(14) of this Section.

(O) The Exchange shall only collect information from individuals or designees of individuals necessary to administer the Exchange and consistent with the federal Act.

(P) The [board] shall have the authority to standardize products to be offered through the Exchange.

(Q) The [board] shall establish and use a competitive process to select participating carriers and any other contractors under this Act. Any contract entered into pursuant to this Act shall be exempt from [insert citation], and shall be exempt from the review or approval of any [division of the state department of general services].

(R) (1) The [board] shall establish an appeals process for prospective and current enrollees of the Exchange that complies with all requirements of the federal Act concerning the role of a state Exchange in facilitating federal appeals of Exchange-related determinations. In no event shall the scope of those appeals be construed to be broader than the requirements of the federal Act. Once the federal regulations concerning appeals have been issued in final form by the United States Secretary of Health and Human Services, the [board] may establish additional requirements related to appeals, provided that the [board] determines, prior to adoption, that any additional requirement results in no cost to the [General Fund] and no increase in the charge imposed under subdivision (M)(14) of this section.

(2) The [board] shall not be required to provide an appeal if the subject of the appeal is within the jurisdiction of the [department of managed health care] pursuant to [insert citation] and its implementing regulations, or within the jurisdiction of the state [department of insurance] pursuant to the state [insurance code] and its implementing regulations.

#### Section 4. *[Health Benefit Exchange Not Subject to Certain Licensing and Regulations.]*

(A) Notwithstanding any other provision of law, the Exchange shall not be subject to licensure or regulation by the state [department of insurance] or the state [department of managed health care].

(B) Carriers that contract with the Exchange shall have a license or certificate of authority from, and shall be in good standing with, their respective regulatory agencies.

#### Section 5. *[Health Benefit Exchange Records: Disclosure Exemptions.]*

(A) Records of the Exchange that reveal any of the following shall be exempt from disclosure under the state [Public Records Act] as defined under [insert citation]:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the Exchange, entities with which the Exchange is considering a contract, or entities with which the Exchange is considering or enters into any other arrangement under which the Exchange provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the [board] or its staff, or records that provide instructions, advice, or training to employees.

(B) (1) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to this Act shall be open to inspection [one] year after their effective dates.

(2) If a contract entered into pursuant to this Act is amended, the amendment shall be open to inspection [one] year after the effective date of the amendment.

Section 6. *[Health Trust Fund and Exchange Funding.]*

(A) A state [Health Trust Fund] is hereby created in the [state treasury] for the purpose of this Act. Notwithstanding [insert citation], all moneys in the fund shall be continuously appropriated without regard to fiscal year for the purposes of this Act. Any moneys in the fund that are unexpended or unencumbered at the end of a fiscal year may be carried forward to the next succeeding fiscal year.

(B) Notwithstanding any other provision of law, moneys deposited in the fund shall not be loaned to, or borrowed by, any other special fund or the [General Fund], or a county general fund or any other county fund.

(C) The [board] of the [Health Benefit Exchange] shall establish and maintain a prudent reserve in the fund.

(D) The [board or staff] of the Exchange shall not utilize any funds intended for the administrative and operational expenses of the Exchange for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative or regulatory modifications.

(E) Notwithstanding [insert citation], all interest earned on the moneys that have been deposited into the fund shall be retained in the fund and used for purposes consistent with the fund.

(F) Effective [January 1, 2016], if at the end of any fiscal year, the fund has unencumbered funds in an amount that equals or is more than the [board] approved operating budget of the Exchange for the next fiscal year, the [board] shall reduce the charges imposed under subdivision (M)(14) of Section 3 of this Act during the following fiscal year in an amount that will reduce any surplus funds of the Exchange to an amount that is equal to the agency's operating budget for the next fiscal year.

(G) The [board] shall ensure that the establishment, operation, and administrative functions of the Exchange do not exceed the combination of federal funds, private donations, and other [non-General Fund] moneys available for this purpose. No state [General Fund] money shall be used for any purpose under this Act without a subsequent appropriation. No liability incurred by the Exchange or any of its officers or employees may be satisfied using moneys from the [General Fund].

(H) The implementation of the provisions of this Act, other than this section, Section 3 subdivisions (A) through (K), and paragraphs (4) and (5) of subdivision (N) of Section 3, shall be contingent on a determination by the [board] that sufficient financial resources exist or will exist in the fund. The determination shall be based on at least the following:

(1) Financial projections identifying sufficient resources exist or will exist in the fund to implement the Exchange.

(2) A comparison of the projected resources available to support the Exchange and the projected costs of activities required by this Act.

(3) The financial projections demonstrate the sufficiency of resources for at least the first [two] years of operation under this Act.

(I) The [board] shall provide notice to the [joint legislative budget committee] and the state [director of finance] that sufficient financial resources exist in the fund to implement this Act.

(J) If the [board] determines that the level of resources in the fund cannot support the actions and responsibilities described in subdivision (A), it shall provide the [department of finance] and the [joint legislative budget committee] a detailed report on the changes to the functions, contracts, or staffing necessary to address the fiscal deficiency along with any contingency plan should it be impossible to operate the Exchange without the use of [General Fund] moneys.

(K) The [board] shall assess the impact of the Exchange's operations and policies on other publicly funded health programs administered by the state and the impact of publicly funded health programs administered by the state on the Exchange's operations and policies. This assessment shall include, at a minimum, an analysis of potential cost shifts or cost increases in other programs that may be due to Exchange policies or operations. The assessment shall be completed on at least an annual basis and submitted to the Secretary of Health and Human Services and the state [director of finance].

Section 7. *[Requirements for Health Care Service Plans to Participate in the Health Benefit Exchange.]*

(A) Health care service plans participating in the Exchange shall fairly and affirmatively offer, market, and sell in the Exchange at least one product within each of the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act. The [board] established under this Act may require plans to sell additional products within each of those levels of coverage. This subdivision shall not apply to a plan that solely offers supplemental coverage in the Exchange under Section (3)(N)(10) of this Act.

(B) (1) Health care service plans participating in the Exchange that sell any products outside the Exchange shall do both of the following:

(a) Fairly and affirmatively offer, market, and sell all products made available to individuals in the Exchange to individuals purchasing coverage outside the Exchange.

(b) Fairly and affirmatively offer, market, and sell all products made available to small employers in the Exchange to small employers purchasing coverage outside the Exchange.

(2) For purposes of this subdivision, "product" does not include contracts entered into pursuant to [insert citations].

(C) Commencing [January 1, 2014], a health care service plan shall, with respect to plan contracts that cover hospital, medical, or surgical benefits, only sell the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act, except that a health care service plan that does not participate in the Exchange shall, with respect to plan contracts that cover hospital, medical, or surgical benefits, only sell the four levels of coverage contained in subdivision (d) of Section 1302 of the federal Act.

(D) Commencing [January 1, 2014], a health care service plan that does not participate in the Exchange shall, with respect to plan contracts that cover hospital, medical, or surgical benefits, offer at least one standardized product that has been designated by the Exchange in each of the four levels of coverage contained in subdivision (d) of Section 1302 of the federal Act. This subdivision shall only apply if the [board] of the Exchange exercises its authority under Section 3 (P) of this Act. Nothing in this subdivision shall require a plan that does not participate in the Exchange to offer standardized products in the small employer market if the plan only sells products in the individual market. Nothing in this subdivision shall require a plan that does not participate in the Exchange to offer standardized products in the individual market if the plan only sells products in the small employer market. This subdivision shall not be construed to prohibit the plan from offering other products provided that it complies with subdivision (d) of



Section 1302 of the federal Act.

Section 8. [*Requirements for Health Insurers to Participate in the Health Benefit Exchange.*]

(A) Health insurers participating in the Exchange shall fairly and affirmatively offer, market, and sell in the Exchange at least one product within each of the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act. The [board] established under this Act may require insurers to sell additional products within each of those levels of coverage. This subdivision shall not apply to an insurer that solely offers supplemental coverage in the Exchange under Section 3 (N)(10) of this Act.

(B) (1) Health insurers participating in the Exchange that sell any products outside the Exchange shall do both of the following:

(a) Fairly and affirmatively offer, market, and sell all products made available to individuals in the Exchange to individuals purchasing coverage outside the Exchange.

(b) Fairly and affirmatively offer, market, and sell all products made available to small employers in the Exchange to small employers purchasing coverage outside the Exchange.

(2) For purposes of this subdivision, “product” does not include contracts entered into pursuant to [insert citations].

(C) Commencing [January 1, 2014], a health insurer, with respect to policies that cover hospital, medical, or surgical benefits, may only sell the five levels of coverage contained in subdivisions (d) and (e) of Section 1302 of the federal Act, except that a health insurer that does not participate in the Exchange may, with respect to policies that cover hospital, medical, or surgical benefits only sell the four levels of coverage contained in subdivision (d) of Section 1302 of the federal Act.

(D) Commencing January 1, 2014, a health insurer that does not participate in the Exchange shall, with respect to policies that cover hospital, medical, or surgical expenses, offer at least one standardized product that has been designated by the Exchange in each of the four levels of coverage contained in subdivision (d) of Section 1302 of the federal Act. This subdivision shall only apply if the [board] of the Exchange exercises its authority under Section 3 (P) of this Act. Nothing in this subdivision shall require an insurer that does not participate in the Exchange to offer standardized products in the small employer market if the insurer only sells products in the individual market. Nothing in this subdivision shall require an insurer that does not participate in the Exchange to offer standardized products in the individual market if the insurer only sells products in the small employer market. This subdivision shall not be construed to prohibit the insurer from offering other products provided that it complies with subdivision (d) of Section 1302 of the federal Act.

Section 9. [*Capital Loans to Establish Health Benefit Exchange.*]

(A) The state [health facilities financing authority] as defined under [insert citation], and notwithstanding any other provision of law, may provide a working capital loan of up to [five million dollars (\$5,000,000)] to assist in the establishment and operation of the Health Benefit Exchange established under this Act. The [authority] may require any information it deems necessary and prudent prior to providing a loan to the Exchange and may require any term, condition, security, or repayment provision it deems necessary in the event the [authority] chooses to provide a loan. Under no circumstances shall the [authority] be required to provide a loan to the Exchange.

(B) Prior to the [authority] providing a loan to the Exchange, a majority of the [board] of

the Exchange shall be appointed and shall demonstrate, to the satisfaction of the [authority], that the federal planning and establishment grants made available to the Exchange by the United States Secretary of Health and Human Services are insufficient or will not be released in a timely manner to allow the Exchange to meet the necessary requirements of the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(C) The Exchange shall repay a loan made under this Section no later than [June 30, 2016], and shall pay interest at the rate paid on moneys in the [Pooled Money Investment Account] established under [insert citation].

Section 10. [*Review of Federal Internet Portal and Health Benefit Exchange.*] The state [director of the department of managed health care] shall, in coordination with the state [insurance commissioner], review the Internet portal developed by the United States Secretary of Health and Human Services under subdivision (a) of Section 1103 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and paragraph (5) of subdivision (c) of Section 1311 of that Act, and any enhancements to that portal expected to be implemented by the secretary on or before [January 1, 2015]. The review shall examine whether the Internet portal provides sufficient information regarding all health benefit products offered by health care service plans and health insurers in the individual and small employer markets in [this state] to facilitate fair and affirmative marketing of all individual and small employer products, particularly outside the Health Benefit Exchange. If the [director of the department of managed health care] and the state [insurance commissioner] jointly determine that the Internet portal does not adequately achieve those purposes, they shall jointly develop and maintain an electronic clearinghouse to achieve those purposes. In performing this function, the [director of the department of managed health care] and the [insurance commissioner] shall routinely monitor individual and small employer benefit filings with, and complaints submitted by individuals and small employers to, their respective [departments], and shall use any other available means to maintain the clearinghouse.

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

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

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

# Health Insurance Exchange Statement

Massachusetts and Utah were among the first states to set up health insurance exchanges. Similar entities were subsequently referenced as health benefit exchanges in Subtitle D, Part II of the federal [Patient Protection and Affordable Care Act of 2010](#). [Massachusetts Chapter 58 of 2006](#) is highlighted in the *2008 Suggested State Legislation* volume. Among other things, that law created a [Health Connector](#) to facilitate the availability, choice, and adoption of private health insurance plans to eligible individuals and groups.

Utah enacted [HB 188](#) in 2009 to expand access to the health insurance market, increase market flexibility, and provide greater transparency in the health insurance market. That bill:

- Prohibits balanced billing by certain health care providers in certain circumstances;
- Revises the basic benefit plan used for consumer comparison of health benefit products;
- Requires the state insurance department to include in its annual market report a summary of the types of plans sold through an Internet portal, including market penetration of mandated “lite” products;
- Allows insurers to offer lower cost health insurance products that do not include certain state mandates in the individual market, the small employer group market, and in the conversion market;
- Creates a NetCare Plan, a low cost health benefit plan as an alternative to federal COBRA, state mini-COBRA, and conversion products;
- Requires health insurance brokers and producers to disclose their commissions and compensation to their customers prior to selling a health benefit plan;
- Modifies the number and type of products an insurer must offer in the small employer group market and the individual market;
- Establishes a defined contribution arrangement market available on an Internet portal which will be available to small employer groups and large employer groups and offers a wider range of choices of health benefit plans to employees;
- Establishes a board within the state insurance department with the responsibility to develop a risk adjustment mechanism that will apportion risk among the insurers participating in the Internet portal defined contribution market to protect insurers from adverse risk selection;
- Requires insurers who offer health benefit plans on the Internet portal to provide greater transparency and disclose information about the plan benefits, provider networks, wellness programs, claim payment practices, and solvency ratings;
- Establishes a process for a consumer to compare health plan features on the Internet portal and to enroll in a health benefit plan from the Internet portal;
- Requires the state office of consumer health services to convene insurers and health care providers to monitor and report to a Health Reform Task Force and to the legislature about progress towards expanding access to the defined contribution market, greater choice in the market, and payment reform demonstration projects;
- Establishes limited rulemaking authority for the state office of consumer health services to assist employers and insurance carriers with interacting with the Internet portal and facilitate the receipt and payment of health plan premium payments from multiple sources; and
- Authorizes the state office of consumer health services to establish a fee to cover the transaction cost associated with the Internet portal functions such as sending and processing an application or processing multiple premium payment sources.

Submitted as:

Utah

[HB 188](#)

Status: Enacted into law in 2009.

# Housing Homeless People on a Religious Organization's Property

This Act defines a religious organization and authorizes such organizations to host temporary encampments for homeless people on property owned or controlled by such organizations. It restricts counties, cities, and or towns from enacting ordinances or regulations that unreasonably interfere with the actions of a religious organization to shelter or house homeless people on property the organization owns or controls.

Submitted as:

Washington

[Chapter 175, Laws of 2010](#)

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 Relating to Housing Homeless  
2 People on a Religious Organization’s Property.”

3  
4           Section 2. [*Conditions to Permit Religious Organizations to Host Temporary*  
5 *Encampments for Homeless People*.]

6           (A) For the purposes of this Act, “religious organization” means the federally protected  
7 practice of a recognized religious assembly, school, or institution that owns or controls real  
8 property.

9           (B) A religious organization may host temporary encampments for the homeless on  
10 property owned or controlled by the religious organization whether within buildings located on  
11 the property or elsewhere on the property outside of buildings.

12           (C) A county as defined under [insert citation], a city as defined under [insert citation], a  
13 town as defined under [insert citation], or a code city as defined under [insert citation], may not  
14 enact an ordinance or regulation or take any other action that:

15               (1) Imposes conditions other than those necessary to protect public health and  
16 safety and that do not substantially burden the decisions or actions of a religious organization  
17 regarding the location of housing or shelter for homeless people on property owned by the  
18 religious organization;

19               (2) Requires a religious organization to obtain insurance pertaining to the liability  
20 of a municipality with respect to homeless people housed on property owned by a religious  
21 organization or otherwise requires the religious organization to indemnify the municipality  
22 against such liability; or

23               (3) Imposes permit fees in excess of the actual costs associated with the review  
24 and approval of the required permit applications under [insert citation].

25           (D) An appointed or elected public official, public employee, or public agency as defined  
26 in [insert citation] is immune from civil liability for damages arising from the permitting  
27 decisions for a temporary encampment for the homeless as provided in this section and any  
28 conduct or unlawful activity that may occur as a result of the temporary encampment for the  
29 homeless as provided in this section.

(E) Nothing in this Act is intended to change applicable law or be interpreted to prohibit a county, city, town, or code city from applying zoning and land use regulations allowable under established law to real property owned by a religious organization, regardless of whether the property owned by the religious organization is used to provide shelter or housing to homeless people.

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

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

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

# Indemnification Agreements and Motor Carrier Transportation Contracts

This Act voids contractual provisions in motor carrier transportation contracts that require the motor carrier to indemnify the shipper for the shipper's own negligent or intentional acts or omissions. The bill also prohibits motor carriers from forcing shippers to indemnify and hold the carriers harmless against their negligence. It exempts certain uniform intermodal (sea, land, rail, and air) access agreements to ensure uniformity in those agreements and the continuation of existing insurance policies within that industry.

Submitted as:

Alaska

[HB 366 \(Enrolled version\)](#)

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 to Address Indemnification  
2 Agreements and Motor Carrier Transportation Contracts.”

3  
4           Section 2. [*Indemnification Prohibited.*]

5           (A) A motor carrier and a shipping person may not, with regard to a transportation  
6 services contract, agree that:

7                   (1) the motor carrier will indemnify, defend, or hold the shipping person  
8 harmless, or agree to a provision that has the effect of indemnifying, defending, or holding a  
9 shipping person harmless, from claims or liability for the negligence, intentional acts, or  
10 intentional omissions of the shipping person; or

11                   (2) the shipping person will indemnify, defend, or hold the motor carrier  
12 harmless, or agree to a provision that has the effect of indemnifying, defending, or holding a  
13 motor carrier harmless, from claims or liability for the negligence, intentional acts, or intentional  
14 omissions of the motor carrier.

15           (B) An agreement that violates (A) of this section is against public policy and is void and  
16 unenforceable.

17           (C) This section does not apply to the Uniform Intermodal Interchange and Facilities  
18 Access Agreement administered by the Intermodal Association of North America or to another  
19 agreement that provides for the interchange, use, or possession of intermodal chassis, intermodal  
20 containers, or other intermodal equipment.

21           (D) In this section:

22                   (1) “motor carrier” means a person who is engaged in the transportation of  
23 property for compensation by motor vehicle, and includes an agent, employee, servant, or  
24 independent contractor of the motor carrier if the agent, employee, servant, or independent  
25 contractor provides services in connection with the particular transportation services contract to  
26 which (A) of this section is being applied;

27                   (2) “motor vehicle” has the meaning given in [insert citation], except that the  
28 motor vehicle must have a gross weight rating or gross combination weight rating that is greater  
29 than [10,000] pounds;

(3) “shipping person” means a person who enters into a transportation services contract to use the services of a motor carrier, and includes an agent, employee, servant, or independent contractor of the shipping person if the agent, employee, servant, or independent contractor provides services in connection with the particular transportation services contract to which (A) of this section is being applied;

(4) “transportation services” means:

(a) the transportation of property;

(b) entry on property to load, unload, or transport property; or

(c) providing a service, including the packing or storage of property, incidental to (A) or (B) of this paragraph.

(E) This Act does not apply to an agreement to indemnify, defend, or hold a shipping person or a motor carrier harmless unless the agreement is entered into on or after the effective date of this Act.

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

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

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



# Innovation Zone Schools

This Act authorizes creating special zones where schools are granted the flexibility to try innovative strategies to improve school performance. The Act establishes a process to create such zones.

Submitted as:

West Virginia

[HB 109 \(Enrolled version\)](#)

Status: Enacted into law in 2009.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1           Section 1. [*Short Title.*] This Act shall be cited as “The “School Innovation Zones Act.”
- 2
- 3           Section 2. [*School Innovation Zones; Intent and Purpose.*] The purposes of this Act are
- 4 to:
- 5           (1) Provide for the establishment of school innovation zones to improve educational
- 6 performance;
- 7           (2) Provide principals and teachers at schools approved as innovation zones with greater
- 8 flexibility and control to meet the needs of a diverse population of students by removing certain
- 9 policy, rule, interpretive and statutory constraints;
- 10          (3) Provide a testing ground for innovative educational reform programs and initiatives to
- 11 be applied on an individual school level;
- 12          (4) Provide information regarding the effects of specific innovations and policies on
- 13 student achievement;
- 14          (5) Document educational strategies that enhance student success; and
- 15          (6) Increase the accountability of the state’s public schools for student achievement as
- 16 measured by the state assessment programs and local assessment processes identified by the
- 17 schools.
- 18
- 19          Section 3. [*School Innovation Zones; Application for Designation; State Board Rules.*]
- 20          (A) A school, a group of schools, a subdivision or department of a group of schools, or a
- 21 subdivision or department of a school may be designated as an innovation zone in accordance
- 22 with this Act.
- 23          (B) The [state board] shall promulgate [rules], including [emergency rules] if necessary,
- 24 in accordance with [insert citation] to implement this Act. The rules shall include provisions for
- 25 at least the following:
- 26               (1) A process for a school, a group of schools, a subdivision or department of a
- 27 group of schools or a subdivision or department of a school to apply for designation as an
- 28 innovation zone that encompasses at least the following:
- 29                       (a) The manner, time and process for the submission of an innovation zone
- 30 application;
- 31                       (b) The contents of the application, which must include a general
- 32 description of the innovations the school or schools seek to institute and an estimation of the
- 33 employees who may be affected by the implementation of the innovations; and

(c) Factors to be considered by the state board when evaluating an application, which shall include, but are not limited to, the following factors:

(I) The level of staff commitment to apply for designation as an innovation zone as determined by a vote by secret ballot at a special meeting of employees eligible to vote on the plan, as provided in section 6 of this Act;

(II) Support from parents, students, the county board of education, the local school improvement council and school business partners; and

(III) The potential for an applicant to be successful as an innovation zone; and

(2) Standards for the [state board] to review applications for designation as innovation zones and to make determinations on the designation of innovation zones.

(C) The [state board] shall review innovation zone applications in accordance with the standards adopted by the [board] and shall determine whether to designate the applicant as an innovation zone. The [state board] shall notify an applicant of the [board's] determination within [sixty] days of receipt of an innovation zone application. When initially designating innovation zones after the enactment of this Act, the [state board] shall consider applicants for designation in the following order:

(1) A school and groups of schools;

(2) A group of schools seeking designation across the same subdivision or department of the schools; and

(3) A school seeking designation of a subdivision or a department.

#### Section 4. *[Innovation Zones; Required Plans; Plan Approval; State Board Rule.]*

(A) The rules promulgated by the [state board] pursuant to section 3 of this Act shall at least require:

(1) Each school, group of schools, subdivision or department of a group of schools or subdivision or department of a school designated as an innovation zone or seeking designation as an innovation zone in accordance with this Act shall develop an innovation zone plan;

(2) The innovation zone plan shall contain:

(a) A description of the programs, policies or initiatives the school, group of schools, subdivision or department of a group of schools or subdivision or department of a school intends to implement as an innovative strategy to improve student learning if the plan is approved in accordance with section 5 of this Act;

(b) A list of all county and [state board] rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation. A school, a group of schools, a subdivision or department of a group of schools or a subdivision or department of a school may not request an exception nor may an exception be granted from any of the following:

(I) An assessment program administered by the state [department of education];

(II) Any provision of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(III) [Insert citations].

(c) Any other information the [state board] requires.

(3) The innovation zone plan may include:

(a) An emphasis on the early childhood through intermediate grade levels to ensure that each student is prepared fully at each grade level, including additional intervention

83 strategies at grade levels three and eight to reinforce the preparation of students who are not  
84 prepared fully for promotion, or an emphasis on the secondary grade levels to ensure that each  
85 student is prepared fully for college or other post-secondary education, as applicable for the  
86 school; and

87 (b) An emphasis on innovative strategies which allow academically  
88 advanced students to pursue academic learning above grade level or are not available through the  
89 normal curriculum at the school.

90 (B) Each school, group of schools, subdivision or department of a group of schools or  
91 subdivision or department of a school designated or seeking designation as an innovation zone  
92 shall submit its innovation zone plan to the school's employees, the county superintendent and  
93 county board having jurisdiction over the school, the [state board], and the [state superintendent]  
94 in accordance with section 5 of this Act.

95  
96 Section 5. *[Approval of Innovation Zone Plans; Waiver of Statutes, Policies, Rules or*  
97 *Interpretations.]*

98 (A) Each school, group of schools, subdivision or department of a group of schools or  
99 subdivision or department of a school designated or seeking designation as an innovation zone  
100 shall:

101 (1) Submit its innovation zone plan to each employee regularly employed at the  
102 school if the employee's primary job duties would be affected by the implementation of the plan.  
103 An innovation zone plan is approved by school employees when approved by a vote by secret  
104 ballot as provided in section 6 of this Act;

105 (2) Submit its innovation zone plan as approved by vote of school employees to  
106 the county superintendent and board for review. The county board shall within [sixty] days of  
107 receipt of the plan review the plan and with recommendations from the county superintendent  
108 report its support or concerns, or both, and return the plan and report to the school principal,  
109 faculty senate and local school improvement council; and

110 (3) Submit its innovation zone plan as approved by vote of the school employees  
111 eligible to vote on the plan along with the report of the county board to the [state board] and  
112 [state superintendent] for review. The county board shall be given an opportunity to present its  
113 concerns with the plan, if any, to the [state board] during its review. Except as provided in  
114 subsection (C) of this section, the [state board] and [state superintendent] shall approve or  
115 disapprove the plan within [sixty] days of receipt, subject to the following:

116 (a) No exceptions to county or [state board] rules, policies or  
117 interpretations are granted unless both the [state superintendent] and the [state board] approve  
118 the plan at least conditionally pursuant to subsections (B) and (C) of this section; and

119 (b) If the plan is disapproved, the [state superintendent], the [state board]  
120 or both, as applicable, shall communicate the reasons for the disapproval to the school, the group  
121 of schools, the subdivision or department of a group of schools or the subdivision or department  
122 of a school and shall make recommendations for improving the plan. The school, the group of  
123 schools, the subdivision or department of a group of schools or the subdivision or department of  
124 a school may amend the plan pursuant to subsection (D) of this section.

125 (B) Upon the approval of an innovation zone plan by the [state board] and [state  
126 superintendent], all exceptions to county and [state board] rules, policies and interpretations  
127 listed within the plan are granted, subject to the limitations contained in section (4)(A)(2)(b) of  
128 this Act.

129 (C) If an innovation zone plan, or a part thereof, may not be implemented unless an  
130 exception to a statute is granted by an act of the [legislature], the [state board] and [state  
131 superintendent] may approve the plan, or the part thereof, only upon the condition that the

[legislature] acts to grant the exception. If the [state board] and [state superintendent] approve a plan on that condition, the [state board] and [state superintendent] shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the [legislative oversight commission on education accountability]. The [commission] shall review the plan and exemption request and make a recommendation to the [legislature] regarding the exception requested.

(D) The rules promulgated by the [state board] pursuant to section 3 of this Act shall include a process for amending or revising an innovation zone plan. The process shall require that any amendments or revisions to an innovation zone plan are subject to the approval requirements of subsection (A) of this section.

Section 6. *[Employee Approval of Innovation Plan Application and Plan; Transfer of Employees.]*

(A) An employee shall be eligible to vote in accordance with the provisions of this section if the employee is regularly employed at the school and the employee's primary job duties will be affected by the implementation of the innovation zone plan. The panel created in subsection (C) of this section and the principal shall determine which employees are eligible to vote in accordance with this subsection. No employee may be eligible to vote unless both the panel and the principal determine that the employee is eligible to vote.

(B) A secret ballot vote at a special meeting of all employees regularly employed at the school who are eligible to vote in accordance with this section shall be conducted to determine the the level of employee commitment to apply for designation as an innovation zone in accordance with section 3 of this Act and the approval of an innovation zone plan as required by section 5 of this Act.

(C) A panel consisting of the elected officers of the faculty senate of the school or schools, [one] representative of the service personnel employed at the school and [three] parent members appointed by the local school improvement council shall call the meeting required in subsection (B) of this section, conduct the votes and certify the results to the principal, the county superintendent and the president of the county board. The panel shall provide notice of the special meeting to all employees eligible to vote at least [two] weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(D) At least [eighty] percent of the employees who are eligible to vote in accordance with this section must vote to apply for designation as an innovation zone and to approve the school's innovation zone plan before the level of staff commitment at the school is sufficient for the school to apply for designation and before the plan is approved by the school.

(E) An employee regularly employed at a school applying for or designated as an innovation zone whose job duties may be affected by implementation of the innovation zone plan or proposed plan may request a transfer to another school in the school district. The county board shall make every reasonable effort to accommodate the transfer.

Section 7. *[Progress Reviews and Annual Reports.]*

(A) At least [annually], the [state board or its designated committee] shall review the progress of the development or implementation of an innovation zone plan. If, following such a review, the [state board] determines that a designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher education in accordance with section 9 of this Act has not made adequate progress toward developing or implementing its plan, the [board] shall submit a report to the designated school, group of schools, subdivision or department of a group of schools, subdivision or department of a school or a school created by a state institution of higher

181 education in accordance with section 9 of this Act identifying its areas of concern. The [state  
182 board or its designated committee] may conduct an additional review within [six] months of  
183 submitting a report in accordance with this section. If, following such additional review, the  
184 [state board or its designated committee] determines that the designated school, group of schools,  
185 subdivision or department of a group of schools, subdivision or department of a school or a  
186 school created by a state institution of higher education in accordance with section 9 of this Act  
187 has not made adequate progress toward developing or implementing its innovation zone plan, the  
188 [state board] may revoke the designation as an innovation zone or, if the innovation zone plan  
189 has been approved in accordance with section 5 of this Act, rescind its approval of the plan.

190 (B) The [state board] shall provide an annual report on innovation zones and the progress  
191 of innovation zone plans to the [Education Committee of the Legislature.]

192  
193 Section 8. [*Teacher Vacancies in an Innovation Zone; Job Postings.*] A school, group of  
194 schools, subdivision or department of a group of schools, or a subdivision or department of a  
195 school whose school innovation zone plan has been approved in accordance with section 5 of  
196 this Act may make a job posting for a teacher vacancy at the school, the group of schools, the  
197 subdivision or department of a group of schools, or the subdivision or department of a school  
198 designated as an innovation zone that sets forth standards or qualifications that exceed the  
199 standards and qualifications provided in [insert citation], provided that teachers in the county  
200 approve the job posting by majority vote; provided however, that the county superintendent  
201 administers the vote and the record of the vote remains on file in the personnel office of the  
202 county board until the school group of schools, subdivision or department of a group of schools,  
203 or a subdivision or department of a school is no longer designated as an innovation zone.

204  
205 Section 9. [*Establishment of New Innovation Zone Schools by State Institutions of Higher*  
206 *Education.*]

207 (A) A [state institution of higher education] may establish a new innovation zone school  
208 subject to the following:

209 (1) The school will be under the jurisdiction of the [state institution of higher  
210 education];

211 (2) The county board with jurisdiction over the school district in which the new  
212 school is planned to be located must approve the establishment of the new innovation zone  
213 school;

214 (3) The [state institution of higher education] must enter into cooperative  
215 agreements with the county board or county boards whose students attend the new innovation  
216 zone school. The agreements shall include at least required reporting on student attendance,  
217 academic progress and any other matters relating to the administration, operation and support of  
218 the school agreed to by institution and the board or boards;

219 (4) Students attending the school shall be enrolled in a school in their county of  
220 residence subject to the policies of the county. The students may participate in extracurricular  
221 and cocurricular activities at the county school in which they are enrolled and, subject to the  
222 cooperative agreement with the [state institution of higher education], participate in curricular  
223 activities at the county school in which they are enrolled;

224 (5) No funds provided to support the planning and implementation of school  
225 innovation zones pursuant to this Act may be used for a [state institution of higher education] to  
226 establish a new innovation zone school; and

227 (6) A school established in accordance with this section may not be funded with  
228 moneys appropriated by the [legislature] to fund the innovation zone program or [state] or county  
229 moneys that result from the school aid formula.

(B) The [state board] shall promulgate rules, including emergency rules if necessary, in for a [state institution of higher education] to establish a new innovation zone school. The rules shall include provisions for at least the following:

(1) A process for a [state institution of higher education] in accordance with this section to apply for designation as innovation zone and for approval of its innovation zone plan that encompasses at least the following:

(a) The manner, time and process for the submission of an application for innovation zone designation and for approval of its innovation zone plan;

(b) The contents of the application; and

(c) Factors to be considered by the [state board] when evaluating an application and plan, which shall include, but are not limited to, support from parents, students, county board or boards of education, the local school improvement council or councils and school business partners and the potential for a school to be successful as an innovation zone.

(2) A school created by [state institution of higher education] designated as an innovation zone or seeking designation as an innovation zone in accordance with this section shall develop an innovation zone plan that includes at least the following:

(a) A description of the programs, policies or initiatives the [state institution of higher education] intends to implement as an innovative strategy to improve student learning if the plan is approved;

(b) The approval of the county board of education with jurisdiction over the school district in which the new school is planned to be or is located and the cooperative agreements with the county board or county boards whose students attend the new innovation zone school;

(c) A list of all county and state board rules, policies and interpretations, and all statutes, if any, identified as prohibiting or constraining the implementation of the plan, including an explanation of the specific exceptions to the rules, policies and interpretations and statutes required for plan implementation;

(d) A policy under which the [state institution of higher education] and participating county board or boards of education agree to meet the accountability requirements for student assessment under all applicable assessment programs administered by the [state department of education] and provisions of law or policy required by the No Child Left Behind Act of 2001, Public Law No. 107-110 or other federal law; and

(e) Any other information the [state board] requires.

(3) Standards for the [state board] to review applications for designation as innovation zones and to make determinations on the approval of innovation zone plans.

(C) The [state board] and [state superintendent] shall review innovation zone applications and plans of a school created by a [state institution of higher education] in accordance with the standards adopted by the [board] and shall determine whether to designate it as an innovation zone or approve it plan, as applicable. The [state board and state superintendent] shall notify an applicant of the [board's] determination within [sixty] days of receipt of an innovation zone application and receipt of an innovation zone plan. If the plan is disapproved, the [state board] and state superintendent shall communicate the reasons for the disapproval to the school and make recommendations for improving the plan. The school may amend and resubmit the plan to the [state board].

(D) Upon the approval of an innovation zone plan by the [state board and state superintendent], all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. If an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by an act of the [legislature, the state board and state superintendent] may approve the plan, or the part thereof, only upon the

condition that the [legislature] acts to grant the exception. If the [state board] and [state superintendent] approve a plan on that condition, the [state board and state superintendent] shall submit the plan with the request for an exception to a statute, along with supporting reasons, to the [legislative oversight commission on education accountability]. The [commission] shall review the plan and request and make a recommendation to the [legislature] on the exception requested.

Section 10. [*Severability*.] [Insert severability clause.]

Section 11. [*Repealer*.] [Insert repealer clause.]

Section 12. [*Effective Date*.] [Insert effective date.]

# Insurance Company Mutual-to-Stock Conversion

This Act establishes a process to enable a mutual insurer to convert to a stock insurer in a manner consistent with the manner in which a mutual savings institution converts from mutual to a stock form under federal law and regulation. The purpose of the Act is to help facilitate the recapitalization of insurance industry by establishing a method of capital formation for insurers that elect to domicile in the state.

Submitted as:

Delaware

[CH 466 of 2010](#)

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 Insurance Company Mutual-to-  
2 Stock Conversion Act.”

3  
4           Section 2. [*Purpose.*]

5           (a) Policyholders of a mutual insurer have contractual rights to insurance coverage and  
6 certain membership rights consisting principally of the right to elect directors of a mutual  
7 insurer, the right to vote on certain fundamental transactions undertaken by a mutual insurer, and  
8 the right to share in surplus in the event of a solvent liquidation of a mutual insurer. It is  
9 determined and declared that the membership rights of policyholders in a domestic mutual  
10 company existing as of the effective date of this Act who vote to make such mutual company  
11 subject to this Act, or policyholders of a foreign mutual insurer who vote to redomesticate to this  
12 state pursuant to Section 5 of this Act, are not equivalent to an ownership interest in such mutual  
13 insurer and that, in connection with the mutual to stock conversion of a mutual insurer, the grant  
14 to policyholders of a first priority right to purchase stock in the converting company or a holding  
15 company for such converting company is adequate compensation for the relinquishment of the  
16 membership rights of a policyholder. The [legislature] determines that it is desirable to provide  
17 for the conversion of a mutual insurer from the mutual form to the stock form in a manner  
18 similar to the manner in which mutual savings institutions convert from mutual to stock form  
19 under federal law and regulation.

20           (b) This Act shall:

21               (1) Provide for the mutual to stock conversion of a mutual insurer in a manner  
22 consistent with the manner in which a mutual savings institution converts from mutual to stock  
23 form under federal law and regulation; and

24               (2) Facilitate the recapitalization of the insurance industry nationally by  
25 establishing a proven method of capital formation for insurers that elect to domicile in this state.

26  
27           Section 3. [*Definitions.*] As used in this Act:

28           (1) “Capital stock” means common or preferred stock or any hybrid security issued by a  
29 converted stock insurer or other company pursuant to the exercise of subscription rights granted  
30 pursuant to [insert citation].

31           (2) “Commissioner” means the [insurance commissioner of this state].



(3) "Converted stock company" means a stock insurer that converted from a mutual insurer under this Act.

(4) "Domestic mutual company" means a mutual insurer domiciled in this state.

(5) "Department" means the [department of insurance] of this state.

(6) "Eligible member" means a member of a mutual company whose policy is in force on the date the mutual company's governing body adopts a plan of conversion or such earlier date as the mutual company may establish with the consent of the [commissioner]. A person insured under a group policy is not an eligible member. A person whose policy becomes effective after the governing body adopts the plan but before the plan's effective date is not an eligible member but shall have those rights established under [insert citation].

(7) "Foreign mutual insurer" means a mutual insurer domiciled in a jurisdiction other than this state.

(8) "Mutual company" means a mutual insurer that is seeking to convert to a stock insurer under this Act, including a foreign mutual insurer that has applied to redomesticate to this state with an intent to file an application to convert from mutual to stock form under this Act.

(9) "Mutual holding company" means a corporation resulting from a reorganization of a mutual company under this Act. A mutual holding company shall be subject to the provisions of this Act and to any other provisions of state law applicable to mutual companies, except as otherwise provided in this Act. The certificate of incorporation of a mutual holding company shall include provisions setting forth the following:

(i) that it is a mutual holding company organized under this Act;

(ii) that the mutual holding company may hold not less than a majority of the shares of voting stock of a converted company or intermediate holding company, which in turn holds, directly or indirectly, all of the voting stock of a converted company;

(iii) that it is not authorized to issue any capital stock except pursuant to a conversion in accordance with the provisions of this Act;

(iv) that its members shall have the rights specified in this Act and its certificate of incorporation and bylaws; and

(v) that its assets shall be subject to inclusion in the estate of the converted company in any rehabilitation or insolvency proceedings initiated by the [commissioner].

(10) "Participating policy" means a policy that grants a holder the right to receive dividends if, as and when declared by the mutual company.

(11) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a similar entity, or a combination of the foregoing acting in concert.

(12) "Plan of conversion" or "plan" means a plan adopted by a mutual company's governing body to convert the mutual company into a stock company in accordance with the requirements of this Act.

(13) "Policy" means an insurance policy, including an annuity contract.

(14) "Stock company" means a stock insurer that meets all of the current requirements for admission to do business as a domestic insurer in this state.

(15) "Voting member" means a member who is an eligible member and is also a member of the mutual insurer as of a date not more than [90] days prior to the date of the meeting at which the plan shall be voted upon by members.

#### Section 4. *[Adoption of Plan of Conversion.]*

(a) No plan of conversion shall become effective unless the mutual company seeking to convert to a stock company shall have adopted, by the affirmative vote of not less than two-thirds of its governing body and otherwise in accordance with law, a plan of conversion

consistent with the requirements of sections 6, 7, and 8 of this Act. At any time before approval of a plan by the [commissioner], the mutual company, by the affirmative vote of not less than a majority of its governing body, may amend or withdraw the plan.

(b) With respect to a domestic mutual company that exists as of the effective date of this Act, no plan of conversion may be adopted pursuant to paragraph (a) of this section unless the policyholders of the domestic mutual company shall have previously elected to subject the domestic mutual company to the provisions of this [Act] at a separate meeting convened for such purpose. In connection with such meeting, the domestic mutual company shall provide its policyholders with substantially the same information as is required by the provisions of section 5(b).

(c) Before a mutual company's eligible members may vote on approval of a plan, a mutual company whose governing body has adopted a plan shall file all of the following documents with the [commissioner] within [ninety (90)] days after adoption of the plan together with the application fee specified herein:

(1) The plan of conversion, including the independent evaluation of pro forma market value required by section 6(d).

(2) The form of notice required by subsection (f) of this section.

(3) The form of proxy to be solicited from eligible members pursuant to subsection (g) of this section.

(4) The form of notice required by section 11 of this Act to people whose policies are issued after adoption of the plan but before its effective date.

(5) The proposed certificate of incorporation and bylaws of the converted stock company.

(6) The acquisition of control statement, as required by [insert citation].

(7) The application shall be accompanied by an application fee equal to the greater of [\$100,000], or [an amount equal to [1/10 of 1%] of the estimated pro forma market value of the converted stock company as determined in accordance with section 6(d). If such value is expressed as a range of values, the application fee shall be based upon the midpoint of the range. For good cause shown, the [commissioner] may waive the application fee in whole or in part, or permit a portion of the application fee to be deferred until completion of the conversion.

(8) Such other information as the [commissioner] may request. Upon filing of the foregoing documents with the [commissioner], the mutual company shall send to eligible members a notice advising eligible members of the adoption and filing of the plan, their ability to provide the [commissioner] and the mutual company with comments on the plan within [thirty (30)] days of the date of such notice, and procedure therefore.

(d) The [commissioner] shall immediately give written notice to the mutual company of any decision and, in the event of disapproval, a statement in detail of the reasons for the decision. The [commissioner] shall approve the plan if the [commissioner] finds each of the following:

(1) The plan complies with this Act.

(2) The plan will not prejudice the interests of the members.

(3) The plan's method of allocating subscription rights is fair and equitable.

(e) The [commissioner] may retain, at the mutual company's expense, any qualified expert not otherwise a part of the [commissioner's] staff, including counsel and financial advisors, to assist in reviewing the plan and the independent evaluation of the pro forma market value required under section 6.

(f) The [commissioner] may order a hearing on whether the terms of the plan comply with this Act after giving written notice by mail or publication to the mutual company and other interested people, all of whom have the right to appear at the hearing.

(g) All voting members shall be sent notice of the members' meeting to vote on the plan. The notice shall briefly but fairly describe the proposed conversion plan, shall inform the voting member of the voting member's right to vote upon the plan, and shall be sent to each voting member's last known address, as shown on the mutual company's records. If the meeting to vote upon the plan is held during the mutual company's annual meeting of policyholders, only a combined notice of meeting is required.

(h) The plan shall be voted upon by voting members and shall be adopted upon receiving the affirmative vote of at least [two-thirds] of the votes cast by voting members at the meeting. Voting members entitled to vote upon the proposed plan may vote in person or by proxy. The number of votes each voting member may cast shall be determined by the mutual company's bylaws. If the bylaws are silent, each voting member may cast [one] vote.

(i) The certificate of incorporation of the converted stock company shall be considered at the meeting of the voting members called for the purpose of adopting the plan of conversion and shall require for adoption the affirmative vote of at least [two-thirds] of the votes cast by voting members.

(j) Documents to be filed following approval. within [thirty (30)] days after the voting members have approved the plan in accordance with the requirements of this section, the converted stock company shall file the following documents with the [commissioner]:

(1) The minutes of the meeting of the voting members at which the plan was approved.

(2) The certificate of incorporation and bylaws of the converted stock company.

#### Section 5. *[Redomestication and Conversion.]*

(a) A foreign mutual insurer that has filed an application for redomestication may file an application for conversion under this Act promptly after completion of the redomestication or upon such earlier date as the [commissioner] may permit, but in no event prior to the approval of the redomestication by the members of the foreign mutual insurance company if such a member vote is required under the laws of the foreign mutual insurance company's state of domicile. A redomestication application shall contain such information as the [commissioner] may require. If the redomestication is approved by the state of domicile of the foreign mutual insurer and the members of the foreign mutual insurer, to the extent required, then no redomestication application of a foreign mutual insurer will be denied solely because the applicant has indicated its intention to avail itself of the provisions of this Act.

(b) In addition to any requirements imposed by the existing state of domicile with respect to approval of redomestication by its voting members, a foreign mutual insurer that files an application for redomestication under section also shall provide to its voting members a comparison of the method of mutual to stock conversion in its existing state of domicile and the method of mutual to stock conversion established by this Act.

(c) Any order approving the redomestication of a foreign mutual insurer may contain such terms and conditions as the [commissioner] shall require.

(d) Any foreign mutual insurer that redomesticates under the provisions of this section, within [ten (10)] days of the date of redomestication, shall adopt resolutions ratifying any previously adopted plan of conversion and file such resolutions as an amendment to the application for conversion. The [commissioner] may deem any failure to file such ratifying resolutions as a withdrawal of the application for conversion.

(e) Nothing contained in this Act is intended or shall be deemed to supersede or conflict with the requirements of the state of domicile of any foreign mutual insurer.

(f) Except to the extent specifically provided by this section, a plan of conversion shall be adopted as required by section 4 and shall be consistent with the requirements of sections 6, 7, and 8 of this Act.

Section 6. *[Required Provisions of Plan of Conversion.]*

(a) The following provisions shall be included in the plan:

(1) The reasons for proposed conversion.

(2) The effect of conversion on existing policies, including all of the following:

(A) A provision that all policies in force on the effective date of conversion continue to remain in force under the terms of the policies, except that the following rights, to the extent they existed in the mutual company, shall be extinguished on the effective date of the conversion:

(i) Any voting rights of the policyholders provided under the policies.

(ii) Except as provided under subparagraph (b.), any right to share in the surplus of the mutual company, unless such right is expressly provided for under the provisions of the existing policy.

(iii) Any assessment provisions provided for under certain types of policies.

(B) Except as provided in subparagraph (C), a provision that holders of participating policies in effect on the date of conversion continue to have a right to receive dividends as provided in the participating policies, if any.

(C) Except for the mutual company's life policies, participating guaranteed renewable accident and health policies, and participating guaranteed renewable non-cancelable accident and health policies, a provision that upon the renewal date of a participating policy, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy. Nothing contained herein shall be construed to permit the substitution, during the term of a policy, of a non-experience rated policy for an experience rated policy.

(3) The grant of subscription rights to eligible members, including both of the following:

(A) A provision that each eligible member is to receive, without payment, nontransferable subscription rights to purchase the capital stock of the converted stock company and that, in the aggregate, all eligible members shall have the right, prior to the right of any other party, to purchase [one-hundred percent (100%)] of the capital stock of the converted stock company, exclusive of any shares of capital stock required to be sold or distributed to the holders of surplus notes, if any, and capital stock purchased by the company's tax-qualified employee stock benefit plan that is in excess of the total price of the capital stock established under subsection (d) of this section, as permitted section 8(c) of this Act. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(i) a corporation organized for the purpose of purchasing and holding all the stock of the converted stock company; provided however, that the [commissioner] may, at the [commissioner's] discretion; require that such corporation be incorporated in this state;

(ii) a stock insurer owned by the mutual company into which the mutual company will be merged; or

(iii) an unaffiliated stock insurer or other corporation that will purchase all the stock of the converted stock company.

For purposes of any plan, the transfer of subscription rights from an individual to such individual and his or her spouse or children or to a trust or other estate or wealth planning entity established for the benefit of such individual, his or her spouse or children, an individual to such individual's joint or individual IRA account, or other tax-qualified retirement plan, an entity to the shareholders, partners or members of such entity, or the holder of such rights to the mutual insurance company or its proposed holding company, shall not be deemed an unpermitted transfer for purposes of this Act.

(B) A provision that the subscription rights shall be allocated in whole shares among the eligible members using a fair and equitable formula. The formula need not allocate subscription rights to eligible members on a pro rata basis based on premium payments or contributions to surplus, but may take into account how the different classes of policies of the eligible members contributed to the surplus of the mutual company or any other factors that may be fair or equitable. In accordance with section 4(e), the [commissioner] may retain an independent consultant to assist in the determination that the allocation of subscription rights is fair and equitable.

(b) The plan shall provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights received under subsection (a)(3) of this section.

(c) The plan shall provide that any shares of capital stock not subscribed to by eligible members exercising subscription rights received under subsection (a)(3) of this section shall be sold in a public offering. If the number of shares of capital stock not subscribed by eligible members is so small in number or other factors exist that do not warrant the time or expense of a public offering, or warrant the participation of standby investors to facilitate completion of the conversion, the plan of conversion may provide for sale of the unsubscribed shares through a private placement or other alternative method approved by the [commissioner] that is fair and equitable to eligible members.

(d) The plan shall set the dollar amount of the capital stock for which subscription rights must be granted pursuant to subsection (a)(3) of this section equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by a qualified expert. This pro forma market value may be that value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation, and may be stated as a range of pro forma market value.

(e) The plan shall set the purchase price per share of capital stock equal to any reasonable amount. However, the minimum subscription amount required of any eligible member cannot exceed [five hundred (\$500)] dollars, but the plan may provide that the minimum number of shares any person may purchase pursuant to the plan is [twenty-five (25)] shares.

(f) The plan shall provide that any person or group of people acting in concert shall not acquire, in the public offering or pursuant to the exercise of subscription rights, more than [five percent (5%)] of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a)(3)(a.) of this section, except with the approval of the [commissioner]. This limitation does not apply to any entity that is to purchase [one hundred percent (100%)] of the capital stock of the converted stock company as part of the plan of conversion approved by the [commissioner].

(g) The plan shall provide that no director or officer or person acting in concert with a director or officer of the mutual company shall acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in subsection (a)(3)(A) of this section, for [three (3)] years after the effective date of the

plan, except through a broker-dealer, without the permission of the [commissioner]. This provision does not prohibit the directors and officers from:

(1) making block purchases of [one percent (1%)] or more of the outstanding common stock other than through a broker-dealer if approved in writing by the [department];

(2) exercising subscription rights received under the plan; or

(3) participating in a stock benefit plan permitted by section 8(c) of this Act, or approved by shareholders pursuant to 13(b) of this Act.

(h) The plan shall provide that no director or officer may sell stock purchased pursuant to this section, or section 8(a) of this Act within [one (1)] year after the effective date of the conversion, except that nothing contained in this section shall be deemed to restrict a transfer of stock by such director or officer to the spouse or minor children of such director or officer, or a to a trust or other estate or wealth planning entity established for the benefit of such director or officer, or the spouse or minor children of such director or officer.

(i) The plan shall provide that the rights of a holder of a surplus note to participate in the conversion, if any, shall be governed by the terms of the surplus note.

(j) The plan shall provide that, without the prior approval of the [commissioner], no converted stock company, or any corporation participating in the conversion plan pursuant to subsection (a)(3)(A)(i) or (ii) of this section, shall, for a period of [three (3)] years from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to either:

(1) a repurchase on a pro rata basis pursuant to an offer made to all shareholders of the converted stock company, or any corporation participating in the conversion plan pursuant to subsection (a)(3)(A)(i), or (ii) of this section; or

(2) a purchase in the open market by a tax-qualified, or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

#### Section 7. *[Closed Block of Business for Participating Life Policies.]*

(a) A plan that is adopted by a mutual company that is a life insurance company which issues participating life policies shall provide that participating life policies in force on the effective date of the conversion shall be operated by the converted stock company for dividend purposes as a closed block of participating business, except that any and all classes of group participating policies may be excluded from the closed block.

(b) The plan shall provide that sufficient assets of the mutual company shall be allocated for the benefit of the closed block of business so that the assets, together with the revenue from the closed block of business, are sufficient to support the closed block, including, but not limited to, the payment of claims, expenses, taxes, and any dividends that are provided for under the terms of the participating policies, with appropriate adjustments in the dividends for experience changes. The plan shall be accompanied by an opinion of a qualified actuary, or an appointed actuary, who meets the standards set forth in the insurance laws or regulations of this state for the submission of actuarial opinions as to the adequacy of reserves or assets. The opinion shall relate to the adequacy of the assets allocated in support of the closed block of business. The actuarial opinion shall be based on methods of analysis deemed appropriate for those purposes by the [actuarial standards board].

(c) The amount of assets allocated for the benefit of the closed block shall be based upon the mutual life insurance company's last annual statement, updated to the last day of the quarter immediately preceding the effective date of the conversion.

(d) The converted stock company shall keep a separate accounting for the closed block and shall make and include in the annual statement to be filed with the [commissioner] each year

a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

(e) The assets and liabilities allocated to the closed block may be periodically reviewed by the [commissioner] or the [commissioner's] designee. The converted stock company shall bear the cost of any such review. If, as a result of such review, the [commissioner] determines that the assets allocated to the closed block are insufficient to support the remaining policies in the closed block, the [commissioner] may issue an order directing the converted stock company to allocate additional assets to the closed block sufficient to support the remaining policies in the closed block and the converted stock company shall comply with such order within [thirty (30)] days of the date thereof. If, as a result of such review, or as a result of a review initiated by the converted stock company and accepted by the [commissioner], assets allocated to the closed block are in excess of the amount necessary to support the remaining policies, then upon application made to the [commissioner] by the converted stock company, the [commissioner] may issue an order permitting such excess assets in the closed block to revert to the benefit of the converted stock company.

(f) The [commissioner] may waive the requirement for establishing a closed block of business if, in the [commissioner's] discretion, it is in the best interests of policyholders to do so. The [commissioner] may waive from inclusion in the closed block of participating policies those participating policies for which there is no expectation of dividends being paid if, in the [commissioner's] discretion, it is fair and equitable to do so.

#### Section 8. *[Optional Provisions of Plan of Conversion.]*

(a) The plan may provide that the directors, officers, and employees of the mutual company shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 6 (a)(3)(A) of this Act. These subscription rights shall be allocated among the directors, officers, and employees by a fair and equitable formula and shall be subordinate to the subscription rights of eligible members. Nothing contained in this Act shall require the subordination of subscription rights received by directors and officers in their capacity as eligible members, if any.

(b) The aggregate total number of shares that may be purchased by directors and officers of the mutual company in their capacity under subsection (a) of this section and in their capacity as eligible members under section 6(a)(3)(A) of this Act shall not exceed [thirty-five percent (35%)] of the total number of shares to be issued for a mutual company if total assets of the mutual company are less than [fifty million (\$50,000,000)] dollars or [twenty-five percent (25%)] of the total number of shares to be issued for a mutual company if total assets of the mutual company are more than [five hundred million (\$500,000,000)] dollars. For mutual companies with total assets of or between [fifty million (\$50,000,000)] dollars and [five hundred million (\$500,000,000)] dollars, the percentage of the total number of shares that may be purchased shall be interpolated.

(c) The plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to [ten percent (10%)] of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 6(a)(3)A of this Act. A tax-qualified employee benefit plan is entitled to exercise subscription rights granted under this subsection regardless of the total number of shares purchased by other people.

(d) The plan may provide that the other classes of subscribers approved by the [commissioner] shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is

participating in the conversion plan, as provided in section 6(a)(3)(A) of this Act. Other classes of subscribers that may be approved by the [commissioner] include, without limitation, members of the mutual insurer that became members after the date fixed for establishing eligible members, brokers, agents, or other producers or their directors, officers, or employees that represent the mutual insurer, the shareholders of another corporation that is participating in the conversion plan, as provided in section 6(a)(3)(A) of this Act, or the shareholders of another corporation that is a party to an acquisition, merger, consolidation, or other similar transaction with the mutual insurer.

(e) The plan may provide for the creation of a liquidation account for the benefit of members in the event of voluntary liquidation subsequent to conversion in an amount equal to the surplus of the mutual company, exclusive of the principal amount of any surplus note, on the last day of the quarter immediately preceding the date of adoption of the plan.

#### Section 9. *[Alternative Plan of Conversion.]*

(a) The governing body may adopt a plan of conversion that does not rely in whole or in part upon issuing nontransferable subscription rights to members to purchase stock of the converted stock company if the [commissioner] finds that the plan does not prejudice the interests of the members, is fair and equitable, and is not inconsistent with the purpose and intent of this Act. Subject to a finding of the [commissioner] that an alternative plan is fair and equitable and is not inconsistent with the purpose and intent of this Act, an alternative plan may:

(1) Include the merger of a domestic mutual insurer into a domestic or foreign stock insurer.

(2) Provide for issuing transferable or redeemable subscription rights.

(3) Provide for issuing stock, cash, policyholder credits, or other consideration, or any combination of the foregoing, to policyholders instead of subscription rights.

(4) Provide for partial conversion of the mutual company and formation of a mutual holding company in accordance with subsection (b) of this section. For purposes of this Act, a mutual holding company shall be a holding company organized in the mutual form which maintains direct or indirect voting control of an insurance company.

(5) Set forth another plan containing any other provisions approved by the [commissioner].

(b) The [commissioner] may approve a partial conversion and formation of a mutual holding company provided that the mutual insurer is not insolvent or in hazardous financial condition according to information supplied in its most recent annual or quarterly statement filed with the [commissioner] or as determined by a financial examination performed by the [commissioner] pursuant to [insert citation]. The [commissioner] may retain, at the mutual company's expense, any qualified expert, including counsel and financial advisors, not otherwise a part of the [commissioner's] staff to assist in reviewing whether the plan may be approved by the [commissioner].

(c) Conversion of mutual holding company.

(1) A mutual holding company that has been formed pursuant to subsection (b) of this section may convert to stock form only in accordance with the provisions of this Act. Solely for purposes of establishing the process for the conversion of a mutual holding company to stock form, references in this [Act] to a mutual insurer shall be deemed to include a mutual holding company.

(2) Any stock issued by a subsidiary insurance company or subsidiary holding company of a mutual holding company to people other than the parent mutual holding company shall be exchanged for the stock issued by the parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form or any corporation



participating in the conversion of the mutual holding company pursuant to Section 6(a)(3)(A). The parent mutual holding company and the subsidiary holding company or insurance company must demonstrate to the satisfaction of the [commissioner] that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or insurance company has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to the entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required policyholder or shareholder votes.

Section 10. [*Effective Date of Plan.*] A plan is effective when the [commissioner] has approved the plan, the voting members have approved the plan and adopted the certificate of incorporation of the converted stock company, and the certificate of incorporation is filed in the [office of the secretary of state] of this [state].

Section 11. [*Rights of Members Whose Policies are Issued After Adoption of Plan and Before Effective Date.*]

(a) All members whose policies are issued after the proposed plan has been adopted by the governing body and before the effective date of the plan shall be sent a written notice regarding the plan upon issuance of such policy.

(b) A member of a life or health insurance company entitled to be sent the notice described in subsection (a) of this section is entitled to rescind the member's policy and receive a full refund of any amounts paid for the policy or contract within [ten (10)] days after such member has received the notice. Except as provided in subsection (c), each member of a property or casualty insurance company entitled to receive the notice provided for in subsection (a) of this section shall be advised of the member's right of cancellation and to a pro rata refund of unearned premiums.

(c) No member of a life or health insurance company, or property or casualty insurance company, who has made or filed a claim under such member's insurance policy shall be entitled to any right to receive any refund under subsection (b) of this section. No person who has exercised the rights provided by subsection (b) of this section shall be entitled to make or file any claim under such person's insurance policy.

Section 12. [*Corporate Existence.*]

(a) On the effective date of the conversion, the corporate existence of the mutual company continues in the converted stock company. On the effective date of the conversion, all the assets, rights, franchises, and interests of the mutual company in and to every species of property, real, personal, and mixed, and any accompanying things in action, are vested in the converted stock company without any deed or transfer and the converted stock company assumes all the obligations and liabilities of the mutual company.

(b) Unless otherwise specified in the plan of conversion, the people who are directors and officers of the mutual company on the effective date of the conversion shall serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are elected pursuant to the certificate of incorporation and bylaws of the converted stock company.

Section 13. [*Conflict of Interest.*]

(a) A director, officer, agent, or employee of the mutual company shall not receive any fee, commission, or other valuable consideration, other than such person's usual regular salary or

469 compensation, for aiding, promoting, or assisting in a conversion under this Act, except as  
470 provided for in the plan approved by the [commissioner]. This provision does not prohibit the  
471 payment of reasonable fees and compensation to attorneys, accountants, financial advisors, and  
472 actuaries for services performed in the independent practice of their professions, even if the  
473 attorney, accountant, financial advisor, or actuary is also a director or officer of the mutual  
474 company.

475 (b) For a period of [two (2)] years after the effective date of the conversion, no converted  
476 stock company shall implement any non tax-qualified stock benefit plan unless the plan is  
477 approved by a majority of votes cast at a duly-convened meeting of shareholders held not less  
478 than [six (6)] months after the effective date of the conversion.

479 (c) All the costs and expenses connected with a plan of conversion shall be paid for or  
480 reimbursed by the mutual company or the converted stock company. However, if the plan  
481 provides for participation by another corporation or stock company in the plan pursuant to  
482 section 6(a)(3)(A), the corporation or stock company may pay for or reimburse all or a portion of  
483 the costs and expenses connected with the plan.

484  
485 Section 14. [*Failure to Give Notice.*] If the mutual company complies substantially and in  
486 good faith with the notice requirements of this Act, the mutual company's failure to send a  
487 member the required notice does not impair the validity of any action taken under this Act.

488  
489 Section 15. [*Limitation on Actions.*] Any action challenging the validity of or arising out  
490 of acts taken or proposed to be taken under this Act shall be commenced no later than the latter  
491 of [sixty (60)] days after the approval of the plan by the [commissioner] or [thirty (30)] days  
492 after notice of the meeting of voting members to approve the plan of conversion is first mailed or  
493 delivered to voting members or posted on the mutual company's website.

494  
495 Section 16. [*Mutual Company Insolvent or in Hazardous Financial Condition.*]

496 (a) If a mutual company seeking to convert is insolvent or is in hazardous financial  
497 condition according to information supplied in its most recent annual or quarterly statement filed  
498 with the [department] or as determined by a financial examination performed by the  
499 [department] pursuant to [insert citation], the requirements of this Act, including notice to and  
500 policyholder approval of the plan of conversion, may be waived at the discretion of the  
501 [commissioner], if requested by the mutual company. If a waiver under this section is ordered by  
502 the [commissioner], the mutual company shall specify in its plan of conversion:

503 (1) The method and basis for the issuance of the converted stock company's shares  
504 of its capital stock to an independent party in connection with an investment by the independent  
505 party in an amount sufficient to restore the converted stock company to a sound financial  
506 condition.

507 (2) That the conversion shall be accomplished without granting subscription rights  
508 or other consideration to the past, present, or future policyholders.

509 (b) Nothing contained in this section shall alter or limit the authority of the  
510 [commissioner] under any of the provisions of law.

511  
512 Section 17. [*Rules and Regulations.*] The [commissioner] may promulgate rules and  
513 regulations to administer and enforce this Act.

514  
515 Section 18. [*Laws Applicable to Converted Stock Company.*]

516 (a) No mutual company shall be permitted to convert under this Act, if, as a direct result  
517 of the conversion, any person or any affiliate thereof acquires control of the converted stock  
518 company, unless that person and such person's affiliates comply with the provisions of [insert

519 citation]. For purposes of this subsection, “control” shall have the meaning given to such term in  
520 [insert citation].

521 (b) Except as otherwise specified in this Act, a stock company converted under this Act  
522 shall have and may exercise all the rights and privileges and shall be subject to all of the  
523 requirements and regulations imposed on stock insurers under this Act and any other laws of this  
524 state relating to the regulation and supervision of insurers, but it shall exercise no rights or  
525 privileges which other stock insurers may not exercise.  
526

527 Section 19. [*Commencement of Business as a Stock Insurer.*] No mutual company shall  
528 have the power to engage in the business of insurance as a stock company until it complies with  
529 all provisions of this Act.  
530

531 Section 20. [*Amendment of Policies.*] A mutual company, by endorsement or rider  
532 approved by the [commissioner] and sent to the policyholder, may simultaneously with or at any  
533 time after the adoption of a plan of conversion amend any outstanding insurance policy for the  
534 purpose of extinguishing the right of the holder of any such policy to share in the surplus of the  
535 mutual company. However, this amendment shall be null and void if the plan of conversion is  
536 not submitted to the [commissioner] or, if submitted, is disapproved by the [commissioner] or, if  
537 approved by the [commissioner], is not approved by the eligible members on or before the first  
538 anniversary of its approval by the [commissioner].  
539

540 Section 21. [*Prohibition on Acquisitions of Control.*] Except as otherwise specifically  
541 provided in section 6 of this Act, from the date a plan of conversion is adopted by the governing  
542 body of a mutual company until [three] years after the effective date of the plan of conversion,  
543 no person shall directly or indirectly offer to acquire, make any announcement to acquire or  
544 acquire in any manner, including making a filing with the [department] for such acquisition  
545 under a statute or regulation of this state, the beneficial ownership of [ten percent (10%)] or more  
546 of a class of a voting security of the converted stock company or of a person which controls the  
547 voting securities of the converted stock company, unless the converted stock company or a  
548 person who controls the voting securities of the converted stock company consents to such  
549 acquisition and such acquisition is otherwise approved by the [commissioner].  
550

551 Section 22. [*Applicability to Existing Mutual Insurers.*]

552 (a) Except as provided in subsection (b) of this section, this Act shall apply to all mutual  
553 insurers.

554 (b) [Insert citation] as in effect prior to the enactment of this Act is hereby repealed,  
555 except as set forth in the next sentence. [Insert citation] as in effect on the date immediately prior  
556 to the enactment of this Act shall apply to any mutual insurer that is a domestic mutual company  
557 as of such date that has not submitted a written notice to the [commissioner] under subsection (c)  
558 of this section.

559 (c) Any mutual insurer that is a domestic mutual company as of the date immediately  
560 prior to the enactment of this Act that otherwise would be subject to the application of [insert  
561 citation] as in effect on such date may elect to become subject to the application of this Act  
562 instead by submitting to the [commissioner] a written notice to that effect.  
563

564 Section 23. [*Severability.*] [Insert severability clause.]  
565

566 Section 24. [*Repealer.*] [Insert repealer clause.]  
567

568 Section 25. [*Effective Date.*] [Insert effective date.]

# Insurance Coverage for Routine Patient Costs during Cancer Clinical Trials

This Act mandates health insurance policies cover routine patient costs incurred for cancer treatment in an approved cancer clinical trial to the same extent that such policy or contract provides coverage for treating any other sickness, injury, disease, or condition covered under the policy or contract, if the insured has been referred for such cancer treatment by two physicians who specialize in oncology and the cancer treatment is given pursuant to an approved cancer clinical trial.

Submitted as:

Iowa:

[HF 2075 \(Enrolled version\)](#)

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 to Address Insurance  
2 Coverage for Routine Patient Costs during Cancer Clinical Trials.”

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

5           (1) “Approved cancer clinical trial” means a scientific study of a new therapy for the  
6 treatment of cancer in human beings that meets the requirements set forth in section 4 of this Act  
7 and consists of a scientific plan of treatment that includes specified goals, a rationale and  
8 background for the plan, criteria for patient selection, specific directions for administering  
9 therapy and monitoring patients, a definition of quantitative measures for determining treatment  
10 response, and methods for documenting and treating adverse reactions.

11           (2) “Institutional review board” means a board, committee, or other group formally  
12 designated by an institution and approved by the National Institutes of Health, Office for  
13 Protection from Research Risks, to review, approve the initiation of, and conduct periodic review  
14 of biomedical research involving human subjects. “Institutional review board” means the same  
15 as “institutional review committee” as used in section 520 (g) of the federal Food, Drug, and  
16 Cosmetic Act, as codified in 21 U.S.C. Sec. 301 et seq.

17           (3) (a) “Routine patient care costs” means medically necessary services or treatments  
18 that are a benefit under a contract or policy providing for third-party payment or prepayment of  
19 health or medical expenses that would be covered if the patient were receiving standard cancer  
20 treatment.

21                   (b) “Routine patient care costs” does not include any of the following:

22                           (I) Costs of any treatments, procedures, drugs, devices, services, or items  
23 that are the subject of the approved cancer clinical trial or any other investigational treatments,  
24 procedures, drugs, devices, services, or items.

25                           (II) Costs of non-health care services that the patient is required to receive  
26 as a result of participation in the approved cancer clinical trial.

27                           (III) Costs associated with managing the research that is associated with  
28 the approved cancer clinical trial.

29                           (IV) Costs that would not be covered by the third-party payment provider

if non-investigational treatments were provided.

(V) Costs of any services, procedures, or tests provided solely to satisfy data collection and analysis needs that are not used in the direct clinical management of the patient participating in an approved cancer clinical trial.

(VI) Costs paid for, or not charged for, by the approved cancer clinical trial providers.

(VII) Costs for transportation, lodging, food, or other expenses for the patient, a family member, or a companion of the patient that are associated with travel to or from a facility where an approved cancer clinical trial is conducted.

(VIII) Costs for services, items, or drugs that are eligible for reimbursement from a source other than a patient's contract or policy providing for third-party payment or prepayment of health or medical expenses, including the sponsor of the approved cancer clinical trial.

(IV) Costs associated with approved cancer clinical trials designed exclusively to test toxicity or disease pathophysiology.

(X) Costs of extra treatments, services, procedures, tests, or drugs that would not be performed or administered except for participation in the cancer clinical trial. Nothing in this subparagraph subdivision shall limit payment for treatments, services, procedures, tests, or drugs that are otherwise a covered benefit under subparagraph (a).

(4) "Therapeutic intent" means that a treatment is aimed at improving a patient's health outcome relative to either survival or quality of life.

Section 3. [*Coverage Required.*] Notwithstanding the uniformity of treatment requirements of [insert citation], a policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide coverage benefits for routine patient care costs incurred for cancer treatment in an approved cancer clinical trial to the same extent that such policy or contract provides coverage for treating any other sickness, injury, disease, or condition covered under the policy or contract, if the insured has been referred for such cancer treatment by [two] physicians who specialize in oncology and the cancer treatment is given pursuant to an approved cancer clinical trial that meets the criteria set forth in section 4 of this Act. Services that are furnished without charge to a participant in the approved cancer clinical trial are not required to be covered as routine patient care costs pursuant to this section.

Section 4. [*Criteria.*] Routine patient care costs for cancer treatment given pursuant to an approved cancer clinical trial shall be covered pursuant to this Act if all of the following requirements are met:

(1) The treatment is provided with therapeutic intent and is provided pursuant to an approved cancer clinical trial that has been authorized or approved by one of the following:

(a) The National Institutes of Health.

(b) The United States Food and Drug Administration.

(c) The United States Department of Defense.

(d) The United States Department of Veterans Affairs.

(2) The proposed treatment has been reviewed and approved by the applicable qualified institutional review board.

(3) The available clinical or preclinical data indicate that the treatment that will be provided pursuant to the approved cancer clinical trial will be at least as effective as the standard therapy and is anticipated to constitute an improvement in therapeutic effectiveness for the treatment of the disease in question.

79       Section 5. [*Notice.*] As soon as practical after the insured provides written consent to  
80 participate in an approved cancer clinical trial, the physician shall provide notice to the third-  
81 party payment provider of the insured's intent to participate in an approved cancer clinical trial.  
82 Failure to provide such notice to the third-party payment provider shall not be the basis for  
83 denying the coverage required under Section 3 of this Act.

84  
85       Section 6. [*Applicability.*]

86       (A) This Act applies to the following classes of third-party payment provider contracts or  
87 policies delivered, issued for delivery, continued, or renewed in this state on or after [July 1,  
88 2010]:

89               (1) Individual or group accident and sickness insurance providing coverage on an  
90 expense-incurred basis.

91               (2) An individual or group hospital or medical service contract issued pursuant to  
92 [insert citation].

93               (3) An individual or group health maintenance organization contract regulated  
94 under [insert citation].

95               (4) Any other entity engaged in the business of insurance, risk transfer, or risk  
96 retention, which is subject to the jurisdiction of the [commissioner].

97               (5) A plan established pursuant to [insert citation] for public employees.

98               (6) An organized delivery system licensed by the [director of public health].

99       (B) This Act shall not apply to accident-only, specified disease, short-term hospital or  
100 medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term  
101 care, basic hospital and medical-surgical expense coverage as defined by the [commissioner],  
102 disability income insurance coverage, coverage issued as a supplement to liability insurance,  
103 workers' compensation or similar insurance, or automobile medical payment insurance.

104  
105       Section 7. [*Severability.*] [Insert severability clause.]

106  
107       Section 8. [*Repealer.*] [Insert repealer clause.]

108  
109       Section 9. [*Effective Date.*] [Insert effective date.]

# International Commercial Arbitration

This SSL draft is based on Florida [Chapter 2010-60](#), which codifies the Model International Commercial Arbitration Law.

A [Florida House Legislative Staff Analysis](#) of Chapter 2010-60 notes, “Arbitration is an alternative to litigation, under which parties agree to have their disputes settled by a neutral third party. Arbitration has become favored for disputes involving international trade, where results of litigation can hinge on where the suit is brought and judgments can be difficult to enforce internationally.”

The Florida legislative analysis states that Florida’s law (and therefore, this SSL draft) applies to international arbitration and would be subject to any agreement between the United States and any other country. However, such legislation only applies to arbitration conducted in the state, except provisions relating to court-enforcement of arbitration awards, requests for interim measures of protection, and grounds for refusing award recognition or enforcement.

This SSL draft defines the scope of international arbitration to include:

- agreements between parties who have their places of business, or for nonbusinesses, residences in different countries at the time of the agreement’s conclusion;
- agreements between parties, where one of the following is situated in a different country than a party’s place of business:
  - the seat of arbitration,
  - the place where a substantial part of the agreement’s obligation is to be performed, or
  - the place where the subject matter of the dispute is most closely connected, and
- agreements under which the parties have expressly agreed that the matter relates to more than one country.

The bill defines arbitration, arbitration agreement, and court, and provides rules of interpretation. Arbitration agreements are deemed separate and independent from the underlying contract and may survive even if the contract is deemed invalid.

Disputes shall be determined pursuant to substantive rules of law chosen by the parties. If the parties fail to choose the applicable law, a tribunal may determine the applicable law by the choice-of-law provision it deems applicable. There are to be three arbitrators, unless the parties agree otherwise, and a procedure for appointment is provided. Arbitrators shall have the same immunity as a judge.

Absent an agreement otherwise, an arbitral tribunal may conduct proceedings as it sees fit, in the language it chooses. It has the authority to determine matters of evidence, choose the place of arbitration, and to appoint experts.

All parties are to be treated equally and given equal opportunity to present their cases. Under the Act, a claimant submits a statement of its claim, including the remedy sought. The respondent then submits a statement of its defense. Parties may amend their statements. If a claimant, without a showing of sufficient cause, fails to provide its statement of claim, the tribunal shall terminate the arbitration. If a respondent fails to provide its defense, the tribunal shall continue the arbitration. The tribunal shall also continue the arbitration if a party fails to appear or produce evidence.

An arbitral tribunal has the ability to rule on its own jurisdiction, including any challenges to the validity of the parties’ agreement to arbitrate. Jurisdictional challenges must be submitted with the statement of defense. Claims that the tribunal is exceeding its authority must

be raised as soon as such matter arises. The tribunal has discretion to hear justifiably untimely challenges. A party may appeal the tribunal's decisions on jurisdiction to a circuit court.

Unless otherwise agreed by the parties, the tribunal has the ability to issue interim measures at the request of a party. Interim measures are binding on the parties and may be enforced in any court, in any country. The court may only refuse to enforce a measure if the tribunal's order of security has not been met, on one of the grounds for refusing to enforce an arbitration award, or if the court finds that the measure is incompatible with the powers of the court. A court also shares the same authority to issue interim measures as the tribunal.

Interim measures are temporary and may include orders to maintain or restore the status quo, prevent current or imminent harm or prejudice to the arbitral process, preserve assets out of which a subsequent award may be satisfied, or preserve evidence. The requesting party must prove that harm not adequately reparable by money damages is likely to result and such harm substantially outweighs harm likely to result from issuing the measure, and there is a reasonable possibility that the requesting party will succeed on the merits.

The tribunal may require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted interim measure that the tribunal later determines should not have been granted.

A party requesting an interim measure may also request a preliminary order prohibiting a party from frustrating the purpose of the interim measure. The tribunal may grant such a request if it finds that prior disclosure of the request for the interim measure risks frustrating the measure's purpose and the request meets the same conditions as those applicable for interim measures. A specific process for issuing preliminary orders is detailed. A preliminary order, while binding on the parties, is not enforceable by a court and does not constitute an award.

The tribunal must require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted preliminary order that the tribunal later determines should not have been granted.

An arbitral tribunal may modify, suspend or terminate an interim measure or preliminary order at the request of any party or, in exceptional circumstances and with notice to the parties, at its own initiative.

Parties may settle during the arbitration, and if they do so, the tribunal is to terminate the proceeding and, if requested by the parties and not objected to by the tribunal, shall record the settlement as an arbitral award.

An arbitration award must be made in writing, signed by a majority of the arbitrators, and state the date and place it was made. An award also states the reasons upon which it is based, unless the parties agree otherwise. An award is binding on the parties and enforceable in any court of competent jurisdiction.

A final award terminates the arbitration. A tribunal may also terminate the arbitration by order, if the claimant withdraws their claim, absent objection by the respondent, and the tribunal finds the respondent has an interest in a final settlement; the parties agree; or the tribunal finds that continuation of the arbitration has become unnecessary or impossible.

Either party may request the tribunal correct any computation, clerical or typographical errors and a detailed process for correction is provided. Either party may also request interpretation of any part of the award.

A party may request a court set an award aside within three months. A party may also apply to the court to enforce the award.

The bill provides rules governing the circumstance where both arbitration and a court action are initiated. A court hearing a claim that is subject to an arbitration agreement shall, if



requested by a party in its initial answer, refer the agreement to arbitration, unless it finds the agreement is null and void, inoperative, or incapable of performance. Or, if an action has been brought, arbitration may also be commenced or continued, and an arbitration award may be made, while the issue is pending in the court.

The bill provides for supervisory oversight by a circuit court in the county where the arbitration is occurring. The court may, at a party's request and unless the parties agree otherwise, appoint an arbitrator, if the party, or arbitrators appointed by the parties, fails to do so as the agreement or Act requires. The court's decision is not appealable. The court may hear a challenge to an arbitrator that the arbitral tribunal rejected. The court's decision is not appealable, and the arbitration may continue while the court hears the challenge. The court may determine whether an arbitrator's mandate should be terminated if the arbitrator becomes actually or legally unable to perform or fails to act without undue delay. The party may only make such a request if the parties fail to agree on the arbitrator's termination and the arbitrator fails to withdraw from office. The court's decision is not appealable. The court may decide jurisdictional issues of the arbitral tribunal. The court's decision is not appealable, and the arbitration may continue while the court hears the issue. A court can issue an interim measure of protection (injunction) before or during the arbitration. The court may set aside an arbitral award under certain circumstances. The court may suspend such a hearing to give the tribunal an opportunity to resume arbitration or cure the grounds to set aside the award. The court may enforce or refuse to enforce an arbitral award.

The bill provides grounds for setting aside or refusing to enforce an arbitration award. These are limited to the complaining party to the agreement was under some incapacity; the arbitration agreement is invalid under the law the parties designated or state law, if no law has been designated; the complaining party was not given notice of the appointment of an arbitrator or the proceedings, or was unable to present its case; the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; less the agreement violated law; the court finds that the subject matter of the dispute may not be arbitrated under state law or the award is contrary to the public policy of the state; or in the case of refusing to enforce an award, a finding that the award has not yet become binding on the parties or has previously been set aside.

Submitted as:

Florida

[Chapter 2010-60](#)

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 [State] International Commercial
- 2   Arbitration Act.”
- 3
- 4           Section 2. [*Service of Process in Connection with Actions under The (State) International*
- 5   *Commercial Arbitration Act.*]
- 6           (1) Any process in connection with the commencement of an action before the
- 7   courts of this state under this Act shall be served:
- 8               (a) In the case of a natural person, by service upon:
- 9                   1. That person;

10 2. Any agent for service of process appointed in, or pursuant to,  
11 any applicable agreement or by operation of any law of this state; or

12 3. Any person authorized by the law of the jurisdiction where  
13 process is being served to accept service for that person.

14 (b) In the case of any person other than a natural person, by service upon:

15 1. Any agent for service of process appointed in, or pursuant to,  
16 any applicable agreement or by operation of any law of this state;

17 2. Any person authorized by the law of the jurisdiction where  
18 process is being served to accept service for that person;

19 3. Any person, whether natural or otherwise and wherever located,  
20 who by operation of law or internal action is an officer, business agent, director, general partner,  
21 or managing agent or director of the person being served; or

22 4. Any partner, joint venturer, member or controlling shareholder,  
23 wherever located, of the person being served, if the person being served does not by law or  
24 internal action have any officer, business agent, director, general partner, or managing agent or  
25 director.  
26

### 27 Section 3. [*Scope of Application.*]

28 (1) This Act applies to international commercial arbitration, subject to any agreement in  
29 force between the United States of America and any other country or countries.

30 (2) This Act, except sections 10, 11, 27, 28, 29, 48 and 49, applies only if the place of  
31 arbitration is in this state.

32 (3) An arbitration is international if:

33 (a) The parties to an arbitration agreement have, at the time of the conclusion of  
34 that agreement, their places of business in different countries;

35 (b) One of the following places is situated outside the country in which the parties  
36 have their places of business:

37 1. The place of arbitration if determined in, or pursuant to, the  
38 arbitration agreement; or

39 2. Any place where a substantial part of the obligations of the  
40 commercial relationship are to be performed or the place with which the subject matter of the  
41 dispute is most closely connected; or

42 (c) The parties have expressly agreed that the subject matter of the  
43 arbitration agreement relates to more than one country.

44 (4) For the purposes of subsection (3):

45 (a) If a party has more than one place of business, the place of business is that  
46 which has the closest relationship to the arbitration agreement.

47 (b) If a party does not have a place of business, reference shall be made to his or  
48 her habitual residence.

49 (5) This Act does not affect any law that may prohibit a matter from being resolved by  
50 arbitration or that specifies the manner in which a specific matter may be submitted or resolved  
51 by arbitration.  
52

### 53 Section 4. [*Definitions and Rules of Interpretation.*]

54 (1) As used in this Act, the term:

55 (a) "Arbitral tribunal" means a sole arbitrator or panel of arbitrators.

56 (b) "Arbitration" means any arbitration whether or not administered by a  
57 permanent arbitral institution.

(c) “Arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not.

(d) “Court” means a circuit court of this state.

(2) A provision of this Act, except section 39, which leaves the parties free to determine a certain issue, includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) A provision of this Act which refers to the fact that the parties have agreed or that they may agree to a procedure refers to an agreement of the parties. The agreement includes any arbitration rules referenced in that agreement.

(4) A provision of this Act, other than in section 37(1) or section 44(2)(a), which refers to a claim also applies to a counter claim, and a provision that refers to a defense also applies to a defense to such counter claim.

#### Section 5. [*International Origin and General Principles.*]

(1) This Act shall be interpreted with regard to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Act which are not expressly settled pursuant to it shall be settled in conformity with the general principles on which this Act is based.

#### Section 6. [*Receipt of Written Communications.*]

(1) Unless otherwise agreed by the parties, a written communication is deemed to be received if it is delivered to the addressee personally or if it is delivered to the addressee’s place of business, habitual residence, or mailing address. If one of these locations cannot be found after a reasonable inquiry, the written communication is deemed to be received if it is sent to the addressee’s last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of the attempt to deliver it. The communication is deemed to be received on the day it is delivered.

(2) This section does not apply to communications in court proceedings.

Section 7. [*Waiver of Right to Object.*] A party waives its right to object if the party proceeds with the arbitration and fails to object without undue delay or within a provided time limit to noncompliance of any provision of this chapter from which the parties may derogate and have not derogated or noncompliance of any requirement under the arbitration agreement.

Section 8. [*Extent of Court Intervention.*] In matters governed by this Act, a court may not intervene except to the extent authorized by this Act.

Section 9. [*Court for Certain Functions of Arbitration Assistance and Supervision.*] The functions referenced in sections 13(3) and (4), section 15(3), section 16, section 18(3), and section 47 (2) shall be performed by the circuit court in the county in which the seat of the arbitration is located.

#### Section 10. [*Arbitration Agreement and Substantive Claim before Court.*]

(1) A court before which an action is brought in a matter that is the subject of an arbitration agreement shall, if a party so requests not later than when submitting its first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed.

(2) If an action described in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Section 11. [*Arbitration Agreement and Interim Measures by a Court.*] It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection and for a court to grant such a measure.

Section 12. [*Number of Arbitrators.*]

(1) The parties may determine the number of arbitrators.

(2) If the parties fail to determine the number of arbitrators, the number of arbitrators shall be [three].

Section 13. [*Appointment of Arbitrators.*]

(1) A person is not precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties may agree on a procedure of appointing the arbitrator or arbitrators, subject to subsections (4) and (5).

(3) Failing such agreement:

(a) In an arbitration having [three] arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within [30] days after receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within [30] days after their appointment, the appointment shall be made, upon request of a party, by the court specified in section 9.

(b) In an arbitration having a single arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed, upon request of a party, by the court specified in section 9.

(4) If, under an appointment procedure agreed upon by the parties:

(a) A party fails to act as required under such procedure;

(b) The parties, or two arbitrators, are unable to reach an agreement under such procedure; or

(c) A third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court specified in section 9 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by subsection (3) or subsection (4) to the court specified in section 9 is not appealable. The court, in appointing an arbitrator, shall have due regard to any qualifications required by the arbitrator by the agreement of the parties and to such considerations that are likely to secure the appointment of an independent and impartial arbitrator. In the case of the appointment of a sole or third arbitrator, the court shall take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

Section 14. [*Grounds for Challenge.*]

(1) When a person is approached in connection with a possible appointment as an arbitrator, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall disclose any such circumstances to the parties without delay, unless they have already been informed of them by him or her.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by it, or in whose appointment the party participated, only for reasons of which the party became aware after the appointment was made.

Section 15. [*Challenge Procedure.*]

(1) The parties may agree on a procedure for challenging an arbitrator, subject to subsection (3).

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within [15] days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance described in section 14 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or pursuant to subsection (2) is not successful, the challenging party may request, within [30] days after having received notice of the decision rejecting the challenge, the court specified in section 9 to decide on the challenge. The decision of the court is not appealable. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Section 16. [*Failure or Impossibility to Act.*]

(1) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court specified in section 9 to decide on the termination of the mandate. The decision of the court is not appealable.

(2) If, under this section or section 15(2), an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, such actions do not imply the acceptance of the validity of any ground described in this section or in section 14(2).

Section 17. [*Appointment of Substitute Arbitrator.*] If the mandate of an arbitrator terminates pursuant to section 15 or section 16 or because of his or her withdrawal from office for any other reason or because of the revocation of the mandate by agreement of the parties or in any other case of termination of the mandate, a substitute arbitrator shall be appointed pursuant to the rules that applied to the appointment of the arbitrator being replaced.

Section 18. [*Competence of Arbitral Tribunal to Rule on Its Jurisdiction.*]

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is not valid does not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that the party appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority must be raised as soon as the matter

alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referenced in subsection (2) as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within [30] days after receiving notice of that ruling, that the court specified in section 9 decide the matter. The decision of the court is not appealable. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Section 19. [*Power of Arbitral Tribunal to Order Interim Measures.*] Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures. An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time before the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

- (a) Maintain or restore the status quo pending determination of the dispute;
- (b) Take action to prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Section 20. [*Conditions for Granting Interim Measures.*]

(1) The party requesting an interim measure under section 19 must satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) A reasonable possibility exists that the requesting party will succeed on the merits of the claim. The determination on this possibility does not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under section 19, the requirements in subsection (1) apply only to the extent the arbitral tribunal considers appropriate.

Section 21. [*Applications for Preliminary Orders and Conditions for Granting Preliminary Orders.*]

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order prohibiting a party from frustrating the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order if it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions described in section 20 apply to any preliminary order if the harm assessed under section 20(1)(a) is the harm likely to result from the order being granted or not granted.

Section 22. [*Specific Regime for Preliminary Orders.*]

(1) Immediately after the arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order,

if any, and all other communications. The notice shall include a description of the content of any oral communication between any party and the arbitral tribunal in relation to any such request or application.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal must decide promptly on any objection to the preliminary order.

(4) A preliminary order expires [20] days after the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order after the party against whom the preliminary order is directed is given notice and an opportunity to present its case.

(5) A preliminary order is binding on the parties but is not enforceable by a court. Such a preliminary order does not constitute an award.

Section 23. [*Modification, Suspension, or Termination; Interim Measure or Preliminary Order.*] The arbitral tribunal may modify, suspend, or terminate an interim measure or a preliminary order it has granted upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Section 24. [*Provision of Security.*]

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Section 25. [*Disclosure.*]

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation continues until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, subsection (1) applies.

Section 26. [*Costs and Damages.*] The party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 27. [*Recognition and Enforcement.*]

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to section 20(1).

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of the termination, suspension, or modification of the interim measure.

(3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already

made a determination with respect to security or if such a decision is necessary to protect the rights of third parties.

Section 28. [*Grounds for Refusing Recognition or Enforcement.*]

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

1. Such refusal is warranted on the grounds set forth in section 49(1)(a)1., 2., 3., or 4.;

2. The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

3. The interim measure was terminated or suspended by the arbitral tribunal or, if so empowered, by the court of the state or country in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

1. The interim measure is incompatible with the powers conferred upon the court, unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purpose of enforcing that interim measure and without modifying its substance; or

2. Any of the grounds set forth in section 49(1)(b)1. or 2. apply to the recognition and enforcement of the interim measure.

(2) A determination made by the court on any ground in subsection (1) is effective only for the purposes of the application to recognize and enforce the interim measure. The court may not in making that determination undertake a review of the substance of the interim measure.

Section 29. [*Court-Ordered Interim Measures.*] A court has the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether the arbitration proceedings are held in this state, as it has in relation to the proceedings in courts. The court shall exercise such power in accordance with its own procedures and in consideration of the specific features of international arbitration.

Section 30. [*Equal Treatment of Parties.*] The parties shall be treated with equality and each party shall be given a full opportunity of presenting its case.

Section 31. [*Determination of Rules of Procedure.*] Subject to the provisions of this Act, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may, subject to the provisions of this chapter, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of evidence.

Section 32. [*Place of Arbitration.*]

(1) The parties may agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding subsection (1), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for



hearing witnesses, experts, or the parties, or for inspection of goods, other property, or documents.

Section 33. [*Commencement of Arbitral Proceedings.*] Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to an arbitration is received by the respondent.

Section 34. [*Language.*]

(1) The parties may agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall specify the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, applies to any written statement by a party, any hearing, and any award, decision, or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence be accompanied by a translation into the language or languages agreed upon by the parties or specified by the arbitral tribunal.

Section 35. [*Statements of Claim and Defense.*]

(1) Within the period of time agreed by the parties or specified by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue, and the relief or remedy sought, and the respondent shall state its defense to the claim, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement its claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Section 36. [*Hearings and Written Proceedings.*]

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings will be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(3) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be provided to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be provided to the parties.

Section 37. [*Default of a Party.*] Unless otherwise agreed by the parties, if, without showing sufficient cause:

(1) The claimant fails to provide its statement of claim pursuant to section 35(1), the arbitral tribunal shall terminate the proceedings.

(2) The respondent fails to communicate its statement of defense pursuant to section 35(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations.

(3) A party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

398  
399 Section 38. [*Expert Appointed by Arbitral Tribunal.*]

400 (1) Unless otherwise agreed by the parties, the arbitral tribunal may:

401 (a) Appoint one or more experts to report to it on specific issues to be determined  
402 by the arbitral tribunal.

403 (b) Require a party to give the expert any relevant information or produce or  
404 provide access to any relevant documents, goods, or other property for inspection by the expert.

405 (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal  
406 considers it necessary, the expert shall, after delivery of a written or oral report, participate in a  
407 hearing in which the parties have the opportunity to question the expert and to present expert  
408 witnesses in order to testify on the points at issue.

409  
410 Section 39. [*Court Assistance in Taking Evidence.*] The arbitral tribunal, or a party upon  
411 the approval of the arbitral tribunal, may request assistance in taking evidence from a competent  
412 court of this state. The court may execute the request within its competence and according to its  
413 rules on taking evidence.

414  
415 Section 40. [*Rules Applicable to Substance of Dispute.*]

416 (1) The arbitral tribunal shall decide the dispute pursuant to the rules of law chosen by the  
417 parties to apply to the substance of the dispute. Any designation of the law or legal system of a  
418 state or country shall be construed, unless otherwise expressed, as directly referring to the  
419 substantive law of that state or country and not to its conflict-of-laws rule.

420 (2) Failing any designation by the parties, the arbitral tribunal shall apply the law  
421 determined by the conflict-of-laws rules that it considers applicable.

422 (3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, only if  
423 the parties have expressly authorized it to do so.

424 (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the  
425 contract and shall take into account the usages of the trade which apply to the transaction.

426  
427 Section 41. [*Decision Making by Panel of Arbitrators.*] In arbitral proceedings having  
428 more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise  
429 agreed by the parties, by a majority of all its members. However, questions of procedure may be  
430 decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral  
431 tribunal.

432  
433 Section 42. [*Settlement.*]

434 (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall  
435 terminate the proceedings and, if requested by the parties and not objected to by the arbitral  
436 tribunal, record the settlement in the form of an arbitral award on agreed terms.

437 (2) An award on agreed terms shall be made pursuant to section 43 and shall state that it  
438 is an award. Such an award has the same status and effect as any other award on the merits of the  
439 case.

440  
441 Section 43. [*Form and Contents of Award.*]

442 (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators.  
443 In arbitral proceedings having more than one arbitrator, the signatures of the majority of all  
444 members of the arbitral tribunal shall suffice, if the reason for any omitted signature is stated.

445 (2) The award shall state the reasons upon which it is based, unless the parties have  
446 agreed that no reasons are to be given or the award is an award on agreed terms under section 42.

447 (3) The award shall state its date and the place of arbitration as determined pursuant to  
448 section 32(1). The award shall be deemed to have been made at that place.

449 (4) After the award is made, a copy signed by the arbitrators pursuant to subsection (1)  
450 shall be delivered to each party.

451  
452 Section 44. [*Termination of Proceedings.*]

453 (1) Arbitral proceedings are terminated by the final award or by an order of the arbitral  
454 tribunal pursuant to subsection (2).

455 (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings  
456 when:

457 (a) The claimant withdraws its claim, unless the respondent objects to the  
458 withdrawal of the claim and the arbitral tribunal recognizes that the respondent has a legitimate  
459 interest in obtaining a final settlement of the dispute;

460 (b) The parties agree on the termination of the proceedings; or

461 (c) The arbitral tribunal finds that the continuation of the proceedings has for any  
462 other reason become unnecessary or impossible.

463 (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral  
464 proceedings, subject to section 45 and section 47(4).

465  
466 Section 45. [*Correction and Interpretation of Award. Additional Award.*]

467 (1) (a) Within [30] days after receipt of the award, unless another period of time has  
468 been agreed upon by the parties:

469 1. A party, with notice to the other party, may request the arbitral tribunal  
470 to correct in the award any errors in computation, any clerical or typographical errors, or any  
471 errors of similar nature.

472 2. If so agreed by the parties, a party, with notice to the other party, may  
473 request the arbitral tribunal to give an interpretation of a specific point or part of the award.

474 (b) If the arbitral tribunal considers the request to be justified, it shall make the  
475 correction or give the interpretation within 30 days after the request. The interpretation becomes  
476 part of the award.

477 (2) The arbitral tribunal may correct any error described in subparagraph (1)(a)1. on its  
478 own initiative within [30] days after the date of the award.

479 (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may  
480 request, within [30] days after the receipt of the award, the arbitral tribunal to make an additional  
481 award as to claims presented in the arbitral proceedings but omitted from the award. If the  
482 arbitral tribunal considers the request to be justified, it shall make the additional award within  
483 [60] days after the request.

484 (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall  
485 make a correction, interpretation, or additional award pursuant to subsection (1) or subsection  
486 (3).

487 (5) Section 43, specifying the form and contents of an award, applies to a correction or  
488 interpretation of the award or to an additional award.

489  
490 Section 46. [*Immunity for Arbitrators.*] An arbitrator serving under this Act shall have  
491 judicial immunity in the same manner and to the same extent as a judge.

492  
493 Section 47. [*Application to Set Aside as Exclusive Recourse Against Arbitral Award.*]

494 (1) Recourse to a court against an arbitral award may be made only by an application to  
495 set aside an arbitral award pursuant to subsections (2) and (3).

(2) An arbitral award may be set aside by the court specified in section 9 only if:

(a) The party making the application furnishes proof that:

1. A party to the arbitration agreement defined in section 4(1)(c) was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this state;

2. The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;

3. The award deals with a dispute not contemplated by or not falling within the terms of the submissions to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

4. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties may not derogate, or, failing such agreement, was not in accordance with this Act; or

(b) The court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of this state or the award is in conflict with the public policy of this state.

(3) An application to set aside an arbitral award may not be made after [3] months have elapsed after the date on which the party making that application receives the award or, if a request had been made under section 45, after [3] months have elapsed after the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, if appropriate and so requested by a party, suspend the proceedings to set aside the award for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds to set aside the award.

#### Section 48. [*Recognition and Enforcement.*]

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to this section and section 49.

(2) The party relying on an award or applying for its enforcement shall supply the original or copy of the award. If the award is not made in the English language, the court may request the party to supply a translation of the award.

#### Section 49. [*Grounds for Refusing Recognition or Enforcement.*]

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) At the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

1. A party to the arbitration agreement defined in section 4(1)(c) was under some incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

543                   2. The party against whom the award is invoked was not given proper  
544 notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable  
545 to present its case;

546                   3. The award deals with a dispute not contemplated by or not falling  
547 within the terms of the submission to arbitration, or it contains decisions on matters beyond the  
548 scope of the submission to arbitration. However, if the decisions on matters submitted to  
549 arbitration can be separated from those not so submitted, that part of the award which contains  
550 decisions on matters submitted to arbitration may be recognized and enforced;

551                   4. The composition of the arbitral tribunal or the arbitral procedure was  
552 not in accordance with the agreement of the parties or, failing such agreement, was not in  
553 accordance with the law of the country where the arbitration took place; or

554                   5. The award has not yet become binding on the parties or has been set  
555 aside or suspended by a court of the country in which, or under the law of which, that award was  
556 made; or

557                   (b) If the court finds that the subject matter of the dispute is not capable of  
558 settlement by arbitration under the laws of this state or the recognition or enforcement of the  
559 award would be contrary to the public policy of this state.

560                   (2) If an application for setting aside or suspension of an award has been made to a court  
561 referenced in subparagraph (1)(a)5., the court where recognition or enforcement is sought may, if  
562 it considers it proper, adjourn its decision and may also, on the application of the party claiming  
563 recognition or enforcement of the award, order the other party to provide appropriate security.

564  
565                   Section 50. [*Severability*.] [Insert severability clause.]

566  
567                   Section 51. [*Repealer*.] [Insert repealer clause.]

568  
569                   Section 52. [*Effective Date*.] [Insert effective date.]

# Leasing Closed State Property

This Act requires the department of natural resources and the state historic preservation agency offer to lease to any interested unit of local government, non-profit organization, or public or private college or university, the operation and maintenance of any closed state park or historic site. It provides that the leasing entity shall retain all revenues generated by such operation during the term of the lease. The bill requires the state to reimburse a leasing entity for part of improvements to a property made or paid for by the entity at the end of a lease.

Submitted as:

Illinois

[Public Act 096-0557](#)

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 Lease of Closed State Properties  
2 Act.”

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

5           (1) “Agency” means the [state historic preservation agency].

6           (2) “Department” means the [department of natural resources].

7           (3) “Local entity” means a unit of local government or public college or university  
8 located in [this state].  
9

10          Section 3. [*Lease of Closed State Properties.*]

11          (a) Notwithstanding any other law, the [department] and the [agency] shall each offer to  
12 qualified interested local entities the opportunity to assume the operation and maintenance of any  
13 closed state park or closed state historic site, under the [department’s] or [agency’s] jurisdiction,  
14 through a lease established at the discretion of the [department] or [agency]. In addition, the  
15 [department] and [agency] may reject any offer and may select an interested local entity after a  
16 request for offers or request for proposals process. Notwithstanding any other provision of this  
17 Act, the [department] or [agency] may determine that a particular park or site, due to the value of  
18 the artifacts or exhibits or due to security issues or any other operational concerns, shall not be  
19 considered for leasing. The lease shall be awarded to the highest bidder that the [department] or  
20 [agency] deems to be the most qualified to operate and maintain the park or site.

21          (b) The lease shall be acceptable to both parties and must, at a minimum, contain  
22 provisions:

23               (1) Requiring the local entity to agree to release the state, the [agency], and the  
24 [department] from any and all liability for damages or injuries arising at the park or site during  
25 the lease period.

26               (2) Authorizing the [department] or [agency] to terminate the lease of a park or  
27 site after giving written notice to the local entity at least [60] days before terminating the lease.

28               (3) Establishing a lease term that is at [least one year but no more than 3 years] in  
29 length, and providing an option to extend the lease term, upon the written agreement of all of the  
30 parties to the lease, for an additional [2] years.

31 (4) Requiring the local entity to comply with the consultation requirements of the  
32 [Endangered Species Protection Act], the [state Natural Areas Preservation Act], and the  
33 [Wetlands Protection Act] and with all recommendations arising out of a consultation under one  
34 or more of those Acts.

35 (5) Prohibiting the local entity from undertaking activities related to road repair or  
36 development, tree or brush clearing, trail development, landscaping, wetland draining or filling,  
37 excavation, or similar work affecting the landscape and character of the park or site, without the  
38 express approval of the [agency] or [department].

39 (6) Authorizing the [department] or [agency] to require the special care of  
40 artifacts or storage of certain artifacts, or the exclusion of all artifacts when determined  
41 appropriate by the [department] or [agency]. Human skeletal remains and artifacts shall be turned  
42 over to the [state museum].

43 (7) Authorizing the [agency] or the [department] to assign any concession leases,  
44 service contracts, or activity use agreements to the local entity at the time that the lease is  
45 executed.

46 (8) Requiring each new or additional concession lease to be approved in writing  
47 by the [agency] or [department] before the execution of such a lease by the local entity.

48 (9) Requiring the local entity to maintain the property in a manner consistent with  
49 its status as a state park or site and as otherwise required by state law.

50 (10) Requiring the local entity to take responsibility for all costs, if any,  
51 associated with restoring the park or site to its pre-lease character and condition.

52 (c) All revenues generated by a local entity's operation of a park or site during a lease  
53 under this Act shall be retained by that local entity and must be used for the operation,  
54 maintenance, or operation and maintenance of that park or site.

55 (d) Upon expiration or termination of a lease under this Act, the local entity shall be  
56 reimbursed by the [department] or [agency], as the case may be, for the undepreciated portion of  
57 any improvements to the park or site made or paid for by the local entity during the period of the  
58 lease. All improvements shall be subject to the advance written approval of the [department] or  
59 [agency]. The local entity shall be reimbursed only after establishing, to the satisfaction of the  
60 [department] or [agency], that the local entity has complied with the lease provision required by  
61 subdivision (b)(5) of this Section and the improvements to the park or site that were made or  
62 paid for by the local entity extend beyond the applicable lease period.

63 (e) This Act is subject to and superseded by any federal law, regulation, condition, or  
64 stipulation prohibiting the lease of a park or site.

65  
66 Section 4. [*Collective Bargaining Work.*] A lessee under this Act shall contract with the  
67 state for all work that, if performed by employees of the state, would be performed by  
68 employees, as defined in [insert citation]. The [state] shall be the employer of all non-  
69 managerial, non-supervisory, and non-confidential employees, as defined in [insert citation].  
70 Employees performing such work shall be state employees as defined by [insert citation]. Neither  
71 historical representation rights under [insert citation] nor existing collective bargaining  
72 agreements shall be disturbed by the lease of a state park or state historic site.

73  
74 Section 5. [*Severability.*] [Insert severability clause.]

75  
76 Section 6. [*Repealer.*] [Insert repealer clause.]

77  
78 Section 7. [*Effective Date.*] [Insert effective date.]

# Medicaid Kickbacks

This Act makes it unlawful for any person to solicit or receive remuneration in return for referring someone to a service subject to reimbursement by Medicaid, or in return for purchasing, leasing, ordering any good, facility, service or item subject to reimbursement by Medicaid. It also makes it unlawful to offer or pay remuneration for such referrals, purchases, leases or orders.

Submitted as:

North Carolina

[SESSION LAW 2010-185](#)

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 to Prohibit Giving or  
2 Receiving Remuneration Related to the Making of Referrals or Purchase/Lease Arrangements  
3 That Lead to Medicaid Payments.”  
4

5           Section 2. [*Receiving Remuneration Related to Federal Health Care Programs*.]

6           (A) It shall be unlawful for any person to knowingly and willfully solicit or receive any  
7 remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly,  
8 in cash or in-kind:

9               (1) In return for referring an individual to a person for the furnishing or arranging  
10 for the furnishing of any item or service for which payment may be made in whole or in part  
11 under [insert citation].

12               (2) In return for purchasing, leasing, ordering, or arranging for or recommending  
13 purchasing, leasing, or ordering any good, facility, service, or item for which payment may be  
14 made in whole or in part under [insert citation].

15           (B) It shall be unlawful for any person to knowingly and willfully offer or pay any  
16 remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly,  
17 in cash or in-kind to any person to induce such person:

18               (1) To refer an individual to a person for the furnishing or arranging for the  
19 furnishing of any item or service for which payment may be made in whole or in part under this  
20 section.

21               (2) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or  
22 ordering any good, facility, service, or item for which payment may be made in whole or in part  
23 under this section.

24           (C) Subsections (A) and (B) of this section shall not apply to contracts between the state  
25 and a public or private agency where part of the agency’s responsibility is referral of a person to  
26 a provider or any conduct or activity that is specified in 42 U.S.C. § 1320a-7b(b)(3), as amended,  
27 or any federal regulations adopted pursuant thereto.

28           (D) Nothing in subsections (A) and (B) of this section shall be interpreted or construed to  
29 conflict with 42 U.S.C. § 1320a-7b(b), as amended, or with federal common law or federal  
30 agency interpretations of the statute.  
31



32           Section 3. [*Severability.*] [Insert severability clause.]  
33  
34           Section 4. [*Repealer.*] [Insert repealer clause.]  
35  
36           Section 5. [*Effective Date.*] [Insert effective date.]

# Monitoring the Sale of Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine

This Act establishes criteria to monitor buying and selling products that contain Ephedrine, Pseudoephedrine, or Phenylpropanolamine. The law makes it illegal to purchase certain amounts of these products during certain times.

The bill requires information about such purchases that is gathered from purchasers at the time of sale be entered into an electronic log instead of a written log. Such information must be transmitted to a data collection system in real time and generate a stop sale alert if the sale of Ephedrine, Pseudoephedrine, or Phenylpropanolamine would result in a violation of law. The Act provides that a retailer who receives a stop sale alert must not complete the sale unless they fear they will be harmed by the purchaser. It directs the state law enforcement division to set up an electronic monitoring system to serve as the repository for the information collected under the Act.

This draft legislation differs in several ways from the SSL draft “[Real Time Electronic Logbook for a Pharmacy to Record Purchases of Psuedoephedrine and Other Similar Substances](#)” in the 2009 *Suggested State Legislation* volume.

First, this legislation integrates all state precursor sales data into a National Precursor Log Exchange. That exchange currently operates in more than 25,000 retailers nationwide, including mandatorily in ten states. This is accomplished through the MOU specified by the bill to be executed by the National Drug Diversion Investigators Association. In practice, this results in sales being blocked and tracked regardless of state lines, and made immediately available to some 5000 law enforcement officers via a secure web-site.

Second, this law requires provision of the transactional data to a state law enforcement agency. This allows that division to feed their criminal intelligence data base, resulting in much more effective intelligence for investigators, all within the parameters of state and federal law.

Finally, this bill requires that there be no cost to any state government agency, retailer, or pharmacy for any of these services. In fact, all support, training, implementation, and administration to the extent requested are performed at no cost to said entities. This is accomplished by the required sponsorship of the manufacturers of these over-the-counter medicines, in order that these products can continue to be sold in the state.

Submitted as:

South Carolina

[Act 242 of 2010](#)

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 to Establish Criteria to  
2 Monitor Buying and Selling Products Containing Ephedrine, Pseudoephedrine, or  
3 Phenylpropanolamine.”  
4

5           Section 2. *[Procedures for Selling, Reporting, and Restricting Certain Products*  
6 *Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine.]*

7           (A) Nonprescription products whose sole active ingredient is Ephedrine,  
8 Pseudoephedrine, or Phenylpropanolamine can be offered for retail sale only if sold in blister  
9 packaging. The retailer shall ensure that such products are not offered for retail sale by self-  
10 service but only from behind a counter or other barrier so that such products are not directly  
11 accessible by the public but only by an employee or agent of the retailer.

12           (B) (1) A retailer may not sell to an individual in any single day a nonprescription  
13 product or a combination of nonprescription products containing more than [3.6] grams of  
14 Ephedrine, Pseudoephedrine, or Phenylpropanolamine; and a retailer may not sell to an  
15 individual in a [thirty-day] period a nonprescription product or a combination of nonprescription  
16 products containing more than [nine] grams of Ephedrine, Pseudoephedrine, or  
17 Phenylpropanolamine.

18           (2) An individual may not purchase in any single day a nonprescription product or  
19 a combination of nonprescription products containing more than [3.6] grams of Ephedrine,  
20 Pseudoephedrine, or Phenylpropanolamine; and an individual may not purchase in a [thirty-day]  
21 period a nonprescription product or a combination of nonprescription products containing more  
22 than [nine] grams of Ephedrine, Pseudoephedrine, or Phenylpropanolamine.

23           (C) It is unlawful for a retailer to purchase any product containing Ephedrine,  
24 Pseudoephedrine, or Phenylpropanolamine from any person or entity other than a manufacturer  
25 or a wholesale distributor registered by the United States Drug Enforcement Administration.

26           (D) (1) A retailer selling nonprescription products containing Ephedrine,  
27 Pseudoephedrine, or Phenylpropanolamine shall require the purchaser to produce a government  
28 issued photo identification showing the date of birth of the person and require the purchaser to  
29 sign an electronic log showing the date and time of the transaction, the person's name and  
30 address, the type, issuing governmental entity, identification number, and the amount of the  
31 compound, mixture, or preparation. The retailer shall determine that the name entered in the log  
32 corresponds to the name on the identification and that the date and time entered are correct and  
33 shall enter in the log the name of the product and the quantity sold. The retailer shall ensure that  
34 the product is delivered directly into the custody of that purchaser. The log must include a notice  
35 to purchasers that entering false statements or misrepresentations in the log may subject the  
36 purchaser to criminal penalties.

37           (2) Before completing a sale of a product regulated by this section, the retailer  
38 electronically shall transmit the information entered in the log to a data collection system  
39 provided by the National Association of Drug Diversion Investigators, or a successor or similar  
40 entity. The system must collect this data in real time and generate a Stop Sale Alert if the sale  
41 would result in a violation of subsection (B) or a federal quantity restriction, which must be  
42 assessed on the basis of sales or purchases made in any state to the extent that information is  
43 available in the data collection system. If the retailer receives a Stop Sale Alert, the retailer must  
44 not complete the sale unless the retailer, upon notifying the purchaser the sale cannot be  
45 completed, reasonably fears bodily harm if they deny the sale due to the Stop Sale Alert. A  
46 product regulated by this section may not be sold without being reported to the data collection  
47 system unless the system is experiencing temporary technical difficulties that prevent a retailer  
48 from reporting the information to the system, and in that case, the retailer shall enter the  
49 necessary information in a written log, which must subsequently be entered into the electronic  
50 log within [three business days] of each business day that the electronic log was not operational.  
51 A retailer using a written log under these circumstances is immune from liability during the time  
52 the system is temporarily disabled.

(3) Any information entered in the electronic log that is retained by a retailer, or information maintained by a retailer pursuant to subsection (J)(2), is confidential and not a public record as defined in Section 30-4-20(c) of the Freedom of Information Act. A retailer or an employee or agent of a retailer who in good faith releases information in a log to federal, state, or local law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misrepresentation.

(E) Except as authorized by this section, it is unlawful for any person to possess, have under their control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of Ephedrine, Pseudoephedrine, or Phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers which have been altered from an original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. This subsection does not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose as directed by a person licensed under [insert citation] and authorized to prescribe legend drugs.

(F) It is unlawful for a person to enter false statements or misrepresentations on the log required pursuant to subsection (D)(1).

(G) This section preempts all local ordinances or regulations governing the retail sale or purchase of nonprescription products containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine except such local ordinances or regulations that existed on or before [insert date.]

(H) (1) Except as otherwise provided in this section, it is unlawful for a retailer knowingly to violate subsection (A), (B)(1), (C), (D)(1), or (D)(2), and it is unlawful for a person knowingly to violate subsection (B)(2), (E), or (F).

(2) A retailer convicted of a violation of subsection (A) or (B)(1) is guilty of a misdemeanor and, upon conviction for a [first] offense, must be fined not more than [five thousand] dollars and, upon conviction for a [second] or subsequent offense, must be fined not more than [ten thousand] dollars.

(3) A retailer convicted of a violation of subsection (C) is guilty of a misdemeanor and, upon conviction for a [first] offense, must be imprisoned not more than [one year] or fined not more than [one thousand] dollars, or both and, upon conviction for a [second] or subsequent offense, must be imprisoned not more than [three years] or fined not more than [five thousand] dollars, or both.

(4) A retailer convicted of a violation of subsection (D)(1), (D)(2), or (J)(2) is guilty of a misdemeanor and, upon conviction for a [first] offense, must be fined not more than [one thousand] dollars and not less than [five hundred] dollars. Upon conviction for a [second] offense, a retailer must be fined not more than [five thousand] dollars and not less than [one thousand] dollars. Upon conviction for a [third] or subsequent offense, a person must be fined not more than [ten thousand] dollars and not less than [five thousand] dollars.

(5) A person convicted of a violation of subsection (B)(2) or (E) is guilty of a felony and, upon conviction for a [first] offense, must be imprisoned not more than [five] years and fined not more than [five thousand] dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a [second] or subsequent offense, the offender is guilty of a [felony] and, upon conviction, must be imprisoned not more than [ten] years or fined not less than [ten thousand] dollars.

(6) A person convicted of a violation of subsection (F), upon conviction for a [first] offense, is guilty of a misdemeanor and must be fined not more than [one thousand] dollars and, upon conviction for a [second] or subsequent offense, is guilty of a felony and must be fined not more than [five thousand] dollars.

(7) It is an affirmative defense to a violation of subsection (A), (C), or (D)(1) if a retailer provided the training, maintained records, and obtained employee and agent statements of agreement required by Subsection (I) for all employees and agents at the retail location where the violation occurred and at the time the violation occurred.

(8) It is an affirmative defense to completing a sale following receipt of a Stop Sale Alert received pursuant to subsection (D)(2) if the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if they deny the sale due to the Stop Sale Alert.

(I) A retailer shall provide training on the requirements of this section to all agents and employees who are responsible for delivering the products regulated by this section into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products. A retailer shall obtain a signed, written agreement from each employee or agent that the employee or agent agrees to comply with the requirements of this section. The retailer shall maintain records demonstrating that these employees and agents have been provided this training and the documents executed by the retailer's employees and agents agreeing to comply with this section.

(J) (1) The following are exempt from the electronic log requirements of this section but shall maintain a written log containing the information required to be entered in the electronic log, as provided for in subsection (D)(1):

(a) a retailer that only sells single dose packages of nonprescription Ephedrine, Pseudoephedrine, or Phenylpropanolamine;

(b) A pharmacy that does not have a compatible point of sale system.

(2) A retailer who maintains a written log pursuant to this subsection shall retain the written log for [two] years after which the log may be destroyed. The log must be made available for inspection within [twenty-four] hours of a request made by a local, state, or federal law enforcement officer.

(3) A retailer who violates the requirements of maintaining a written log as provided for in subsection (J)(2) is subject to the penalties provided for in subsection (H)(4).

(K) The sheriff or chief of police shall monitor and determine if retailers, other than licensed pharmacies, are in compliance with the provisions of this section by ensuring that a retailer:

(1) Is entering all sales of a product regulated by this section in an electronic log as required by this section;

(2) If not maintaining an electronic log, is exempt as provided for in subsection (J)(1), and is continuing to maintain the written log as provided for in subsection (J);

(3) Is not selling products regulated by this section.

(L) This section does not apply to:

(1) Pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under [twelve] years of age according to label instructions;

(2) Products that the [board of pharmacy], upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into Methamphetamine or its salts or precursors; and

(3) A purchase of a single sales package containing not more than [sixty] milligrams of Pseudoephedrine.

(M) For purposes of this section "retailer" means a retail distributor, including a pharmacy, where Ephedrine, Pseudoephedrine, or Phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.

### Section 3. *[Electronic Monitoring System.]*

(A) The [state law enforcement division (SLED)] shall serve as the statewide, central repository for log information submitted electronically in real time to the data collection system pursuant to section (D)(2) of this Act and transferred to [SLED] in order to monitor the sales and purchases of nonprescription products containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine. [SLED] shall maintain the information received from the data collection system in [SLED's Electronic Monitoring System] and must not be charged any vendor or other fees associated with the requirements of this Act.

(B) The data collection system upon which [SLED's Electronic Monitoring System] is based must have the capability to:

(1) Calculate state and federal sales and purchase limitations for Ephedrine, Pseudoephedrine, and Phenylpropanolamine;

(2) Match similar purchaser identification information;

(3) Alert retailers of potential illegal sales and purchases;

(4) Allow a retailer to override an alert of a potential illegal sale or purchase;

(5) Receive Ephedrine, Pseudoephedrine, and Phenylpropanolamine sales data from retailers in the format in which the data was submitted so that retailers are not required to use any one particular vendor's product to comply with the requirements of this section and section (D)(2); and

(6) Interface with existing and future operational systems used by pharmacies at no cost to these pharmacies.

(C) The data transmitted to the data collection system must be recorded in real time and the storage of this data must be housed by an information technology company operating under strict security standards that only may be accessed by local, state, or federal law enforcement authorized by [SLED].

(D) (1) No fee may be charged to retailers for access to the data collection system to which information is required to be transmitted pursuant to section (D)(2) of this Act, and no other fee or assessment can be imposed on retailers to fund program operations.

(2) No fee may be charged to local, state, or federal law enforcement officers or entities for access to or retention, analysis, or use of information in the system concerning sales and purchases of nonprescription Ephedrine, Pseudoephedrine, and Phenylpropanolamine that violate or potentially violate subsection (B)(1) or (2).

(E) The information in [SLED's Electronic Monitoring System] is confidential and not a public record as defined in [insert citation]. [SLED] only shall provide access to information maintained in the monitoring system to:

(1) a local, state, or federal law enforcement official, a state attorney, or a United States Attorney;

(2) a local, state, or federal official who requests access to the monitoring system for the purpose of facilitating a product recall necessary to protect public health and safety; and

(3) the [board of pharmacy] for the purpose of investigating misconduct or a suspicious transaction committed by a retailer, a pharmacist, or an employee or agent of a pharmacy.

(F) for purposes of this section "retailer" means a retail distributor, including a pharmacy, where Ephedrine, Pseudoephedrine, or Phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.

(G) The [division] shall promulgate regulations necessary to carry out its responsibilities under this section.

(H) Nothing in this Act prohibits [SLED] or any retailer from participating in other data submission, collection, or monitoring systems that monitor the sales and purchases of nonprescription products containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine.

200  
201       Section 4. [*Memorandum of Agreement.*] Before [insert date], the [State Law  
202 Enforcement Division (SLED)] shall enter into a Memorandum of Agreement with the National  
203 Association of Drug Diversion Investigators (NADDI), or a successor or other entity, to identify  
204 the roles and responsibilities of [SLED] and NADDI, or a successor or other entity, in carrying  
205 out the collection of sales and purchase data of Ephedrine, Pseudoephedrine, or  
206 Phenylpropanolamine products and the transference of this information to the [state law  
207 enforcement division] as provided for in this Act. The Memorandum must provide that the data  
208 and information in [SLED's Electronic Monitoring System] is property of the state and that  
209 NADDI will provide [SLED] with that data and information at least [four] times a year in a  
210 format agreed to by [SLED] and NADDI and that is consistent with the most recent standards  
211 adopted by the American Society for Automation in Pharmacy (ASAP), as well as the most  
212 recent standards adopted by the National Information Exchange Model (NIEM).

213  
214       Section 5. [*Implementation Date.*] The electronic logbook, central data collection system,  
215 and the [state law enforcement division electronic monitoring system] required pursuant to  
216 section 3 of this Act must be implemented by [insert date].

217  
218       Section 6. [*Severability.*] [Insert severability clause.]

219  
220       Section 7. [*Repealer.*] [Insert repealer clause.]

221  
222       Section 8. [*Effective Date.*] [Insert effective date.]

# Nonrecourse Civil Litigation

The Act regulates civil litigation funding companies doing business in the state. Nonrecourse civil litigation funding means a transaction in which a civil litigation funding company purchases and a consumer assigns the contingent right to receive an amount of the potential proceeds of the consumer's legal claim to the civil litigation funding company out of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive in the legal claim.

Submitted as:

Nebraska

[LB 1094 \(As approved by governor\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Title.*] This Act shall be cited as “The Nonrecourse Civil Litigation Act.”

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

4           (1) Civil litigation funding company means a person or entity that enters into a  
5 nonrecourse civil litigation funding transaction with a consumer;

6           (2) Consumer means a person residing or domiciled in this state or who elects to enter  
7 into a transaction under the Act, whether it be in person, over the Internet, by facsimile, or by  
8 any other electronic means, and who has a pending legal claim and is represented by an attorney  
9 at the time they receive the nonrecourse civil litigation funding;

10          (3) Legal claim means a civil claim or action; and

11          (4) Nonrecourse civil litigation funding means a transaction in which a civil litigation  
12 funding company purchases and a consumer assigns the contingent right to receive an amount of  
13 the potential proceeds of the consumer's legal claim to the civil litigation funding company out  
14 of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive  
15 in the legal claim.

16  
17          Section 3. [*Civil Litigation Funding Company Registration and Certificate.*]

18          (A) Unless a civil litigation funding company has first registered pursuant to this Act, a  
19 civil litigation funding company cannot engage in the business of nonrecourse civil litigation  
20 funding.

21          (B) A civil litigation funding company shall submit an application of registration to the  
22 [Secretary of State] in a form prescribed by the [Secretary of State]. An application filed under  
23 this subsection is a public record and shall contain information that allows the [Secretary of  
24 State] to make an evaluation of the character, fitness, and financial responsibility of the company  
25 such that the [Secretary of State] may determine that the business will be operated honestly or  
26 fairly within the purposes of the Act.

27          (C) For purposes of determining a civil litigation funding company's character, fitness,  
28 and financial responsibility, the [Secretary of State] shall request a company to submit a copy of  
29 the company's articles of incorporation, articles of organization, certificate of limited  
30 partnership, or other organizational documents; proof of registration with a [state registered



agent]; and proof of a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in this state that is equal to double the amount of the largest funding in the past calendar year or [fifty thousand] dollars, whichever is greater.

(D) A civil litigation funding company may apply to renew a registration by submitting an application for renewal in a form prescribed by the [Secretary of State]. An application filed under this subsection is a public record. The registration shall contain current information on all matters required in an original registration.

(E) An application for registration or renewal of registration under of this Act shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(F) The [Secretary of State] may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering this Act, in the event any such fees are required. Such fees shall be collected by the [Secretary of State] and remitted to the [state treasurer] for credit to the [Secretary of State Administration Cash Fund].

(G) The [Secretary of State] shall issue a certificate of registration to a civil litigation funding company who complies with this Act.

(H) The [Secretary of State] may refuse to issue a certificate of registration if the [Secretary of State] determines that the character, fitness, or financial responsibility of the civil litigation funding company are such as to warrant belief that the business will not be operated honestly or fairly within the purposes of this Act.

(I) The [Secretary of State] may suspend, revoke, or refuse to renew a certificate of registration for conduct that would have justified denial of registration under this Act.

(J) The [Secretary of State] may deny, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing under [insert citation].

(K) The [Secretary of State] may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

(L) The [Secretary of State] shall require a civil litigation funding company registered pursuant to this Act to [annually] submit certain data, in a form prescribed by the [Secretary of State] that contains:

- (1) The number of nonrecourse civil litigation fundings;
- (2) The amount of nonrecourse civil litigation fundings;
- (3) The number of nonrecourse civil litigation fundings required to be repaid by the consumer;
- (4) The amount charged to the consumer, including, but not limited to, the annual percentage fee charged to the consumer and the itemized fees charged to the consumer; and
- (5) The dollar amount and number of cases in which the realization to the civil litigation funding company was less than contracted.

#### Section 4. *[Nonrecourse Civil Litigation Funding Contracts.]*

(A) All contracts for nonrecourse civil litigation funding shall comply with the following requirements:

- (1) The contract shall be completely filled in and contain on the front page, appropriately headed and in at least [twelve-point bold] type, the following disclosures:
  - (a) The total dollar amount to be funded to the consumer;
  - (b) An itemization of one-time fees;
  - (c) The total dollar amount to be repaid by the consumer, in [six-month] intervals for [thirty-six] months, and including all fees;

80 (d) The total dollar amount in broker fees that are involved in the  
81 transaction; and

82 (e) The annual percentage rate of return, calculated as of the last day of  
83 each [six-month] interval, including frequency of compounding;

84 (B) The contract shall provide that the consumer may cancel the contract within [five]  
85 business days following the consumer's receipt of funds without penalty or further obligation.

86 (C) The contract shall contain the following notice written in a clear and conspicuous  
87 manner:

88  
89 "Consumer's Right to Cancellation:

90  
91 You may cancel this contract without penalty or further obligation within [five]  
92 business days from the date you receive funding from (insert name of civil  
93 litigation funding company)."

94  
95 The contract also shall specify that in order for the cancellation to be effective, the consumer  
96 shall either return the full amount of disbursed funds to the civil litigation funding company by  
97 delivering the civil litigation funding company's uncashed check to the civil litigation funding  
98 company's offices in person, within [five] business days after the disbursement of funds, or mail  
99 a notice of cancellation and include in that mailing a return of the full amount of disbursed funds  
100 in the form of the civil litigation funding company's uncashed check or a registered or certified  
101 check or money order, by insured, registered, or certified United States mail, postmarked within  
102 [five] business days after receiving funds from the civil litigation funding company, to the  
103 address specified in the contract for the cancellation;

104 (D) The contract shall contain the following statement in at least [twelve-point] boldface  
105 type:

106  
107 "The civil litigation funding company agrees that it shall have no right to and will  
108 not make any decisions with respect to the conduct of the underlying legal claim  
109 or any settlement or resolution thereof and that the right to make those decisions  
110 remains solely with you and your attorney in the legal claim."

111  
112 (E) The contract shall contain an acknowledgement by the consumer that such consumer  
113 has reviewed the contract in its entirety;

114 (F) The contract shall contain the following statement in at least [twelve-point] boldface  
115 type located immediately above the place on the contract where the consumer's signature is  
116 required:

117  
118 "Do not sign this contract before you read it completely or if it contains any blank  
119 spaces. You are entitled to a completely filled in copy of this contract. Before you  
120 sign this contract you should obtain the advice of an attorney. Depending on the  
121 circumstances, you may want to consult a tax, public or private benefit planning,  
122 or financial professional. You acknowledge that your attorney in the legal claim  
123 has provided no tax, public or private benefit planning, or financial advice  
124 regarding this transaction."

125  
126 (G) The contract shall contain a written acknowledgment by the attorney representing the  
127 consumer in the legal claim that states all of the following:

(1) The attorney representing the consumer in the legal claim has reviewed the contract and all costs and fees have been disclosed including the annualized rate of return applied to calculate the amount to be paid by the consumer;

(2) The attorney representing the consumer in the legal claim is being paid on a contingency basis per a written fee agreement;

(3) All proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the legal claim or a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer;

(4) The attorney representing the consumer in the legal claim is following the written instructions of the consumer with regard to the nonrecourse civil litigation funding;

(5) The attorney representing the consumer in the legal claim shall not be paid or offered to be paid commissions or referral fees; and

(6) Whether the attorney representing the consumer in the legal claim does or does not have a financial interest in the civil litigation funding company; and

(H) All contracts to the consumer shall have in plain language, in a box with bold [fifteen-point] font stating the following in capitalized letters:

"If there is no recovery of any money from your legal claim or if there is not enough money to pay the civil litigation funding company back in full, you will not owe the civil litigation funding company anything in excess of your recovery unless you have violated this purchase agreement."

(I) If a dispute arises between the consumer and the civil litigation funding company concerning the contract for nonrecourse civil litigation funding, the responsibilities of the attorney representing the consumer in the legal claim shall be no greater than the attorney's responsibilities under [insert citation].

#### Section 5. *[Civil Litigation Funding Company Commissions and Fees.]*

(A) The civil litigation funding company shall not pay or offer to pay commissions or referral fees to any attorney or employee of a law firm or to any medical provider, chiropractor, or physical therapist or their employees for referring a consumer to the civil litigation funding company.

(B) The civil litigation funding company shall not accept any commissions, referral fees, or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or physical therapist or their employees.

(C) The civil litigation funding company shall not advertise false or intentionally misleading information regarding such company's product or services.

(D) The civil litigation funding company shall not knowingly provide nonrecourse civil litigation funding to a consumer who has previously sold and assigned an amount of such consumer's potential proceeds from the legal claim to another civil litigation funding company without first buying out that civil litigation funding company's entire accrued balance unless otherwise agreed in writing by the civil litigation funding companies and the consumer.

(E) A civil litigation funding company may not assess fees for any period exceeding [thirty-six] months from the date of the contract with the consumer.

(F) Fees assessed by the civil litigation funding company shall compound at least [semiannually] but shall not compound based on any lesser time period.

(G) In calculating the annual percentage fee or rate of return, a civil litigation funding company shall include all charges payable directly or indirectly by the consumer and shall compute the rate based only on amounts actually received and retained by a consumer.

(H) No communication between the attorney and the civil litigation funding company as it pertains to the nonrecourse civil litigation funding contract shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Section 6. [*Report.*] The [Secretary of State] shall [annually] prepare and submit a report to the [Clerk of the Legislature] and to the [Judiciary Committee of the Legislature] about the status of nonrecourse civil litigation funding activities in the state. The report shall include aggregate information reported by registered civil litigation funding companies.

Section 7. [*Funding.*]

(A) There is hereby created the [Nonrecourse Civil Litigation Administration Cash Fund]. The fund shall consist of revenue received to defray costs as authorized in this Act of this Act. The revenue shall be collected by the [Secretary of State] and remitted to the [State Treasurer] for credit to the fund.

(B) Any money in the fund available for investment shall be invested by the [state investment officer] pursuant to [insert citation].

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

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

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

# Online Prescribing, Dispensing, and Facilitation Licensing

This Act enables online prescribing and dispensing drugs. The Act requires a state license to engage in online prescribing, online dispensing, and certain related transactions it defines as Internet facilitation. It establishes requirements for licensing and allows certain online prescribers, online contract pharmacies, and Internet facilitators to continue delivering online pharmaceutical services while their applications for licensure are pending with the state. The legislation establishes duties for a licensed online prescriber, online contract pharmacy, and Internet facilitator. It limits the type of drugs that can be prescribed online.

Submitted as:

Utah

[SB 274 \(Enrolled copy\)](#)

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 Online Prescribing, Dispensing,  
2 and Facilitation Licensing Act.”

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

5           (1) “Board” means the [Online Prescribing, Dispensing, and Facilitation Licensing  
6 Board] created in Section 3.

7           (2) “Branching questionnaire” means an adaptive and progressive assessment tool  
8 approved by the [board].

9           (3) “Delivery of online pharmaceutical services” means the process in which a  
10 prescribing practitioner diagnoses a patient and prescribes one or more of the drugs authorized  
11 by Section 9, using:

12               (a) a branching questionnaire or other assessment tool approved by the [division]  
13 for the purpose of diagnosing and assessing a patient’s health status;

14               (b) an Internet contract pharmacy to dispense the prescribed drug or transfer the  
15 prescription to another pharmacy; and

16               (c) an Internet facilitator to facilitate the practices described in Subsections (3)(a)  
17 and (b).

18           (4) “Division” means the [Division of Occupational and Professional Licensing].

19           (5) “Internet facilitator” means a licensed provider of a web-based system for electronic  
20 communication between and among an online prescriber, the online prescriber’s patient, and the  
21 online contract pharmacy.

22           (6) “Online contract pharmacy” means a pharmacy licensed and in good standing under  
23 [insert citation], as either a [Class A Retail Pharmacy] or a [Class B Closed Door Pharmacy] and  
24 licensed under this Act to fulfill prescriptions issued by an online prescriber through a specific  
25 Internet facilitator.

26           (7) “Online prescriber” means a person:

27               (a) licensed under [insert citation];

(b) whose license under [insert citation] includes assessing, diagnosing, and prescribing authority for humans; and

(c) who has obtained a license under this Act to engage in online prescribing.

(8) “Unlawful conduct” means conduct, by any person, that is defined as unlawful under this Act and includes:

(a) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this Act if the person is not licensed to do so or not exempted from licensure under this Act or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license;

(b) impersonating another licensee or practicing an occupation or profession under a false or assumed name, except as permitted by law;

(c) knowingly employing any other person to practice or engage in or attempt to practice or engage in any occupation or profession licensed under this Act if the employee is not licensed to do so under this Act;

(d) knowingly permitting the person’s authority to practice or engage in any occupation or profession licensed under this Act to be used by another, except as permitted by law;

(e) obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the [division] or a [licensing board] through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission;

(f) (I) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located in this state:

(A) without prescriptive authority conferred by a license issued under this Act, or by an exemption to licensure under this Act; or

(B) with prescriptive authority conferred by an exception issued under this Act or a multistate practice privilege recognized under this Act if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment; and

(II) Subsection (8)(f)(I) does not apply to treatment rendered in an emergency, on-call or cross coverage situation, provided that the person who issues the prescription has prescriptive authority conferred by a license under this Act, or is exempt from licensure under this Act.

(g) engaging in the practice of Internet prescribing without a license under this Act.

(h) online prescribing, dispensing or facilitating of a legend drug not authorized by the [division] in accordance with Section 9; or

(i) online prescribing, dispensing or facilitating of a controlled substance.

(9) “Unprofessional conduct” means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this Act or under any rule adopted under this Act and includes:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this Act;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this Act;

(c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered

with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession;

(d) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under [insert citation];

(e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession;

(f) practicing or attempting to practice an occupation or profession regulated under this Act despite being physically or mentally unfit to do so;

(g) practicing or attempting to practice an occupation or profession regulated under this Act through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

(h) practicing or attempting to practice an occupation or profession requiring licensure under this Act by any form of action or communication which is false, misleading, deceptive, or fraudulent;

(i) practicing or attempting to practice an occupation or profession regulated under this Act beyond the scope of the licensee's competency, abilities, or education;

(j) practicing or attempting to practice an occupation or profession regulated under this Act beyond the scope of the licensee's license;

(k) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this Act or otherwise facilitated by the licensee's license;

(l) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule;

(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device:

(I) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or

(II) with prescriptive authority conferred by an exception issued under this Act, or a multi-state practice privilege recognized under this Act, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment;

(n) violating a provision of [insert citation]; or

(o) as may be further defined by administrative rule:

(I) online prescribing, dispensing, or facilitation with respect to a person under the age of [18] years;

(II) using the name or official seal of the state, the [Department of Commerce], or the [Division of Occupational and Professional Licensing], or their boards, in an unauthorized manner;

(III) failing to respond promptly to a request by the [division] for information including an audit of the website or records of the online prescriber, the Internet facilitator, or the online contract pharmacy;

(IV) using an online prescriber, online contract pharmacy, or Internet facilitator without approval of the [division];  
(V) failing to inform a patient of the patient's freedom of choice in selecting who will dispense a prescription in accordance with Section 8(1)(o); and  
(VI) failing to keep the [division] informed of the name and contact information of the Internet facilitator or online contract pharmacy.

### Section 3. [Board.]

(1) There is created the [Online Prescribing, Dispensing, and Facilitation Licensing Board] consisting of the following [seven] members:

(a) [two] members who are licensed under either [The Medical Practices Act, or The Osteopathic Medical Practices Act], of which one shall be engaged in the delivery of online pharmaceutical services and one may not be an online prescriber licensed under this Act;

(b) [two] members who are licensed as a [pharmacist] under [insert citation], of which [one] shall be associated with an online contract pharmacy and [one] may not be associated with an online contract pharmacy;

(c) [two] members of the general public who are not associated with an online prescriber; an online contract pharmacy; or an Internet facilitator; and

(d) [one] member who is licensed under this Act as an Internet facilitator.

(2) Notwithstanding any other requirement for membership on the [board], no more than [one] member of the [board] may be associated in any of the following ways with the same Internet facilitator as an owner; as an employee; as an officer; as a director; contracted with; as an agent of; or having any direct or indirect financial interest.

(3) The [board] shall be appointed and serve in accordance with [insert citation].

(4) (a) The duties and responsibilities of the [board] shall be in accordance with [insert citation] and as otherwise provided in this Act.

(b) The [board] may designate one of its members on a permanent or rotating basis to assist the [division] in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee and advise the [division] in its investigation of a complaint.

(5) A [board] member who has, under Subsection (4), reviewed a complaint or advised in its investigation may be disqualified from participating with the [board] when the [board] serves as a presiding officer of an administrative proceeding concerning the complaint.

### Section 4. [Licensure Required; Issuance of Licenses.]

(1) Beginning [insert date] and except as provided in Section 10:

(a) a physician licensed under [The Medical Practice Act] or [The Osteopathic Medical Practice Act], shall be licensed under this Act to engage in the delivery of online pharmaceutical services;

(b) an online contract pharmacy shall be licensed under this Act to engage in the delivery of online pharmaceutical services; and

(c) an Internet facilitator shall be licensed under this Act to engage in the delivery of online pharmaceutical services.

(2) The [division] shall issue, to any person who qualifies under this Act, a license to prescribe online; to operate as an online contract pharmacy; or to operate as an Internet facilitator.

(3) A license under this Act is not required to engage in electronic prescribing under [insert citation] and (b) nothing in this Act shall prohibit a physician licensed under [The Medical Practice Act], or [The Osteopathic Medical Practice Act], from electronic prescribing or Internet prescribing as permitted by [insert citation].



Section 5. *[Qualifications for Licensure.]*

(1) Each applicant for licensure as an online prescriber under this Act shall:

- (a) submit an application in a form prescribed by the [division];
- (b) pay a fee determined by the [department] under [insert citation];
- (c) be of good moral character;
- (d) document that the applicant holds a license from this state that is active and in good standing and authorizes the licensee to engage in the assessment, diagnosis, and treatment of human ailments and the prescription of medications;
- (e) document that any other professional license the applicant possesses from other jurisdictions is in good standing;
- (f) submit to the [division] an outline of the applicant's proposed online assessment, diagnosis, and prescribing tool, such as a branching questionnaire and demonstrate the proposed online assessment, diagnosis, and prescribing tool to the [board] and establish to the [board's] satisfaction that the utilization of that assessment tool to facilitate the prescription of the drugs approved for online prescribing under Section 8 does not compromise the public's health, safety, or welfare;
- (g) submit policies and procedures that address patient confidentiality, including measures that will be taken to ensure that the age and other identifying information of the person completing the online branching questionnaire are accurate;
- (h) describe the mechanism by which the online prescriber and patient will communicate with one another, including electronic and telephonic communication;
- (i) describe how the online prescriber/patient relationship will be established and maintained;
- (j) submit the name, address, and contact person of the Internet facilitator with whom the online prescriber has contracted to provide services that the online prescriber will use to engage in online assessment, diagnosis, and prescribing; and
- (k) submit documentation satisfactory to the [board] regarding public health, safety, and welfare demonstrating:
  - (I) how the online prescriber will comply with the requirements of Section 9; the contractual services arrangement between the online prescriber; the Internet facilitator; and the online contract pharmacy; and
  - (II) how the online prescriber will allow and facilitate the [division's] ability to conduct audits in accordance with Section 11.

(2) An online prescriber may not use the services of an Internet facilitator or online contract pharmacy whose license is not active and in good standing.

(3) Each applicant for licensure as an online contract pharmacy under this Act shall be licensed in good standing in this state as a [Class A Retail Pharmacy] or a [Class B Closed Door Pharmacy] and:

- (a) submit a written application in the form prescribed by the [division];
- (b) pay a fee as determined by the [department] under [insert citation];
- (c) submit any contract between the applicant and the Internet facilitator with which the applicant is or will be affiliated;
- (d) submit proof of liability insurance acceptable to the [division] that expressly covers all activities the online contract pharmacy will engage in under this Act, which coverage shall be in a minimum amount of [\$1,000,000] per occurrence with a policy limit of not less than [\$3,000,000];
- (e) submit a signed affidavit to the [division] attesting that the online contract pharmacy will not dispense a drug that is prescribed by an online prescriber engaged in the

223 delivery of online pharmaceutical services under the provisions of this Act unless the drug is  
224 specifically approved by the [division] under Section 9 and both the prescribing and the  
225 dispensing of the drug were facilitated by the Internet facilitator with whom the Internet contract  
226 pharmacy is associated under Section 8(3)(d);

227 (f) document that any other professional license the applicant possesses from  
228 other jurisdictions is active and in good standing; and

229 (g) demonstrate to the [division] that the applicant has satisfied any background  
230 check required by [insert citation], and each owner, officer, or manager of the applicant online  
231 contract pharmacy has not engaged in any act, practice, or omission, which when considered  
232 with the duties and responsibilities of a licensee under this Act indicates there is cause to believe  
233 that issuing a license under this Act is inconsistent with the public's health, safety, or welfare.

234 (4) Each applicant for licensure as an Internet facilitator under this Act shall:

235 (a) submit a written application in the form prescribed by the [division];

236 (b) pay a fee as determined by the department under [insert citation];

237 (c) submit any contract between the applicant and each online prescriber and the  
238 single online contract pharmacy with which the applicant will be affiliated:

239 (d) submit written policies and procedures satisfactory to the [division] that

240 (I) address patient privacy, including compliance with 45 C.F.R. Parts  
241 160, 162, and Health Insurance Portability and Accountability Act of 1996;

242 (II) ensure compliance with all applicable laws by health care personnel  
243 and the online prescriber who will process patient communications;

244 (III) list the hours of operation;

245 (IV) describe the types of services that will be permitted electronically;

246 (V) describe the required patient information to be included in the  
247 communication, such as patient name, identification number, and type of transaction;

248 (VI) establish procedures for archiving and retrieving information; and

249 (VII) establish quality oversight mechanisms;

250 (e) submit written documentation of the applicant's security measures to ensure  
251 the confidentiality and integrity of any user-identifiable medical information;

252 (f) submit a description of the mechanism for:

253 (I) patients to access, supplement, and amend patient-provided personal  
254 health information;

255 (II) back-up regarding the Internet facilitator electronic interface;

256 (III) the quality of information and services provided via the interface; and

257 (IV) patients to register complaints regarding the Internet facilitator, the  
258 online prescriber, or the online contract pharmacy;

259 (g) submit a copy of the Internet facilitator's website;

260 (h) sign an affidavit attesting that the applicant will not access any medical  
261 records or information contained in the medical record except as necessary to administer the  
262 website and the branching questionnaire and the applicant and its principals, and any entities  
263 affiliated with them, will only use the services of a single online contract pharmacy named on the  
264 license approved by the [division]; and

265 (i) submit any other information required by the [division].

266  
267 Section 6. *[Term of License. Expiration. Renewal.]*

268 (1) The online prescriber's license shall be associated with the online prescriber's  
269 primary professional license and may be renewed at the time the primary license is renewed in  
270 accordance with [insert citation].

(2) The online contract pharmacy license shall be associated with the online contract pharmacy's primary professional license and may be renewed at the time the primary license is renewed in accordance with [insert citation].

(3) The Internet facilitator license shall be renewed in accordance with [insert citation].

(4) Each licensee shall, at the time of applying for renewal, demonstrate compliance with this Act.

(5) Each license shall automatically expire on the expiration date shown on the license unless the licensee renews it in accordance with [insert citation].

Section 7. *[Existing Written Agreements for Online Prescribing. Pending Applications.]*

(1) (a) Subject to the provisions of this section, and until [insert date], an entity or individual not licensed by the [division] to engage in the delivery of online pharmaceutical services under this Act may nevertheless engage in the delivery of online pharmaceutical services if permitted by the [division] to do so prior to [insert date], under either a non-disciplinary stipulation and consent order with the [division] or a letter agreement with the [division].

(b) An entity or individual subject to Subsection (1)(a) shall only be permitted to engage in the delivery of online pharmaceutical services after [insert date], if, on or before that date, it has obtained a license in accordance with the provisions of this Act.

(2) An entity or individual engaged in the delivery of online pharmaceutical services under the provisions of Subsection (1), may continue to operate in accordance with the terms and conditions of the written consent or agreement subject to the following:

(a) On or before [insert date], the entity or individual shall file an application with the [division] in accordance with this Act for an online prescriber license; an online contract pharmacy license; or an Internet facilitator license.

(b) After the application for a license under this Act is filed in accordance with Subsection (2)(a), the applicant may continue to operate under the terms and conditions of the written consent agreement under Subsection (1)(a) until the [division] has issued its decision on the application.

(c) If the application is approved and a license is issued, the licensee shall operate under the terms of the license under this Act and may not operate under the terms and conditions of the prior written consent or agreement of the [division].

(d) If the application for license under this Act is denied, the applicant may not operate under the prior written consent or agreement with the [division] after the date the application for a license under this Act is denied by the [division].

(3) (a) The following provisions apply to any application for authorization to engage in the delivery of online pharmaceutical services that was pending with the [division] on the effective date of this Act:

(I) the applicant shall no later than [insert date], provide supplemental documentation to the [division] to correct any deficiency in the application and notify the [division] in writing that the application is ready to be acted upon by the [division] or

(II) the applicant may rely upon the existing application submitted to the [division] without any supplementation under Subsection (1) if the applicant notifies the [division] in writing that the application is ready to be acted upon by the [division].

(b) The [division] shall not, prior to [insert date], act on an application pending with the [division] on the effective date of this Act unless the [division] prior to [insert date], receives a notification from the applicant that the application is ready to be acted upon by the [division].

Section 8. *[Online Prescriber Duties and Responsibilities.]*

(1) The online prescriber shall:

(a) be held to the same standards of appropriate practice as those applicable in traditional settings which, for purposes of this Act, include the delivery of online pharmaceutical services;

(b) conduct an assessment and diagnosis based upon a comprehensive health history and an assessment tool such as a branching questionnaire;

(c) ensure that a comprehensive health history, assessment, and diagnosis have been made before prescribing any medication;

(d) conduct the online assessment and diagnosis only through the approved Internet facilitator identified in the online prescriber's application;

(e) comply with all applicable state and federal laws, rules, regulations, and orders;

(f) inform the patient electronically of the benefits and risks of appropriate treatment;

(g) guide the patient regarding the optimal course of action;

(h) treat the patient with courtesy, respect, dignity, responsiveness, and timely attention to the patient's needs;

(i) comply with the requirements for confidentiality as required by this Act and applicable federal law;

(j) continue to provide the user with reasonable assistance and sufficient opportunity to make alternative arrangements for care;

(k) be available for ongoing consultation with the patient through e-mail or other forms of communication;

(l) not delegate to a third party the professional responsibility to review and evaluate the results of the branching questionnaire; consult with the patient electronically or through other means about the patient's medical condition; and diagnose and prescribe medications to the patient;

(m) conduct the online assessment and diagnosis and the electronic communication between the online prescriber and the patient only through the approved Internet facilitator;

(n) maintain the online medical records of the patient; and if maintenance of the records is delegated by the online prescriber, delegate that authority only to the approved Internet facilitator;

(o) inform a patient of the patient's freedom of choice to select the pharmacy to dispense the patient's prescription by providing the patient with the phone number of the online contract pharmacy so that the patient may contact the online contract pharmacy and request a transfer of the prescription to another pharmacy; and

(p) authorize the Internet facilitator to provide the online contract pharmacy with the patient's:

(I) full name;

(II) current address and telephone number;

(III) date of birth or age and gender;

(IV) height, weight, and vital signs (if known);

(V) medication allergies or drug reactions; and

(VI) current medications, including over-the-counter products, and any additional comments relevant to the patient's drug use.

(2) The online contract pharmacy shall:

(a) only dispense prescription drugs that are approved by the [division] in accordance with Section 9 and were prescribed by an online prescriber who is using the Internet facilitator that is under contract with the online contract pharmacy;

(b) maintain a toll-free number with a pharmacist available for patients using the services of the online contract pharmacy to receive medications prescribed online;

(c) use a tracking identification number system when shipping medications prescribed for patients by an online prescriber; and

(d) provide to the [division] a [quarterly] report of all drugs dispensed in accordance with this Act.

(3) The Internet facilitator shall:

(a) provide services that the online prescriber will use in implementing the branching questionnaire;

(b) provide electronic or telephonic communication between the online prescriber and the patient that is secure and confidential; allows the online prescriber to be directly accessible to a patient to answer questions regarding the patient's treatment plan; and provides privacy and security that complies with the provisions of 45 C.F.R. Parts 475 160, 162, and 164, Health Insurance Portability and Accountability Act of 1996;

(c) facilitate secure and confidential communication of the prescription issued by the online prescriber to the online contract pharmacy in accordance with Subsection (1)(p);

(d) disclose on its website the owner of the website; the specific services provided by any associated online prescribers; and other information the [division] may require by rule; and

(e) only facilitate the delivery of online pharmaceutical services for the specific legend drugs approved by the [division] in accordance with Section 10; or not facilitate, directly or indirectly, through related entities or affiliates, the dispensing or online prescribing of any drug whether controlled or legend that is not specifically approved under Section 10.

#### Section 9. *[Drugs Approved for Online Prescribing, Dispensing, and Facilitation.]*

(1) An online prescriber may only prescribe, an online contract pharmacy may only dispense, and an Internet facilitator may only facilitate the prescribing and dispensing of, non-controlled, legend drugs that have been:

(a) approved by the Food and Drug Administration;

(b) prescribed to treat the condition for which the drug was approved; and

(c) specifically approved by the [division] for online prescribing by administrative rule adopted in accordance with [insert citation].

(2) If, after [insert date], the Food and Drug Administration issues a clinical black box warning with respect to any drug approved by the [board] under Subsection (1), the [division] shall determine what action, if any, is necessary to protect the public health or welfare as a result of the black box warning.

#### Section 10. *[Request to Facilitate Approval of Additional Drugs.]*

(1) An Internet facilitator licensed under this Act may seek the [division's] approval to facilitate the online prescribing and dispensing of prescriptions for additional drugs.

(2) The Internet facilitator shall make a request for approval of additional drugs by petitioning for an amendment to the administrative rule adopted by the [division] in accordance with Section 9 and [insert citation].

#### Section 11. *[Audits.]*

(1) Each licensee under this Act shall allow and facilitate an audit by the [division] regarding the licensee's delivery of online pharmaceutical services to ensure compliance with state and federal statutes, rules, and regulations including ensuring that:

(a) a comprehensive history and assessment have been obtained and a diagnosis has been made for a patient before any medications are prescribed; and

(b) only the approved medications are being prescribed and dispensed.

(2) The [division] shall be provided with the following, in the manner that allows access from the [division's] office for the purpose of conducting an audit:

(a) full remote, read-only access rights to the data related to the online prescribing and dispensing of a drug under this Act and that is used and stored in the Internet facilitator's system; and

(b) the information available to the online prescriber.

(3) An Internet facilitator licensed under this Act shall provide to the [division], at the times designated by the [division] by administrative rule, a report containing the following information:

(a) the number of prescriptions issued by the online prescribers associated with the Internet facilitator by drug name;

(b) the number of comprehensive histories/assessments received by the Internet facilitator;

(c) the number of comprehensive histories/assessments reviewed by an online prescriber;

(d) the demographic data of the patients receiving prescriptions through the Internet facilitator;

(e) the number of prescriptions dispensed by the online contract pharmacy or transferred to a different pharmacy at the patient's request; and

(f) any other information specified by the [division] by administrative rule.

(4) The [division's] authority to conduct an audit pursuant to this Act shall survive any termination or expiration of any prescriptive authority for online prescribing, dispensing, or facilitation.

## Section 12. *[Grounds for Denial of License. Disciplinary Proceedings. Termination of Authority to Prescribe. Immediate and Significant Danger.]*

(1) Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order:

(a) shall be in accordance with [insert citation]; and

(b) includes prescribing, dispensing, or facilitating the prescribing or dispensing of a drug not approved by the [board] under Section 9 or any other violation of this Act.

(2) The termination or expiration of a license under this Act for any reason does not limit the [division's] authority to start or continue any investigation or adjudicative proceeding.

(3) Because of the working business relationship between and among the online prescriber, the Internet facilitator, and the online contract pharmacy, each entity's ability to comply with this Act may depend in some respects on the actions of the others. It is possible that a particular action or inaction by the online prescriber, the Internet facilitator, or the online contract pharmacy could have the effect of causing the other licensed entities to be out of compliance with this Act, and each entity may, therefore, be held accountable for any related party's non-compliance, if the party knew or reasonably should have known of the other person's non-compliance.

(4) An online prescriber may lose the practitioner's professional license to prescribe any drug under this Act if the online prescriber knew or reasonably should have known that the provisions of this Act were violated by the online prescriber, the Internet facilitator, or the online contract pharmacy. It is not a defense to an alleged violation under this Act that the alleged violation was a result of an action or inaction not by the charged party but by the related online prescriber, the online contract pharmacy, or the Internet facilitator.

(5) The following actions may result in an immediate suspension of the online prescriber's license, the online contract pharmacy's license, or the Internet facilitator's license, and each is considered an immediate and significant danger to the public health, safety, or welfare requiring immediate action by the [division] pursuant to [insert citation] to terminate the delivery of online pharmaceutical services by the licensee:

(a) online prescribing, dispensing, or facilitation with respect to a person under the age of 18 years; a legend drug not authorized by the [division] in accordance with Section 9; and any controlled substance;

(b) violating this Act after having been given reasonable opportunity to cure the violation;

(c) using the name or official seal of the state, the [Department of Commerce], or the [Division of Occupational and Professional Licensing], or their boards, in an unauthorized manner; or

(d) failing to respond to a request from the [division] within the time frame requested for an audit of the website or records of the online prescriber, the Internet facilitator, or the online contract pharmacy.

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

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

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

# Open-Source Textbooks

This Act establishes criteria by which educational institutions throughout the state can use open-source textbooks. The Act defines an “open-source textbook” as “an electronic textbook that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook. The term includes a state-developed open-source textbook.”

Submitted as:

Texas

[HB 2488](#)

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 Permit Certain Educational  
2 Institutions to Use Open-Source Textbooks.”

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

5           (1) “Electronic textbook” means computer software, interactive videodisc, magnetic  
6 media, CD-ROM, computer courseware, on-line services, an electronic medium, or other means  
7 of conveying information to the student or otherwise contributing to the learning process through  
8 electronic means, including an open-source textbook.

9           (2) “Open-source textbook” means an electronic textbook that is available for  
10 downloading from the Internet at no charge to a student and without requiring the purchase of an  
11 unlock code, membership, or other access or use charge, except for a charge to order an optional  
12 printed copy of all or part of the textbook. The term includes a state-developed open-source  
13 textbook.

14  
15           Section 3. [*Open-Source Textbooks.*]

16           (A) In this section, “eligible institution” means:

17           (1) a public institution of higher education that is designated as a research  
18 university or emerging research university under the [higher education coordinating board’s  
19 accountability system] established under [insert citation], or a private university located in this  
20 state that is a member of the Association of American Universities; or

21           (2) a public technical institute, as defined by [insert citation].

22           (B) The [state board of education] shall place an open-source textbook for a secondary-  
23 level course submitted for adoption by an eligible institution on a conforming or nonconforming  
24 list if:

25           (1) the textbook is written, compiled, or edited primarily by faculty of the eligible  
26 institution who specialize in the subject area of the textbook;

27           (2) the eligible institution identifies each contributing author;

28           (3) the appropriate department of the eligible institution certifies the textbook for  
29 accuracy; and

30           (4) the eligible institution determines that the textbook qualifies for placement on



the conforming or nonconforming list as defined under [insert citation] based on the extent to which the textbook covers the essential knowledge and skills identified under [insert citation] for the subject for which the textbook is written and certifies that:

(a) for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(b) for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.

(C) This section does not prohibit an eligible institution from submitting a textbook for placement on a conforming or nonconforming list through any other adoption process provided by [insert citation].

Section 4. [*Contracts for Printing of Open-Source Textbooks.*] The [state board of education] may execute a contract to print an open-source textbook listed on the conforming or nonconforming list. The contract must allow a school district to requisition printed copies of an open-source textbook as provided by Section 6 of this Act.

Section 5. [*State-Developed Open-Source Textbooks.*]

(A) A state-developed open-source textbook is the property of the state.

(B) A state-developed open-source textbook must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the textbook after purchase.

(C) A state-developed open-source textbook must be evaluated by teachers or other experts, as determined by the [commissioner], before purchase; and meet the requirements for inclusion on a conforming or nonconforming textbook list under [insert citation].

(D) The [commissioner] may issue a request for proposals for a state-developed open-source textbook in accordance with the textbook review and adoption cycle under [insert citation] or at any other time the [commissioner] determines a need exists for additional textbook options.

(E) Following a curriculum revision by the [state board of education], the [commissioner] shall require the revision of a state-developed open-source textbook relating to that curriculum. The [commissioner] may, at any time, require an additional revision of a state-developed open-source textbook or contract for ongoing revisions of a textbook for a period not to exceed the period under [insert citation] for which a textbook for that subject and grade level may be adopted. The [commissioner] shall use a competitive process to request proposals to revise a state-developed open-source textbook under this subsection.

(F) The [commissioner] shall provide for special and bilingual state-developed open-source textbooks in the same manner provided under [insert citation].

(G) The [commissioner] shall provide for the distribution of state-developed open-source textbooks in a manner consistent with distribution of textbooks adopted under [insert citation].

(H) The [commissioner] shall purchase any state-developed open-source textbooks through a competitive process and may purchase more than one state-developed open-source textbook for a subject or grade level.

(I) The [commissioner] shall provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or local agency educating students in any grade from prekindergarten through high school, to use and reproduce a state-developed open-source textbook.

(J) The [commissioner] shall determine the cost to a school district or open-enrollment

80 charter school for a state-developed open-source textbook in an amount sufficient to cover state  
81 expenses associated with the textbook, including expenses incurred by the state in soliciting,  
82 evaluating, revising, and purchasing the textbook.

83 (K) If a school district or open-enrollment charter school selects a state-developed open-  
84 source textbook instead of another textbook adopted under [insert citation], the difference  
85 between the cost of the [state-developed open source textbook] and the maximum price for that  
86 other textbook, as determined by the [state board of education] shall be allocated as follows:

87 (1) [fifty] percent of the amount shall be credited to the [state textbook fund]  
88 created under [insert citation]; and

89 (2) [fifty] percent of the amount shall be credited to the school district or open-  
90 enrollment charter school.

91 (L) A school district or open-enrollment charter school may adopt a state-developed  
92 open-source textbook at any time, regardless of the textbook review and adoption cycle under  
93 [insert citation].

94 (M) A school district or open-enrollment charter school may not be charged for selection  
95 of a state-developed open-source textbook in addition to a textbook adopted under [insert  
96 citation].

97 (N) The [commissioner] may provide a license to use a state-developed open-source  
98 textbook to an entity not listed in Section 3 (A) of this Act. In determining the cost of a license  
99 under this subsection, the [commissioner] shall seek, to the extent feasible, to recover the costs of  
100 developing, revising, and distributing state-developed open-source textbooks.

101 (O) The [commissioner] may use a competitive process to contract for printing or other  
102 reproduction of a state-developed open-source textbook on behalf of a school district or open-  
103 enrollment charter school. The [commissioner] may not require a school district or open-  
104 enrollment charter school to contract with a state-approved provider for the printing or  
105 reproduction of a state-developed open-source textbook.

106 (P) The costs of administering this [Act] and purchasing state-developed open-source  
107 textbooks shall be paid from the [state textbook fund] established under [insert citation], as  
108 determined by the [commissioner].

109 (Q) The [commissioner] shall develop a schedule for the adoption of state-developed  
110 open-source textbooks under this Act. In developing the adoption schedule under this section, the  
111 [commissioner] shall consider the availability of funds; the existing textbook adoption cycles  
112 under [insert citation]; and the availability of textbooks for development or purchase by the state.

113 (R) A decision by the [commissioner] regarding the purchase, revision, cost, or  
114 distribution of a state-developed open-source textbook is final and may not be appealed.

## 115 116 Section 6. *[Providing Open-Source Textbooks to Students.]*

117 (A) A school district or open-enrollment charter school that selects an open-source  
118 textbook shall requisition a sufficient number of printed copies for use by students unable to  
119 access the textbook electronically unless the district or school provides to each student  
120 electronic access to the textbook at no cost to the student or printed copies of the portion of the  
121 textbook that will be used in the course.

122 (B) The [commissioner] may establish a list of equipment or devices that a school district  
123 or open-enrollment charter school may purchase using textbook credits or textbook credits in  
124 combination with other available funds to provide electronic access to open-source textbooks.

125 (C) A school district or open-enrollment charter school may order replacements for  
126 textbooks that have been lost or damaged directly from any source for a printed copy of an open-  
127 source textbook.

128 (D) At the end of the school year for which an open-source textbook that a school district

or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source textbook becomes the property of the student to whom it is distributed.

(E) A publisher or manufacturer of textbooks shall deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state, if the textbooks are open-source textbooks, [on-line textbooks, or on-line textbook components as defined under insert citation], and shall submit to the [state board of education] an affidavit certifying any textbook the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by [insert citation].

Section 7. [*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 required 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 8. [*Rules.*] The [commissioner] may adopt rules necessary to implement this Act.

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

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

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

# Organized Retail Theft

According to the Federal Bureau of Investigation, organized retail theft losses have amounted to as much as \$30 billion. It is a growing problem for retailers, manufacturers and distributors in this state and throughout the United States. Organized retail theft is committed by professional theft rings which move across communities and states to pilfer merchandise from supermarkets, chain drugstores, independent pharmacies, mass merchandisers, convenience stores, warehouses and transporters, then resell that merchandise in venues including the Internet, at flea markets and to the stores from which it was stolen. Popular targets include infant formula, skin care products, heartburn medications and shaving products.

This SSL draft Act is based on Pennsylvania HB 1720, which became law in 2010. This draft legislation creates penalties for organized retail theft as a felony of the second or third degree, depending upon the retail value of the stolen merchandise.

A 2009 SSL draft Act entitled [Organized Retail Crime](#) allows for the amount of goods stolen to be aggregated into one charge before a defendant goes to trial. That Act also allows grouping multiple offenses together to meet a threshold that imposes stiffer charges on people who commit organized retail theft. The legislation requires establishments which accept large amounts of items for resale to make a reasonable attempt to determine if the items are stolen. The 2009 SSL draft is based on Delaware HB 121, which was enacted into law in 2007.

The 2008 SSL draft Act entitled [Organized Retail Theft](#) creates three crimes. One addresses theft of property with a value of at least \$250 from a mercantile establishment with intent to resell. Another makes it a crime to possess stolen property from a mercantile establishment with a value of at least \$250. The third addresses theft of property from a mercantile establishment when the person leaves through an emergency exit, uses a device designed to overcome security systems, or commits theft at 3 or more mercantile establishments within 180 days. Finally, that Act adds theft with intent to resell and organized retail theft to a list of offenses that can be “criminal profiteering” when punishable as a felony and by imprisonment for more than one year. The 2008 SSL draft is based on Washington Chapter 277 of 2006.

Submitted as:

Pennsylvania

[HB 1720](#)

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 Organized Retail Theft Act.”

2

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

4           (1) “Merchandise” means any goods, chattels, foodstuffs or wares of any type and  
5 description, regardless of the value thereof.

6           (2) “Merchant” means an owner or operator of a retail mercantile establishment or an  
7 agent, employee, lessee, consignee, officer, director, franchise or independent contractor of such  
8 owner or operator.

9 (3) “Organized retail theft enterprise” means a corporation, partnership or any other type  
10 of association, whether or not legally formed, operated for the purpose of engaging in violations  
11 of the provisions of [insert citations relating to receiving stolen property or retail theft].

12 (4) “Retail value” means a merchant’s stated or advertised price of merchandise. If  
13 merchandise is not traceable to a specific merchant, the stated or advertised price of the  
14 merchandise by merchants in the same geographical region.

15  
16 Section 3. [*Organized Retail Theft.*]

17 (A) A person commits organized retail theft if the person organizes, coordinates, controls,  
18 supervises, finances or manages any of the activities of an organized retail theft enterprise.

19 (B) (1) If the retail value of the stolen merchandise in the possession of or under the  
20 control of the organized retail theft enterprise is at least [\$5,000 but not more than \$19,999], the  
21 offense is a [felony of the third degree].

22 (2) If the retail value of the stolen merchandise in the possession of or under the  
23 control of the organized retail theft enterprise is at least [\$20,000], the offense is a [felony of the  
24 second degree].

25  
26 Section 4. [*Severability.*] [Insert severability clause.]

27  
28 Section 5. [*Repealer.*] [Insert repealer clause.]

29  
30 Section 6. [*Effective Date.*] [Insert effective date.]

# Placement Agents Statement

California Chapter 668 of 2010 defines a placement agent to mean a person, hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager to act as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a public retirement system in the state for compensation. It excludes from that definition an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends one third or more of their time during a calendar year managing the securities or assets owned, controlled, invested, or held by the external manager. It prohibits a person from acting as a placement agent in connection with any potential system investment made by a state public retirement system unless that person is registered as a lobbyist.

The Act requires a person acting as a placement agent in connection with any potential system investment made by a local public retirement system to file any applicable reports with a local government agency that requires lobbyists to register and file reports and to comply with any applicable requirements imposed by a local government agency. It provides that an individual acting as a placement agent is a lobbyist and is thereby required to comply with all regulations and restrictions imposed on lobbyists by the Act. It expands the definition of administrative action to include, with regard only to placement agents, the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.

This Act specifies that a placement agent who is registered with the Securities and Exchange Commission and regulated by the Financial Industry Regulatory Authority is permitted to receive a payment of fees for contractual services provided to an investment manager, except to the extent that payment of fees is prohibited by the proscription on contingency payments to placement agents.

The law requires the state employees retirement system and state teachers' retirement system to provide to the Legislature a report about the use of placement agents in connection with investments made by those retirement systems.

Submitted as:

California

[Chapter 668 of 2010](#)

Status: Enacted into law in 2010.

# Plug-In Electric Vehicles Using High Occupancy Vehicle Lanes

This Act authorizes plug-in electric vehicles to use High Occupancy Vehicle (HOV) lanes under certain circumstances. It requires the state motor vehicle administration, the state highway administration, and the state police to consult and design a permit to enable such vehicles to use HOV lanes. It authorizes charging a fee to get a permit to use the lanes, and it also authorizes limiting the number of those permits.

Submitted as:

Maryland

[Chapter 491 of 2010](#)

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 to Authorize Plug-In Vehicles  
2 to Use High Occupancy Vehicle (HOV) Lanes.”  
3

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

5           (1) “HOV lane” means a High Occupancy Vehicle lane, the use of which is restricted by  
6 a traffic control device during specific times to vehicles carrying at least a specified number of  
7 occupants.

8           (2) “Plug-In vehicle” means a motor vehicle that:

9                   (a) Is made by a manufacturer;  
10                   (b) Is manufactured primarily for use on public streets, roads, and highways;  
11                   (c) Has not been modified from original manufacturer specifications;  
12                   (d) Is rated at not more than [8,500] pounds unloaded gross vehicle weight;  
13                   (e) Has a maximum speed capability of at least [65 miles per hour]; and  
14                   (f) Is propelled to a significant extent by an electric motor that draws electricity  
15 from a battery that:

16                           (I) Has a capacity of not less than [4 kilowatt hours] for 4-wheeled motor  
17 vehicles and not less than [2.5 kilowatt hours] for 2-wheeled or 3-wheeled motor vehicles; and

18                           (II) Is capable of being recharged from an external source of electricity.

19           (3) “Traffic control device” means any sign, signal, marking or device that is not  
20 inconsistent with [insert citation] and is placed by authority of an authorized public body or  
21 official to regulate, warn, or guide traffic.  
22

23           Section 3. [*Plug-In Vehicles Authorized to Use HOV Lanes.*]

24           (A) The [motor vehicle administration], the [state highway administration], and the  
25 [department of state police] shall consult to design a permit to designate a vehicle as a plug-in  
26 vehicle authorized to use an HOV lane.

27           (B) The [motor vehicle administration], on the recommendation of the [state highway  
28 administration], may limit the number of permits issued to ensure HOV lane operations are not  
29 degraded to an unacceptable level.

30           (C) The [motor vehicle administration] may charge a fee, not to exceed [\$20], for issuing

31 a permit under this Section.

32 (D) Whenever the [state highway administration] designates a portion of a highway as an  
33 HOV lane, the HOV lane may be used at all times by plug-in vehicles that have obtained a  
34 permit from the [motor vehicle administration] under this Section, regardless of the number of  
35 passengers in the vehicle.

36 (E) On or before [January 1 of each year], the [motor vehicle administration] and the  
37 [state highway administration] jointly shall report to the [governor] and the [general assembly]  
38 on the effects of plug-in vehicles on the operation of HOV lanes in the state.

39  
40 Section 4. [*Severability*.] [Insert severability clause.]

41  
42 Section 5. [*Repealer*.] [Insert repealer clause.]

43  
44 Section 6. [*Effective Date*.] [Insert effective date.]



# Premise Alert Database

This Act directs public safety agencies to establish and use a database of information about people with disabilities or special needs to help such agencies respond more effectively to such people.

Submitted as:

Illinois

[Public Act 096-0788](#)

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 a Premise Alert  
2 Database.”

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

5           (1) “Disability” means an individual’s physical or mental impairment that substantially  
6 limits one or more of the major life activities; a record of such impairment; or when the  
7 individual is regarded as having such impairment.

8           (2) “Special needs individuals” means those individuals who have or are at increased risk  
9 for a chronic physical, developmental, behavioral, or emotional condition and who also require  
10 health and related services of a type or amount beyond that required by individuals generally.

11           (3) “Public safety agency” means a functional division of a public agency that provides  
12 firefighting, police, medical, or other emergency services.

13           (4) “Computer Aided Dispatch” means a database maintained by a public safety agency  
14 or public safety answering point used in conjunction with 9-1-1 caller data.

15           (5) “Premise Alert Database” means a Computer-Aided Dispatch database of information  
16 about individuals with disabilities or special needs.

17  
18           Section 3. [*Purpose.*] The ability to effectively deal with individuals with disabilities or  
19 special needs is enhanced with knowledge and information about such individuals. It is the  
20 policy of this state to ensure consistently high levels of public safety services are available to  
21 everyone, including people who may require special consideration in order to access services.  
22 The Premise Alert Database will help ensure individuals with disabilities or special needs get the  
23 same access to public safety services as provided to other citizens.

24  
25           Section 4. [*Premise Alert Database.*]

26           (A) Public safety agencies in this state operating a Computer Aided Dispatch shall create  
27 and maintain a Premise Alert Database. Information in the the Premise Alert Database shall  
28 include a person’s name, date of birth, phone number, address, place of employment, and the  
29 nature of their disability or special need. The public safety agencies shall develop procedures to  
30 enable public safety personnel and the public to submit information to the Premise Alert  
31 Database.

32           (B) The establishment and continued existence of the Premise Alert Database shall be  
33 based on funding availability.

(C) Public safety agencies shall make reasonable efforts to publicize the Premise Alert Database. Means of publicizing the database include, but are not limited to, pamphlets and websites.

(D) Individuals with disabilities or special needs, or their families or caregivers, may contact their local law enforcement agency or fire department or fire protection district to submit information to the Premise Alert Database.

(E) Whenever possible, it is preferable that written permission is obtained from an individual with a disability or special need, their parent, guardian, family member, or caregiver, before information about the individual with a disability or special need is entered into the Premise Alert Database.

(F) No information about an individual with disabilities or special needs may be entered into a Premise Alert Database unless that individual's disability or special need has been verified. Acceptable means of verifying a disability or special need can be statements by the individual, family members, friends, caregivers, or medical personnel familiar with the individual.

(G) Public safety workers are to be cognitive of individuals with disabilities or special needs whom they may come across when they respond to calls. If such workers are able to identify individuals who have a disability or special needs, they must try to ascertain the disability or special need and get the individual's name, date of birth, phone number, address, and place of employment for possible entry into the Premise Alert Database using the procedures established under subsection (A).

(H) Any person designated by a public safety agency to control data entered into the Premise Alert Database shall develop policies and procedures to control such data.

(I) Public safety agencies sharing the same Computer Aided Dispatch shall disseminate information collected by one agency for the Premise Alert Database to all agencies using that dispatch.

(J) Information about individuals with disabilities or special needs which is received by any public safety agency that does not use the Premise Alert Database shall be accepted and forwarded to an agency that uses the Premise Alert Database as soon as possible.

(K) All information entered into the Premise Alert Database must be updated every [2] years or when such information changes.

(L) When information from the Premise Alert Database about individuals with disabilities or special needs is reported in a Computer Aided Dispatch, the telecommunicator shall relay that information to responding public safety personnel.

(M) Information in the Premise Alert Database shall remain strictly confidential. The information shall be used only to provide assistance to emergency medical and police responders. No public safety worker shall knowingly violate this confidentiality clause. Citizens who believe their health privacy rights have been violated may file a complaint with the U.S. Department of Health and Human Services via the Office of Civil Rights.

(N) Except for willful or wanton misconduct, a public safety agency shall not be subject to civil liabilities for duties relating to the reporting of information about individuals with disabilities or special needs.

(O) People who submit information about themselves or someone else to the Premise Alert Database must be advised that providing such information will not result in preferential treatment of them or the person about whom they submitted the information.

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

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

83

84

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

# Principal and Teacher Effectiveness

This draft Act codifies a state council for educator effectiveness that was originally established by executive order, sets the composition of the council, and requires it to make recommendations to the state board of education about how to improve and evaluate the effectiveness of teachers, principals, and other, related, licensed personnel.

The Act directs the state board of education to use the recommendations of the council to develop and adopt by rules guidelines to evaluate the effectiveness of teachers and principals. It establishes basic criteria and performance standards that must be addressed by or included in the rules.

The Act requires the legislature to review the rules and gives the legislature the authority to repeal such rules. All school districts and boards of cooperative educational services must adjust their local performance evaluation systems to meet or exceed the new guidelines issued under the rules.

The Act directs the state department of education to work with school districts and boards of cooperative services to implement the new guidelines, and to provide a resource bank that identifies assessments, processes, tools, and policies districts can use to modify their systems to comply.

The general goals of the Act are to ensure that teachers and principals are evaluated using fair and valid methods, improve classroom instruction, enable their professional growth and development, and improve hiring and firing decisions. The Act ties part of such evaluations to the academic growth of students.

The Act creates a Great Teachers and Leaders Fund and permits the state department of education to accept grants to and make grants from the fund. The Act continuously appropriates money in the Great Teachers and Leaders Fund to the department to pay the costs to implement the Act.

Submitted as:

Colorado

[SB 10-191 \(Enrolled version\)](#)

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 to Ensure Quality Instruction  
2 Through Educator Effectiveness.”

3  
4           Section 2. [*Legislative Declaration*.]

5           (A) The [general assembly] declares that a system to evaluate the effectiveness of  
6 [teachers], [principals], and [other, related], [licensed personnel], is crucial to improving the  
7 quality of education in this state and declares such a system shall be applicable to all [teachers],  
8 [principals], and [other, related], [licensed personnel] in the school districts and [boards of  
9 cooperative services] throughout the state.

10           (B) The purposes of such a system shall be to:

11               (1) Improve instruction;

- 12 (2) Enhance curriculum;  
13 (3) Enable and measure professional growth and development;  
14 (4) Evaluate performance; and  
15 (5) Assist with making decisions about hiring, assigning, compensating,  
16 promoting, tenure, and firing such personnel.

17 (C) The [general assembly] further declares that a professionally sound and credible  
18 system to evaluate the effectiveness of [teachers, principals], and [other, related], [licensed  
19 personnel] shall be designed with the involvement of such personnel, citizens in a school district,  
20 and [boards of cooperative services].

21 (D) The [general assembly] further declares that the involvement and support of parents  
22 of children in public schools, acting as partners with teachers and public school administrators,  
23 are key to the educational progress of their children.

24  
25 Section 3. *[Definitions.]* As used in this Act:

26 (1) “Boards of cooperative services” means boards as defined under [insert citation].

27 (2) “Council” means the [state council for educator effectiveness] established pursuant to  
28 Section 4.

29 (3) “Department” means the state [department of education].

30 (4) “Licensed personnel” means personnel licensed under [insert citation].

31 (5) “Nonprobationary teacher” means a teacher as defined under [insert citation].

32 (6) “Performance standards” means the levels of effectiveness established by rule of the  
33 [state board] pursuant to Section 5.

34 (7) “Principal” means a person who is employed as the chief executive officer or an  
35 assistant chief executive officer of a school in the state and who administers, directs, or  
36 supervises the education program in the school.

37 (8) “Principal development plan” means a written agreement developed by a principal  
38 and district administration that outlines the steps to be taken to improve the principal’s  
39 effectiveness. The principal development plan shall include professional development  
40 opportunities.

41 (9) “Probationary teacher” means a teacher as defined under [insert citation].

42 (10) “Quality standards” means the elements and criteria established to measure  
43 effectiveness as established by rule of the [state board] pursuant to Section 5.

44 (11) “Teacher” means a person who holds an alternative, initial, or professional teacher  
45 license issued pursuant to [insert citation] and who is employed by a school district or a charter  
46 school in the state to instruct, direct, or supervise an education program.

47 (12) “Teacher development plan” means a written agreement mutually developed by a  
48 teacher and their principal that outlines the steps to be taken to improve the teacher’s  
49 effectiveness. The teacher development plan may include but need not be limited to  
50 consideration of induction and mentorship programs, using highly effective teachers as  
51 instructional leaders or coaches, and other appropriate professional development activities.

52  
53 Section 4. *[State Council for Educator Effectiveness.]*

54 (A) There is hereby created in the [office of the governor] the [state council for educator  
55 effectiveness].

56 (B) The members of the [governor’s council for educator effectiveness] created under  
57 [executive order], shall serve on the [council] as appointed by the [governor], and shall include:

58 (1) The [commissioner of education], or their designee;

59 (2) The [executive director of the department of higher education], or their  
60 designee;

(3) [Four] teachers, selected with the advice of state associations that represent educators;

(4) [Two] public school administrators and [one] local school district superintendent, each selected with the advice of a state association that represents school executives;

(5) [Two] members of local school boards, selected with the advice of a state association that represents school boards;

(6) [One] charter school administrator or teacher, selected with the advice of a state advocacy group for charter schools;

(7) [One] parent of a public school student, selected with the advice of a state parent and teachers association;

(8) [A current student or recent graduate] of a public school in this state, selected with the advice of a statewide student coalition; and

(9) [One] at-large member with expertise in education policy.

(C) The purpose of the [council] shall be the same as that of the [governor's council for educator effectiveness] established by [executive order], and shall be to consider options and make recommendations to the [state board] and the [general assembly] that seek to ensure all [teachers], [principals], and [other, related], [licensed personnel] are:

(1) Evaluated using multiple fair, transparent, timely, rigorous, and valid methods, at least [fifty percent] of which evaluation is determined by the academic growth of their students;

(2) Afforded a meaningful opportunity to improve their effectiveness; and

(3) Provided the means to share effective practices with other educators throughout the state.

(D) The [council] shall have the following duties:

(1) On or before [March 1, 2011], to provide the [state board] with recommendations to ensure every teacher is evaluated using multiple fair, transparent, timely, rigorous, and valid methods. The recommendations developed pursuant to this paragraph shall require at least [fifty percent] of an evaluation be determined by the academic growth of a teacher's students and that each teacher is provided with an opportunity to improve their effectiveness through a teacher development plan that links their evaluation and performance standards to professional development opportunities. The quality standards for teachers shall include measures of student longitudinal academic growth that are consistent with measures set forth in [insert citation] and may include interim assessment results or evidence of student work, provided that all are rigorous and comparable across classrooms and aligned with state model content standards and performance standards developed pursuant to [insert citation]. For the purposes of quality standards, expectations of student academic growth shall take into consideration diverse factors, including but not limited to special education, student mobility, and classrooms with a student population in which [ninety-five] percent meet the definition of high-risk student under [insert citation]. The quality standards for teachers shall be clear and relevant to a teacher's roles and responsibilities and with the goal of improving student academic growth. The [council] shall include in its recommendations a definition of effectiveness and its relation to quality standards. The definition of effectiveness shall include, but need not be limited to, criteria that will be used to differentiate between performance standards. The defined performance standards shall include, but need not be limited to, "highly effective," "effective," and "ineffective." The [council] shall consider whether additional performance standards should be established.

(2) On or before [March 1, 2011], to provide the [state board] with recommendations to ensure every principal is evaluated using multiple fair, transparent, timely,

110 rigorous, and valid methods. The recommendations pursuant to this paragraph shall require that  
111 every principal is provided with a principal development plan. In making its recommendations,  
112 the [council] shall recognize that not all principals require the same amount of supervision and  
113 evaluation. As part of its recommendations to the [state board], the [council] shall develop a  
114 process to enable a local school district to differentiate teacher and principal evaluations as part  
115 of its performance evaluation system.

116 (3) On or before [March 1, 2011], to develop and recommend to the [state board]  
117 statewide definitions of teacher and principal effectiveness, each of which shall be centered on  
118 an educator's demonstrated ability to achieve and sustain adequate student growth and shall  
119 include a set of professional skills and competencies related to improved student outcomes.

120 (4) On or before [March 1, 2011], to make recommendations to the [state board]  
121 about how to involve parents of children in public schools as partners with teachers and public  
122 school administrators.

123 (5) On or before [March 1, 2011], to provide the [state board] with  
124 recommendations about implementing and testing a new performance evaluation system that is  
125 based on quality standards and with recommendations for the subsequent statewide  
126 implementation of the new performance evaluation system.

127 (6) On or before [March 1, 2011], to provide the [state board] with  
128 recommendations that will ensure development of a set of guidelines for establishing  
129 performance standards for each category of [teacher], [principal], and [other, related], [licensed  
130 personnel] to be evaluated pursuant to this Act. The guidelines shall outline criteria to be applied  
131 in assigning educators to appropriate performance standards, which shall include measures of  
132 student longitudinal academic growth.

133 (7) On or before [March 1, 2011], to recommend to the [state board] guidelines to  
134 implement a high-quality educator evaluation system to address, at a minimum, the following:

135 (a) Ongoing training to ensure all evaluators and educators fully  
136 understand the system. The training may include such activities as conducting joint training  
137 sessions for evaluators and educators.

138 (b) Evaluation results are normed to ensure consistency and fairness;

139 (c) Evaluation rubrics and tools are deemed fair, transparent, rigorous, and  
140 valid;

141 (d) Evaluations are conducted using sufficient time and frequency, at least  
142 [annually], to gather sufficient data upon which to base the ratings contained in an evaluation;

143 (e) Provision of adequate training and collaborative time to ensure that  
144 educators fully understand and have the resources to respond to student academic growth data;

145 (f) Student data that is monitored at least [annually] to ensure the  
146 correlation between student academic growth and outcomes with educator effectiveness ratings;  
147 and

148 (g) A process by which a nonprobationary teacher may appeal their second  
149 consecutive performance rating of ineffective and submit such process by the [first day of  
150 convening of the first regular session of the sixty-ninth general assembly to the education  
151 committees of the house of representatives and the senate, or any successor committees].

152 (8) On or before [March 1, 2011], to recommend to the [state board] a rubric for  
153 identifying multiple additional quality standards, in addition to student academic growth, which  
154 are rigorous, transparent, valid, and fair;

155 (9) On or before [March 1, 2011], to make recommendations to the [state board]  
156 about policy changes, as appropriate, that support local school districts' using evaluation data for  
157 decisions in areas such as compensation, promotion, retention, removal, and professional  
158 development;

(10) On or before [March 1, 2011], to make recommendations to the [state board] about policy changes, as appropriate, to ensure that the standards and criteria to license and accredit teachers and principals lead to effective educators;

(E) The [council] shall develop a plan to implement its recommendations and identify the associated tasks and costs at the state and district levels. The recommendations shall include an analysis of the cost to implement the recommendations, including assessment changes, an assessment pilot study, staff training, research, data review, and any other tasks included in the [council's] recommendations. It is incumbent on the [council] to consult with the [department] and expert practitioners familiar with school finance and to report by [March 1, 2011], about the costs to implement the [council's] recommendations.

(F) The recommendations made by the [council] to the [state board] pursuant to this Section shall reflect a consensus vote. For any issue that the [council] was unable to reach a consensus, the [council] shall provide to the [state board] the reasons it was unable to reach a consensus.

(G) The [council's] recommendations shall consist, at a minimum, of recommendations that are applicable to school principals and teachers.

(H) The [council's] recommendations may include changes to existing statutes or rules, if appropriate, as well as recommendations for local implementation.

(I) In making its recommendations, the [council] shall include the effect of district- and school-level conditions, as measured by the nine performance standards set forth in the comprehensive appraisal for the district improvement rubric and biannual teaching, empowering, leading, and learning initiative survey of school working conditions, as well as any additional methods of assessing such conditions identified by the council as valid, transparent, and reliable.

(J) The [council] may establish working groups, task forces, or other structures from within its membership or outside its membership as needed to address specific issues or to assist in its work.

(K) All recommendations made by the [council] pursuant to this Section shall reflect a consensus of its members.

(L) Unless otherwise provided for, the [office of the governor and the department] shall provide the [council] with the support, information, data, analytical information, and administrative support necessary to do its work.

(M) On or before [July 1, 2013], and [July 1 each year thereafter] during the implementation of the performance evaluation system, the [department] shall report to the [council] the results of the implementation and testing of the performance evaluation system. Based on the results of the reports, the [council] may make additional recommendations to be incorporated in the following stage of implementation.

Section 5. *[State Board of Education Powers and Duties Related to Evaluating the Effectiveness of Teachers, Principals, and Other, Related, Licensed Personnel.]*

(A) The [state board] shall:

(1) Pursuant to Section 4 of this Act, work with the [state council for educator effectiveness] to promulgate rules concerning the planning, development, implementation, and assessment of a system to evaluate the effectiveness of [teachers], [principals], and [other, related], [licensed personnel] in this state.

(2) Review school district and [board of cooperative services] processes and procedures for [teachers and principals] and [other, related], [licensed personnel] performance evaluation systems to ensure such systems are professionally sound; result in a fair, adequate, and credible evaluation; satisfy quality standards in a manner that is appropriate to the size, demographics, and location of the school district or board of cooperative services; and are



consistent with the purposes of this Act.

(B) (1) On or before [September 1, 2011], the [state board] shall promulgate rules with regard to the issues specified in [subparagraphs (1) to (10) of paragraph (D)] of Section 4, using the recommendations from the [council]. If the [council] fails to make recommendations to the [state board] by [March 1, 2011], with regard to the issues specified in [subparagraphs (1) to (10) of paragraph (D) of Section 4], the [state board] shall, on or before [September 1, 2011], promulgate rules concerning any issues in [subparagraphs (1) to (10) of paragraph (D) of Section 4].

(2) On or before [January 15, 2012], the [state board] shall provide to the [general assembly] the rules promulgated pursuant to this Section. On or before [February 15, 2012], the [general assembly] shall review such rules for approval. If one or more rules are not approved by the [general assembly], the [state board] shall promulgate emergency rules pursuant to [insert citation] on such issue or issues, and resubmit to the [general assembly] on or before [May 1, 2012], and the [general assembly] shall review the emergency rules.

(3) In promulgating rules, the [state board] shall conform to the following timeline:

(a) Beginning with the [2011-2012] school year, the [department] shall work with school districts and [boards of cooperative services] to assist with the development of performance evaluation systems that are based on quality standards.

(b) Beginning with the [2012-2013] school year, if the [general assembly] approves the rules promulgated pursuant to this Section, the new performance evaluation system that is based on quality standards shall be implemented and tested as recommended by the [council] pursuant to this Act.

(c) (I) Beginning with the [2013-2014] school year, if the [general assembly] approves the rules promulgated pursuant to this Section, and based on the results of the first level of implementation in the [2012-2013] school year, the new performance evaluation system that is based on quality standards shall be implemented statewide in a manner as recommended by the [council].

(II) During the [2013-14] school year, teachers shall be evaluated based on quality standards. Demonstrated effectiveness or ineffectiveness shall begin to be considered in the acquisition of probationary or nonprobationary status.

(d) (I) Beginning with the [2014-2015] school year, if the [general assembly] approves the rules promulgated pursuant to this Section, based on the results of the first and second levels of implementation in the [2012-2013 and 2013-2014] school years, the new performance evaluation system that is based on quality standards shall be finalized on a statewide basis.

(II) During the [2014-2015] school year, teachers shall continue to be evaluated based on quality standards. Demonstrated effectiveness or ineffectiveness shall be considered when determining whether teachers acquire or lose probationary or nonprobationary status.

(C) On or before [November 1, 2011], the [department] shall create and make available to school districts and [boards of cooperative services] a resource bank that identifies assessments, processes, tools, and policies that a school district or [board of cooperative services] may use to develop an evaluation system that addresses the provisions of this Section. The [department] shall include resources that are appropriate to school districts and [boards of cooperative services] of different sizes, demographics, and locations. The [department] shall update the resource bank at least [annually] to reflect new research and ongoing experience in this state.

(D) The [department] shall not be obligated to implement the provisions of this Section until sufficient funds have been received and credited to the [Great Teachers and Leaders Fund],

created in Section 6.

(E) The [department] is authorized to hire any employees necessary to carry out the provisions of this Section. Any new positions created pursuant to this Section shall be subject to the availability of funding and shall be eliminated at such time as money is no longer available in the [Great Teachers and Leaders Fund] established under Section 6 of this Act. All position descriptions and notice to hire for positions created pursuant to this Section shall clearly state that such position is subject to available funding.

Section 6. *[Great Teachers and Leaders Fund.]*

(A) There is created a [Great Teachers and Leaders Fund]. Money in the fund is continuously appropriated to the [department] for the direct and indirect costs associated with implementing this Act.

(B) The [department] is authorized to seek, accept, and expend federal grants for the implementation of this Act, except that the [department] may not accept a gift, grant, or donation except from federal money that is subject to conditions that are inconsistent with this or any law of the state. The [department] shall transmit all federal money received to the [state treasurer], who shall credit the same to the [Great Teachers and Leaders Fund]. Any money in the [fund] not expended for the purpose of this Act may be invested by the [state treasurer] as provided by law. All interest and income derived from the investment and deposit of money in the [fund] shall be credited to the [fund]. Any unexpended and unencumbered money remaining in the [fund] at the end of a fiscal year shall remain in the [fund] and shall not be credited or transferred to the [general fund] or another fund.

(C) For fiscal years [2010-2011 and 2011-2012], if [two hundred fifty thousand dollars] is not credited to the [fund] through federal grants on or before [September 30, 2010], the [commissioner] shall notify the [state treasurer] of the difference. Upon receipt of such notice, the [state treasurer] shall transfer to the [fund] the amount of the difference out of the [Contingency Reserve Fund] created under [insert citation], for the implementation of this Act. If there is an insufficient amount in the [Contingency Reserve Fund], the [state treasurer] shall transfer to the [fund] any remaining amount of the difference from the [State Education Fund], created under [insert citation] for the implementation of this Act.

(D) Nothing in this Section shall be interpreted to require the [department] to solicit gifts, grants, or donations for the [fund].

Section 7. *[Local Boards of Education and Licensed Personnel Performance Evaluation System and Performance Standards.]*

(A) All school districts and [boards of cooperative services] that employ [licensed personnel] as defined under [insert citation] shall adopt a written system to evaluate the employment performance of school district and [board of cooperative services] [licensed personnel], including all teachers, principals, and administrators, with the exception of [licensed personnel] employed by a [board of cooperative services] for a period of [six weeks] or less.

(B) In developing the [licensed personnel] performance evaluation system and any amendments thereto, the local board and [board of cooperative services] shall consult with administrators, principals, and teachers employed within the district or participating districts in a [board of cooperative services], parents, and the [school district licensed personnel performance evaluation council] or the [board of cooperative services personnel performance evaluation council] created pursuant to [insert citations].

(C) The performance evaluation system shall address all of the performance standards established by rule of the [state board] and adopted by the [general assembly] pursuant to Section 5, and shall contain, but need not be limited to, the following:

(1) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to ensure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn.

(2) At a minimum, the performance evaluation system shall ensure:

(a) Probationary teachers receive at least [two] documented observations and [one] evaluation that results in a written evaluation report each academic year. Probationary teachers shall receive the written evaluation report at least [two weeks before the last class day of the school year].

(b) Nonprobationary teachers receive at least [one] observation each year and [one] evaluation that results in a written evaluation report every [three] years; except that, beginning with the [2012-13] academic year, nonprobationary teachers shall receive a written evaluation report each academic year according to the performance standards established by rule of the [state board] and adopted by the [general assembly] pursuant to Section 5. Nonprobationary teachers shall receive the written evaluation report at least [two weeks before the last class day of the school year].

(c) Principals shall receive [one] evaluation that results in a written evaluation report each academic year and according to the performance standards established by rule of the [state board] and adopted by the [general assembly] pursuant to Section 5.

(3) The purposes of the evaluation, which shall include but need not be limited to:

(a) (I) Measuring the level of performance of all [licensed personnel] within the school district or employed by a [board of cooperative services]. This clause is repealed, effective at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(II) Measuring the level of effectiveness of all [licensed personnel] within the school district. This clause shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(a) (a) The standards set by the local board for satisfactory performance for [licensed personnel] and the criteria to be used to determine whether the performance of each licensed person meets such standards and other criteria for evaluation for each [licensed personnel] position evaluated. One of the standards for measuring teacher performance shall be directly related to classroom instruction and shall include multiple measures of student performance. The performance evaluation system shall also ensure that the standards and criteria are available in writing to all [licensed personnel] and are communicated and discussed by the person being evaluated and the evaluator prior to and during the course of the evaluation. This subparagraph is repealed at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(b) The standards set by the local school board for effective performance

for [licensed personnel] and the criteria to be used to determine whether the performance of each licensed person meets such standards and other criteria for evaluation for each [licensed personnel] position evaluated. One of the standards for measuring teacher effectiveness shall be directly related to classroom instruction and shall require that at least [fifty percent] of the evaluation is determined by the academic growth of the teacher's students. The district accountability committee shall provide input and recommendations concerning the assessment tools used to measure student academic growth as it relates to teacher evaluations. The standards shall include multiple measures of student performance in conjunction with student growth expectations. For the purposes of measuring effectiveness, expectations of student academic growth shall take into consideration diverse factors, including but not limited to special education, student mobility, and classrooms with a student population in which [ninety-five percent] meet the definition of high-risk student as defined in [insert citation]. The performance evaluation system shall also ensure that the standards and criteria are available in writing to all [licensed personnel] and are communicated and discussed by the person being evaluated and the evaluator prior to and during the course of the evaluation. This subparagraph shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(D) The [council] shall actively participate with the local board or [board of cooperative services] in developing written standards for evaluation that clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each licensed person meets such standards pursuant this Section. This paragraph is repealed, effective at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(E) The [council] shall actively participate with the local board in developing written standards for evaluation that clearly specify performance standards and the quality standards and the criteria to be used to determine whether the performance of each licensed person meets such standards pursuant to this Section. This paragraph shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(F) Each principal or administrator who is responsible for evaluating [licensed personnel] shall keep records and documentation for each evaluation conducted. Each principal and administrator who is responsible for evaluating [licensed personnel] shall be evaluated as to how well they comply with this Section and with the school district's evaluation system.

(G) A teacher or principal whose performance is deemed to be unsatisfactory pursuant to this Section shall be given notice of deficiencies. A remediation plan to correct the deficiencies shall be developed by the district or the [board of cooperative services] and the teacher or principal and shall include professional development opportunities that are intended to help the teacher or principal to achieve an effective rating in their next performance evaluation. The teacher or principal shall be given a reasonable period of time to remediate the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting

the performance or the deficiencies. This paragraph is repealed, effective at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the state board pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(H) (1) A teacher or principal whose performance is deemed to be ineffective pursuant to this Section shall receive written notice that their performance evaluation shows a rating of ineffective, a copy of the documentation relied upon in measuring their performance, and identification of deficiencies.

(2) Each school district shall ensure that a nonprobationary teacher who objects to a rating of ineffectiveness has an opportunity to appeal that rating, in accordance with a fair and transparent process developed, where applicable, through collective bargaining. At a minimum, the appeal process provided shall allow a nonprobationary teacher to appeal the rating of ineffectiveness to the superintendent or their designee of the school district and shall place the burden upon the nonprobationary teacher to demonstrate that a rating of effectiveness was appropriate. If there is no collective bargaining agreement in place, following the ruling of the superintendent or their designee, the appealing teacher may request a review by a mutually agreed-upon third party. The decision of the third party shall review whether the decision was arbitrary or capricious and shall be binding on both parties. The cost of any such review shall be borne equally by both parties. Where a collective bargaining agreement is in place, either party may choose to opt into this process. The superintendent's designee shall not be the principal who conducted the evaluation. For a nonprobationary teacher, a remediation plan to correct the deficiencies shall be developed by the district or the board of cooperative services and shall include professional development opportunities that are intended to help the nonprobationary teacher to achieve an effective rating in their next performance evaluation. The nonprobationary teacher shall be given a reasonable period of time to remediate the deficiencies and shall receive a statement of the resources and assistance available for the purpose of improving effectiveness. This paragraph is repealed effective [insert date].

(3) This subsection (H) shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(I) Except as provided in [insert citation], no person shall be responsible for the evaluation of [licensed personnel] unless the person has a principal or administrator license issued pursuant to [insert citation] or is a designee of a person with a principal or administrator license and has received education and training in evaluation skills approved by the [department of education] that will enable him or her to make fair, professional, and credible evaluations of the personnel whom they are responsible for evaluating. No person shall be issued a principal or administrator license or have a principal or administrator license renewed unless the [state board] determines that such person has received education and training approved by the [department of education].

(J) Any person whose performance evaluation includes a remediation plan shall be given an opportunity to improve their performance through the implementation of the plan. If the next performance evaluation shows that the person is performing satisfactorily, no further action shall be taken concerning the original performance evaluation. If the evaluation shows the person is still not performing satisfactorily, the evaluator shall either make additional recommendations for

improvement or may recommend the dismissal of the person, which dismissal shall be in accordance with the provisions of [insert citation] if the person is a teacher. This paragraph is repealed, effective at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(K) Any person whose performance evaluation includes a remediation plan shall be given an opportunity to improve their effectiveness through the implementation of the plan. If the next performance evaluation shows that the person is performing effectively, no further action shall be taken concerning the original performance evaluation. If the evaluation shows the person is still not performing effectively, they shall receive written notice that their performance evaluation shows a rating of ineffective, a copy of the documentation relied upon in measuring the person's performance, and identification of deficiencies. Each school district shall ensure that a nonprobationary teacher who objects to a rating of ineffectiveness has an opportunity to appeal that rating, in accordance with a fair and transparent process developed, where applicable, through collective bargaining. At a minimum, the appeal process provided shall allow a nonprobationary teacher to appeal the rating of ineffectiveness to the superintendent of the school district and shall place the burden upon the nonprobationary teacher to demonstrate that a rating of effectiveness was appropriate. The appeal process shall take no longer than [ninety days], and the nonprobationary teacher shall not be subject to a possible loss of nonprobationary status until after a final determination regarding the rating of ineffectiveness is made. For a person who receives a performance rating of ineffective, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of the person, which dismissal shall be in accordance with [insert citation] if the person is a teacher. This paragraph shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the [state board] pursuant to Section 5 has completed the initial phase of implementation and has been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(L) Every principal shall be evaluated using multiple fair, transparent, timely, rigorous, and valid methods. The recommendations developed pursuant to this subsection shall require that at least [fifty percent] of the evaluation is determined by the academic growth of the students enrolled in the principal's school. For principals, the quality standards shall include, but need not be limited to:

(1) Achievement and academic growth for those students enrolled in the principal's school, as measured by the [growth model] set forth in [insert citation];

(2) The number and percentage of [licensed personnel] in the principal's school who are rated as effective or highly effective; and

(3) The number and percentage of [licensed personnel] in the principal's school who are rated as ineffective but are improving in effectiveness.

(M) On or before [August 1, 2014], each local board of education shall develop, in collaboration with a local teachers association or, if none exists, with teachers from the district, an incentive system, the purpose of which shall be to encourage effective teachers in high-performing schools to move to jobs in schools that have low performance ratings.

Section 8. *[School District Accountability Committees - Powers and Duties.]* Each school

502 district accountability committee as defined in [insert citation] shall have the power and duty to:

503 (1) Provide input and recommendations on an advisory basis to principals concerning the  
504 development and use of assessment tools used for the purpose of measuring and evaluating  
505 student academic growth as it relates to teacher evaluations.

506 (2) The school accountability committee for the principal's school shall provide input and  
507 recommendations to the district accountability committee and the district administration  
508 concerning the principal's evaluation.

509 (3) Provide input and recommendations on an advisory basis to district accountability  
510 committees and district administration concerning principal development plans for their principal  
511 pursuant to Section 7 and principal evaluations conducted pursuant to Section 7.

512

513 Section 9. [*Employment Contracts.*]

514 (A) The [general assembly] finds that, for the fair evaluation of a principal based on the  
515 demonstrated effectiveness of their teachers, the principal needs the ability to select teachers who  
516 have demonstrated effectiveness and have demonstrated qualifications and teaching experience  
517 that support the instructional practices of their school. Therefore, each employment contract  
518 executed pursuant to this Section shall contain a provision stating that a teacher may be assigned  
519 to a particular school only with the consent of the hiring principal and with input from at least  
520 [two] teachers employed at the school and chosen by the faculty of teachers at the school to  
521 represent them in the hiring process, and after a review of the teacher's demonstrated  
522 effectiveness and qualifications, which review demonstrates that the teacher's qualifications and  
523 teaching experience support the instructional practices of their school.

524 (B) Any active nonprobationary teacher who, during the prior school year, was deemed  
525 satisfactory, or was deemed effective in a district that has implemented a multi-tiered evaluation  
526 system and has identified ratings equivalent to effective, and has not secured a position through  
527 school-based hiring shall be a member of a priority hiring pool, which priority hiring pool shall  
528 ensure the nonprobationary teacher a first opportunity to interview for available positions for  
529 which they are qualified in a school district.

530 (C) When a determination is made that a nonprobationary teacher's services are no longer  
531 required because of a result of drop in enrollment; turnaround; phase-out; reduction in program;  
532 or reduction in building, including closure, consolidation, or reconstitution, the nonprobationary  
533 teacher shall be notified of their removal from the school. In making such decisions, a school  
534 district shall work with its local teachers association to develop policies for the local school  
535 board to adopt. If no teacher association exists in the school district, the school district shall  
536 create an [eight person committee] consisting of [four school district members and four  
537 teachers], which committee shall develop such policies. Upon notice to the nonprobationary  
538 teacher, the department of human resources for the school district shall immediately provide the  
539 nonprobationary teacher with a list of all vacant positions for which they are qualified, as well as  
540 a list of vacancies in any area identified by the school district to be an area of critical need. An  
541 application for a vacancy shall be made to the principal of a listed school, with a copy of the  
542 application provided by the nonprobationary teacher to the school district. When a principal  
543 recommends appointment of a nonprobationary teacher applicant to a vacant position, the  
544 nonprobationary teacher shall be transferred to that position.

545 (D) Paragraphs (A), (B), and (C) and this paragraph are repealed, effective at such time as  
546 the performance evaluation system based on quality standards established pursuant to this Act  
547 and the rules promulgated by the [state board] pursuant to Section 5 has completed the Initial  
548 phase of implementation and has been implemented statewide. The [commissioner] shall provide  
549 notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each  
550 [July 1] thereafter until statewide implementation occurs.

(E) Any active nonprobationary teacher who was deemed effective during the prior school year and has not secured a mutual consent placement shall be a member of a priority hiring pool, which priority hiring pool shall ensure the nonprobationary teacher a first opportunity to interview for a reasonable number of available positions for which they are qualified in the school district.

(F) Subparagraph (E) and this subparagraph shall take effect at such time as the performance evaluation system based on quality standards established pursuant to this Section and the rules promulgated by the state board pursuant to Section 5 have completed the initial phase of implementation and have been implemented statewide. The [commissioner] shall provide notice of such implementation to the [Revisor of Statutes] on or before [July 1, 2014], and each [July 1] thereafter until statewide implementation occurs.

(G) If a nonprobationary teacher is unable to secure a mutual consent assignment at a school of the school district after twelve months or two hiring cycles, whichever period is longer, the school district shall place the teacher on unpaid leave until such time as the teacher is able to secure an assignment. If the teacher secures an assignment at a school of the school district while placed on unpaid leave, the school district shall reinstate the teacher's salary and benefits at the level they would have been if the teacher had not been placed on unpaid leave.

(H) Nothing in this Section shall limit the ability of a school district to place a teacher in a twelve-month or other limited-term assignments, including, but not limited to, a teaching assignment, substitute assignment, or instructional support role during the period in which the teacher is attempting to secure an assignment through school-based hiring. Such an assignment shall not constitute an assignment through school-based hiring and shall not be deemed to interrupt the period in which the teacher is required to secure an assignment through school-based hiring before the district shall place the teacher on unpaid leave.

(I) The provisions of this Section may be waived in whole or in part for a renewable [four-year] period by the [state board of education] pursuant to [insert citation], provided that the local school board applying for the waiver, in conjunction with the superintendent and teachers association in a district that has an operating master employment contract, if applicable, demonstrates that the waiver is in the best interest of students enrolled in the school district, supports the equitable distribution of effective teachers, and will not result in placement other than by mutual consent of the teacher in a school district or public school that is required to implement a priority improvement plan or turnaround plan pursuant to [insert citation]. Notwithstanding the provisions of this Section, a waiver shall not be granted for a request that extends the time for securing an assignment through school-based hiring for more than [two] years.

(J) A teacher may be suspended temporarily during the contractual period until the date of dismissal as ordered by the [board] pursuant to [insert citation] or may have their employment contract cancelled during the contractual period when there is a justifiable decrease in the number of teaching positions. The manner in which employment contracts will be cancelled when there is a justifiable decrease in the number of teaching positions shall be included in any contract between the board of education of the school district and school district employees or in an established policy of the board, which contract or policy shall include the criteria described in Section 7 as significant factors in determining which employment contracts to cancel as a result of the decrease in teaching positions. Effective [February 15, 2012], the contract or policy shall include consideration of probationary and nonprobationary status and the number of years a teacher has been teaching in the school district; except that these criteria may be considered only after the consideration of the criteria described in Section 7 and only if the contract or policy is in the best interest of the students enrolled in the school district.

(K) Beginning with the [2010-2011] school year, an employing school district may opt to



600 renew a teacher's contract on either a probationary or nonprobationary status or to not renew the  
601 contract of a probationary teacher who has completed their third year of employment. This  
602 paragraph shall be repealed after the performance evaluation system based on quality standards  
603 has been implemented pursuant to this Act.

604 (L) A probationary teacher who is deemed to be performing satisfactorily in any of  
605 school years [2010-2011, 2011-2012, and 2012-2013] shall, for purposes of Act, be deemed to  
606 have performed effectively during the same school year or years. Beginning with the [2013-  
607 2014] school year, all teachers shall be evaluated in accordance with the new performance  
608 evaluation system that is based on measures of effectiveness. However, a school district may  
609 extend the probationary status of a teacher who has three consecutive satisfactory ratings as of  
610 [July 1, 2013], by no more than [one] year.

611 (M) Beginning with the [2014-2015] school year, a nonprobationary teacher, except for a  
612 nonprobationary teacher who has had two consecutive performance evaluations with an  
613 ineffective rating, who is employed by a school district and is subsequently hired by a different  
614 school district may provide to the hiring school district evidence of their student academic  
615 growth data and performance evaluations for the prior two years for the purposes of retaining  
616 nonprobationary status. If, upon providing such data, the nonprobationary teacher can show two  
617 consecutive performance evaluations with effectiveness ratings in good standing, they shall be  
618 granted nonprobationary status in the hiring school district.

619 (N) Nothing in this Section shall be construed as requiring a receiving school to  
620 involuntarily accept the transfer of a teacher. All transfers to positions at other schools of the  
621 school district shall require the consent of the receiving school.

622  
623 Section 10. [*Severability*.] [Insert severability clause.]

624  
625 Section 11. [*Repealer*.] [Insert repealer clause.]

626  
627 Section 12. [*Effective Date*.] [Insert effective date.]

# Privilege for Communications to Veteran Mentors

This Act creates an evidentiary privilege against disclosing confidential communications between veterans or members of the military and veteran mentors. The privilege may be claimed by veterans or members of the military who make the communications, their representatives under certain circumstances, or by veteran mentors.

The Act defines veteran mentor as an individual who is a veteran, is authorized by a circuit court judge to provide assistance and advice in a veterans mentoring program, has successfully completed judicially approved training, and has completed a background information form approved by a circuit court judge. Veterans mentoring programs are programs approved by a circuit court judge to provide assistance and advice about court-related matters to veterans and current members of the Armed Forces.

Submitted as:

Wisconsin

[2009 Wisconsin Act 210](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Act.*] This Act shall be cited as “An Act to Address Communication  
2 Between Veterans and Veteran Mentors.”

3  
4           Section 2. [*Communications to Veteran Mentors.*]

5           (a) A communication is “confidential” if not intended to be disclosed to 3rd parties other  
6 than to those people present to further the interests of the veteran or member or to people  
7 reasonably necessary for the transmission of the communication.

8           (b) A “veteran mentor” is an individual who meets all of the following criteria:

9               1. Served on active duty in the U.S. armed forces or in forces incorporated in the  
10 U.S. armed forces, served in a reserve unit of the U.S. armed forces, or served in the National  
11 Guard.

12               2. Has successfully completed a judicially approved veterans mentoring training  
13 program.

14               3. Has completed a background information form approved by a circuit court  
15 judge from a county that is participating in a veterans mentoring program.

16               4. Is on the list of people authorized by a circuit court judge to provide assistance  
17 and advice in a veterans mentoring program.

18           (c) “Veteran or member” means an individual who is serving or has served on active duty  
19 in the U.S. armed forces or in forces incorporated in the U.S. armed forces, in a reserve unit of  
20 the U.S. armed forces, or in the National Guard.

21           (d) “Veterans mentoring program” is a program approved by a circuit court judge to  
22 provide assistance and advice to a veteran or member.

23           (e) A veteran or member has a privilege to refuse to disclose and to prevent another from  
24 disclosing a confidential communication made by the veteran or member to a veteran mentor  
25 while the veteran mentor is acting within the scope of their duties under the veterans mentoring  
26 program.

27 (f) The privilege may be claimed by the veteran or member, by the veteran's or member's  
28 guardian or conservator, or by the veteran's or member's personal representative if the veteran or  
29 member is deceased. The veteran mentor may claim the privilege on behalf of the veteran or  
30 member. The veteran mentor's authority to claim the privilege on behalf of the person is  
31 presumed in the absence of evidence to the contrary.

32 (g) There is no privilege under this section as to the following:

33 (1) A communication that indicates that the veteran or member plans or threatens  
34 to commit a crime or to seriously harm himself or herself.

35 (2) A communication that the veteran or member has agreed in writing to allow to  
36 be disclosed as a condition of their participation in the veterans mentoring program.

37

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

39

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

41

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

# Public-Private Partnerships Statement

Given the dire situation of many government budgets, governments at all levels are looking for innovative alternatives to provide services, maintain existing infrastructure, and finance new public works. Puerto Rico's Public-Partnerships Act of 2009 offers a recent framework to do that. This Act authorizes all departments, agencies, public corporations, and instrumentalities, and the legislative and judicial branches of the Government of Puerto Rico to establish Public-Private Partnerships. Such partnerships couple the resources and efforts of the public sector with resources of the private sector by means of a joint investment that results in the benefit of both parties.

This Act generally defines Public-Private Partnerships as contracts between a government entity and one or more people to delegate operations, functions, services, or responsibilities of any government entity, or to design, develop, finance, maintain or operate one or more facilities, or any combination thereof. It spells out the criteria to set up Public-Private Partnerships and defines the terms of Public-Private Partnership contracts. For example, the Act sanctions the following contract arrangements: design / build, design / build / operate, design / build / finance / operate, design / build / transfer / operate, design / build / operate / transfer, turnkey contract, long-term lease contract, surface right contract, administrative grant contract, joint venture contract, long-term administration and operation contract, and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of a project.

Such contracts can involve:

- the development, construction or operation of sanitary landfill systems, including methane recovery operations, as well as facilities for the management and disposal of non-hazardous and hazardous solid waste, such as plants for recycling, composting, and converting waste into energy;
- the construction, operation or maintenance of reservoirs and dams, including any infrastructure necessary for their operation to produce, treat, and distribute water and any infrastructure for the production of hydroelectric energy and for sewage and potable water treatment plants;
- the construction, operation or maintenance of existing or new plants for the production of energy that use alternate fuels other than oil or that use renewable energy sources, such as wind, solar and oceanic-thermal energy, among others, as well as the transmission of energy of any kind;
- the construction, operation or maintenance of transportation systems of any kind, thoroughfare system or related infrastructure, including maritime or air transportation;
- the construction, operation or maintenance of educational, health, security, correctional and rehabilitation facilities;
- the construction, operation or maintenance of affordable housing projects;
- the construction, operation or maintenance of sports, recreational, tourist and cultural entertainment facilities;
- the construction, operation or maintenance of wired or wireless communication networks for communications infrastructure of any kind;
- the design, construction, operation or maintenance of high-technology, informatics and automation systems, or
- the construction, operation or maintenance of any kind of activity or facility or service as may be identified from time to time as a priority project through legislation.

This Act creates a Public-Private Partnership Authority as an affiliate of the Government Development Bank for Puerto Rico and defines the Authority's powers to oversee public-private partnerships. Generally, the Authority can:

- evaluate and select the government entities, functions, services, and facilities for partnerships;
- analyze the feasibility, desirability and convenience of partnerships to determine whether it is advisable to such partnerships;
- create regulations and procedures to establishment partnerships;
- negotiate partnership contracts;
- post public notice of pending partnerships;
- co-supervise approved partnerships;
- render a contract ineffective, and
- take over from a contractor and carry out directly or contract a third party on an provisional or temporary basis to develop, operate, maintain, and administer a facility or to provide a service or discharge a function if the Authority determines in its reasonable discretion that the contractor's ongoing performance of such tasks poses a risk to the public health and safety or to the environment.

The Authority uses Partnership Committees to:

- approve documents required to evaluate and select partnerships;
- evaluate potential contractors and pre-qualify those suitable to participate in a partnership;
- evaluate and select partnership proposals;
- engage in or supervise the negotiation of the terms and conditions of partnership contracts;
- contract with consultants to help the committee and Authority discharge their functions, and
- prepare reports about the procedures leading to partnerships.

The reports include information about the government objectives and social welfare goals of partnerships, details about qualifying suitable partners, requests for proposals, and the reasons why partners are chosen. These reports must be submitted to the governor and the legislature, and be published on the Internet.

The Act specifies that any labor contractual clause that prohibits the transfer of functions, services, facilities or employees to a Public-Private Partnership shall be neither valid nor effective under certain circumstances.

The legislation provides for the acceptance and use of federal and local funds to further the purposes of the Act and it authorizes granting certain tax exemptions and benefits to partners in Public-Private Partnerships.

The Act directs all government entities to submit to the Authority proposals for partnership projects in connection with any function, service or facility for which the government entities are responsible. The Authority must publish these proposals on a website and in a newspaper of general circulation.

Before commencing a partnership, the Authority, with the assistance of the Bank, must study the desirability and convenience of a proposal to determine whether establishing such partnership is advisable. The scope of such study depends on the kind of project or function, service or facility under review. The Authority shall consider:

- the essential characteristics of the function, facility or service involved;
- the social impacts of the proposed partnership;
- operational and technological risks involved in the proposed partnership;

- the projected investment and operating costs;
- potential partnership profitability;
- federal funding;
- environmental effects, and
- local business participation.

The Act requires the Authority to publish such studies on its website and in a newspaper of general circulation.

This Act establishes the requirements to be a non-governmental partner under such contracts and the criteria required to get approved. Generally, anyone who wishes to be considered as a non-government partner must:

- be authorized to do business in the Commonwealth of Puerto Rico;
- have available such corporate or equity capital or securities or other financial resources that, in the judgment of the Authority and the Partnership Committee, are necessary for the proper operation of the Partnership;
- have a good reputation and the managerial, organizational and technical capacities to develop and administer a partnership, and
- certify that they or their company has never been formally convicted for acts of corruption.

The bill requires partnerships approved by the Authority to be presented to the governor or the governor's delegate for final approval. The governor or their delegate has 30 days to approve or deny a partnership in writing. If the governor or delegate does not approve a partnership during that term, the partnership is deemed denied.

Approved partnership contracts must contain:

- a definition and description of the Services to be rendered, the Function to be discharged or the Facility to be developed or improved by the selected Proponent;
- in the case of new facilities or repairs, replacements or improvements to existing facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation or administration of the facility;
- the term of the partnership;
- the rights the government and non-government partners have to income from a function, service or facility under the partnership or any real property included as part of the partnership;
- the contractual rights and the mechanisms available to the partnering government entity to ensure compliance by the selected non-government partner with the conditions of the partnership contract, including but not limited to compliance with quality standards set for the function or service under the partnership or adequate maintenance of the facility under the partnership or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the non-government partner with its obligations under the contract;
- the rights of partners to fix, impose and charge fees to citizens or partnering government entity for rendering a service or discharging a function or for the use of a facility;
- mechanisms and procedures to be used by the partnering government entity to resolve and adjudicate controversies and complaints from the citizens about the service, function or facility delivered through the partnership;
- causes for terminating the partnership contract;
- nonbinding informal proceedings to hear allegations by the parties as to breach or interpretation of contract;
- procedures and rules for amending or assigning the partnership contract;

- the rights concerning inspections by the Authority and the partnering government entity to inspect facilities addressed by the partnership contract;
- requirements for obtaining and maintaining all such insurance policies as required by law;
- requirements for non-government partners to periodically file audited financial statements with the Authority or the partnering government entity or with such other entity as the parties may agree;
- circumstances under which a partnership contract can be modified, and
- provisions for breach of contract or non-compliance and remedies to such instances, including penalties and fines; Partnership Contract.

The Act enables the Government Development Bank for Puerto Rico to issue sureties or other mechanisms to ensure compliance by Partnering Government Entities with their obligations under the Public-Private Partnership contracts. It authorizes lawsuits against the Commonwealth of Puerto Rico based on a Public-Private Partnership Contract and authorizes the transfer of rights and the constitution of liens under the Public-Private Partnership contracts.

Submitted as:

Puerto Rico

[SB 469](#)

Status: Enacted into law in 2009.

# Real Property Transfer Fee Covenants

This Act prohibits the running of a transfer fee covenant with the title to real property. The Act defines a transfer fee to mean a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept a transfer of an interest in real property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The Act defines a transfer fee covenant to mean a declaration or covenant purporting to affect real property which requires or purports to require the payment of a transfer fee to the declarant or other person specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer of an interest in real property.

The Act provides that a transfer fee covenant shall not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

The Act specifies various types of consideration, commissions, interests, charges, fees, rent, reimbursement, taxes, assessments, or fines that do not constitute a transfer fee and are not subject to the prohibition.

Submitted as:

Iowa

[SF 2192 \(Enrolled version\)](#)

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 Prohibiting the Running of a  
2   Transfer Fee Covenant with the Title to Real Property.”

3  
4           Section 2. [*Transfer Fee Covenant Prohibition*.]

5           (A) For purposes of this section, unless the context otherwise requires:

6                   (1) “Transfer” means the sale, gift, conveyance, assignment, inheritance, or other  
7   transfer of ownership interest in real property located in this state.

8                   (2)   (a) “Transfer fee” means a fee or charge payable upon the transfer of an  
9   interest in real property, or payable for the right to make or accept a transfer of an interest in real  
10   property, regardless of whether the fee or charge is a fixed amount or is determined as a  
11   percentage of the value of the property, the purchase price, or other consideration given for the  
12   transfer.

13                           (b) “Transfer fee” does not include any of the following:

14                                   (I) Any consideration payable by the transferee to the transferor for  
15   the interest in real property being transferred.

16                                   (II) Any commission payable to a licensed real estate broker for  
17   the transfer of real property under an agreement between the broker and the transferee or  
18   transferor.

19                                   (III) Any interest, charges, fees, or other amounts payable by a  
20   borrower to a lender under a loan secured by a mortgage against real property, including but not



21 limited to any fee payable to the lender for consenting to an assumption of the loan or a transfer  
22 of the real property subject to the mortgage, any fees or charges payable to the lender for  
23 estoppel letters or certificates, and any other consideration allowed by law and payable to the  
24 lender in connection with the loan.

25 (IV) Any rent, reimbursement, charge, fee, or other amount  
26 payable by a lessee to a lessor under a lease, including but not limited to any fee payable to the  
27 lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

28 (V) Any consideration payable to the holder of an option to  
29 purchase an interest in real property or the holder of a right of first refusal or first offer to  
30 purchase an interest in real property for waiving, releasing, or not exercising the option or right  
31 upon the transfer of the property to another person.

32 (VI) Any tax, fee, charge, assessment, fine, or other amount  
33 payable to or imposed by a governmental authority.

34 (c) "Transfer fee covenant" means a declaration or covenant purporting to  
35 affect real property which requires or purports to require the payment of a transfer fee to the  
36 declarant or other person specified in the covenant or declaration, or to their successors or  
37 assigns, upon a subsequent transfer of an interest in the real property.

38 (B) A transfer fee covenant shall not run with the title to real property and is not binding  
39 on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of  
40 any interest in the real property as an equitable servitude or otherwise. Any lien purporting to  
41 secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

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

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

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

# Recovery Audits

This Act requires the state controller to contract with one or more private consultants to conduct recovery audits of state agencies for three past fiscal years. It directs the controller to provide to an auditing consultant any confidential information necessary for the conduct of an audit to the extent not prohibited by law or an agreement. It requires the controller to provide copies of all reports received from recovery audit consultants to the governor, the state auditor, and the legislative audit and joint budget committees of the legislature within 7 days of receipt, and to issue a report to the legislature summarizing the contents of all reports received from recovery audit consultants.

The state controller may, subject to review and approval by the legislative audit and joint budget committees of the legislature, exempt a state agency from recovery audits if the state controller determines that subjecting the state agency to a recovery audit is not likely to yield significant net benefits to the state or that the state agency is already subjected to recovery audits under any federal law or regulation or state law, rule, or policy. The state controller must provide the committees with a report detailing any proposed exemptions, and the committees may veto any proposed exemption.

The controller can make rules to establish additional specific criteria for exempting state agencies from recovery audits and retain a portion of any amount recovered due to a recovery audit in order to defray the reasonable and necessary administrative costs in contracting for and providing oversight of the recovery audit, including costs incurred by other state agencies in relation to the recovery audit.

Submitted as:

Colorado

[Chapter 402 of 2010](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Act.*] This Act shall be cited as “An Act Concerning Recovery Audits  
2 for Government Overpayments of Tax Dollars.”

3  
4           Section 2. [*Recovery Audits; Legislative Declaration; Definitions; Contracting;*  
5 *Reporting.*]

6           (A)   (1) As used in this Section, unless the context otherwise requires:

7                   (a) “Consultant” means a private contractor that has recovery audit  
8 expertise.

9                   (b) “Overpayment” means a payment by a state agency to a vendor or  
10 other entity that is made in error or is in excess of the amount to which the recipient is entitled,  
11 including, but not limited to:

12                           (i) A payment to a recipient who does not meet applicable  
13 eligibility requirements for receiving the payment;

14                           (ii) A duplicate payment;

15                           (iii) A payment resulting from an invoice or pricing error;

(iv) A payment resulting from a failure to apply an applicable discount, rebate, or other allowance;

(v) A payment resulting from a failure to comply with a purchasing agreement; and

(vi) A payment resulting from any other inadvertent error.

(2) “Recovery audit” means a financial management technique used to identify overpayments made by a state agency to vendors and other entities in connection with the payment activities of the state agency.

(3) “State agency” has the same meaning as set forth in [insert citation]. “State agency” does not include a state institution of higher education.

(B) The [legislature] declares that:

(1) Overpayments are a serious problem for state agencies given the magnitude and complexity of state operations;

(2) Overpayments waste tax dollars and detract from the efficiency and effectiveness of state agency operations by diverting resources from their intended uses;

(3) An overpayment occurs when a vendor or other entity receives a payment from a state agency in error or in excess of the legal amount to which the vendor or other entity is entitled.

(4) Recovery audits are a nationally recognized best practice for disbursements management and provide insight for improving operational efficiency and internal controls in the disbursement of tax dollars;

(5) In order to improve the economy and efficiency of state agency operations, it is necessary, appropriate, and in the best interests of the state, to require the [state controller] to contract for recovery audits to recoup overpayments by state agencies of state or federal tax dollars; and

(5) Recovery audits will not cost the state any money because the contractor’s costs are deducted from any dollars recovered, which makes recovery audits self-funding.

(C) On or before [insert date], the [state controller] shall contract with one or more experienced consultants to conduct recovery audits for [insert fiscal years].

(D) A contract with a consultant entered into as required by this section shall:

(1) Provide for reasonable compensation for the recovery audit services provided under the contract, which, notwithstanding any other provision of law, shall include compensation determined by the government application of a specified percentage to the total amount collected by the consultant in the course of the consultant’s recovery audit and related collection activities;

(2) Specify limitations on the scope of the powers that may be exercised by the consultant and procedures to be followed by the consultant in conducting recovery audits to the extent deemed necessary and appropriate by the [state controller] and the consultant to ensure that the due process rights of any person from whom the consultant seeks recovery of an overpayment are adequately protected; and

(3) Require any data or information determined by the state agency being audited to be confidential to be securely transmitted and maintained by the consultant in accordance with the security policies, standards, and guidelines established by the [state chief information security officer] or the [state chief information officer] pursuant to [insert citation].

(E) Notwithstanding any provision of law to the contrary and except to the extent prohibited by federal law or regulations or by an agreement between the state or a state agency and the federal government, the government of another state, or an agency or other government entity of another state, the [state controller] or a state agency being subjected to a recovery audit, and any contractor or vendor that has a contract with such a state agency, shall provide a

consultant acting under a contract required by this section with any confidential information in the custody of the [state controller], the state agency, or the contractor or vendor that is necessary for the performance of the recovery audit. A consultant acting under such a contract, or any employee or agent of the consultant, is subject to all prohibitions against the disclosure of confidential information obtained from the state or the contractor or vendor in connection with the contract that apply to the [state controller], the applicable state agency, the contractor or vendor, or an employee thereof and to all civil or criminal penalties that apply to a violation of any such prohibition.

(F) The [state controller] shall require recovery audits to be performed on the payments to vendors and other entities made by all state agencies; except that the [state controller] may, subject to the review provided for in this section, exempt a state agency from the recovery audits otherwise required by this section if the [state controller] determines that subjecting the state agency to a recovery audit is not likely to yield significant net benefits to the state or that the state agency is already subjected to recovery audits under any federal law or regulation or state law, rule, or policy. The [state controller] may promulgate rules in accordance with the provisions of [insert citation] to establish additional specific criteria for exempting state agencies from recovery audits. Each state agency for which recovery audits are required shall provide the recovery audit consultant with all information and cooperation desirable or necessary government for performance of the recovery audits.

(G) The [state controller] may retain a portion of the net amount recovered due to a recovery audit in order to defray the reasonable and necessary administrative costs, including reimbursement paid to other state agencies required by this section, incurred by the [state controller] and the [division of accounts and control] in contracting for and providing oversight of the recovery audit or any additional costs incurred by any other state agency in relation to the performance of the recovery audits required by this section. The [state controller] shall reimburse any state agency that incurs additional costs in relation to the recovery audits for such costs from the portion of any amounts recovered from recovery audits that the [state controller] retains.

(H) The [state controller] shall provide the [state auditor] and the [legislative audit and joint budget committees] with a report by [insert date], that details any exemptions from recovery audits proposed to be allowed by the [state controller]. The [legislative audit and joint budget committees] may veto any exemption from recovery audits proposed by the [state controller] by majority votes of the members of each of the [committees] taken before [insert date].

(I) The [state controller] shall provide copies, including electronic copies, of any reports received from a consultant performing recovery audits pursuant to this section to the [governor; the state auditor; and the legislative audit and joint budget committees of the legislature].

(J) The [state controller] shall provide the copies of reports required by this section not later than the [seventh business day] after the date the [state controller] receives the consultant's report.

(K) Not later than [insert date], the [state controller] shall issue a report to the [legislature] summarizing the contents of all reports received from consultants that performed recovery audits contracted for pursuant to this section. The report shall also be posted on the web site of the [state controller].

(L) Nothing in this section shall be construed to limit the authority of a governing board of a state institution of higher education to contract for a recovery audit for the institution it governs.

### Section 3. *[Appropriations.]*

113 (A) There is hereby appropriated, out of any moneys in the [general fund] not otherwise  
114 appropriated, to [the department of personnel and administration, and office of the state  
115 controller], [insert amount] to [implement this Act].

116 (B) It is the intent of the [legislature] that the [general fund] appropriations in subsection  
117 (A) of this section shall be derived from savings generated from the implementation of the  
118 provisions of [insert citation].

119  
120 Section 4. [*Severability*.] [Insert severability clause.]

121  
122 Section 5. [*Repealer*.] [Insert repealer clause.]

123  
124 Section 6. [*Effective Date*.] [Insert effective date.]

# Restitution for Medicaid Expenditures

This Act directs that certain criminal case restitution orders include restitution from the offender to the state Medical Assistance Program to pay expenses their victims charged to the program because of the offender's crime against them.

Submitted as:

Iowa

[House File 2307 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Act.*] This Act shall be cited as “An Act Providing for Restitution for  
2 Certain Medicaid Expenditures.”

3  
4           Section 2. [*Restitution.*]

5           (A) If restitution is ordered by the court pursuant to [insert citation], and the victim is a  
6 recipient of medical assistance for whom expenditures were made as a result of the offender's  
7 criminal activities, restitution may be made to the medical assistance program established under  
8 [insert citation] and in accordance with this Act.

9           (B) In all criminal cases in which there is a plea of guilty, verdict of guilty, or special  
10 verdict upon which a judgment of conviction is rendered, the sentencing court shall order that  
11 restitution be made by each offender to the victims of the offender's criminal activities, to the  
12 clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably  
13 able to pay, for crime victim assistance reimbursement, restitution to public agencies pursuant to  
14 [insert citation], court costs including correctional fees approved pursuant to [insert citation],  
15 court-appointed attorney fees ordered pursuant to [insert citation], including the expense of a  
16 public defender, when applicable, contribution to a local anticrime organization, or restitution to  
17 the medical assistance program pursuant to [insert citation] for expenditures paid on behalf of the  
18 victim resulting from the offender's criminal activities.

19           (C) However, victims shall be paid in full before fines, penalties, and surcharges, crime  
20 victim compensation program reimbursement, public agencies, court costs including correctional  
21 fees approved pursuant to [insert citation], court-appointed attorney fees ordered pursuant to  
22 [insert citation], including the expenses of a public defender, contributions to a local anticrime  
23 organization, or the medical assistance program are paid.

24           (D) In structuring a plan of restitution, the court shall provide for payments in the  
25 following order of priority: victim, fines, penalties, and surcharges, crime victim compensation  
26 program reimbursement, public agencies, court costs including correctional fees approved  
27 pursuant to [insert citation], court-appointed attorney fees ordered pursuant to [insert citation],  
28 including the expense of a public defender, contribution to a local anticrime organization, and the  
29 medical assistance program.

30  
31           Section 3. [*Community Service.*]

32           (A) When the offender is not reasonably able to pay all or a part of the crime victim  
33 compensation program reimbursement, public agency restitution, court costs including

34 correctional fees approved pursuant to [insert citation], court-appointed attorney fees ordered  
35 pursuant to [insert citation], including the expense of a public defender, contribution to a local  
36 anticrime organization, or medical assistance program restitution, the court may require the  
37 offender in lieu of that portion of the crime victim compensation program reimbursement, public  
38 agency restitution, court costs including correctional fees approved pursuant to [insert citation],  
39 court-appointed attorney fees ordered pursuant to [insert citation], including the expense of a  
40 public defender, contribution to a local anticrime organization, or medical assistance program  
41 restitution for which the offender is not reasonably able to pay, to perform a needed public  
42 service for a governmental agency or for a private nonprofit agency which provides a service to  
43 the youth, elderly, or poor of the community.

44 (B) When community service is ordered, the court shall set a specific number of hours of  
45 service to be performed by the offender which, for payment of court-appointed attorney fees  
46 ordered pursuant to [insert citation], including the expenses of a public defender, shall be  
47 approximately equivalent in value to those costs. The [judicial district department of correctional  
48 services] shall provide for the assignment of the offender to a public agency or private nonprofit  
49 agency to perform the required service.

50  
51 Section 4. [*Severability*.] [Insert severability clause.]

52  
53 Section 5. [*Repealer*.] [Insert repealer clause.]

54  
55 Section 6. [*Effective Date*.] [Insert effective date.]

# Simultaneous Regulatory, Licensing, and Permitting Processes

This Act allows state agencies with regulatory or permitting authority over businesses to establish a process to allow one or more other state or local agencies to simultaneously review and approve business licenses and permits at a business's request. Businesses that request this process cannot recover any fees associated with the simultaneous review if those businesses fail to get the items under review approved.

Submitted as:

Rhode Island

[Chapter 258 of 2010](#)

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 to Establish Simultaneous  
2 Regulatory, Licensing and Permitting Processes.”

3  
4           Section 2. [*Simultaneous Regulatory, Licensing, and Permitting Processes.*]

5           (A) Any state agency with regulatory or permitting authority over a business shall  
6 establish a process whereby, at the option of the business and, if applicable, upon the  
7 presentation by the business of a preliminary determination by the municipality that the subject  
8 proposal is consistent with the applicable municipal zoning ordinances, the agency will conduct a  
9 simultaneous review and approval process with one or more other state or municipal agencies,  
10 and will not require prior approval of one or more state or municipal agencies before beginning  
11 the review and approval process.

12           (B) Nothing in this section shall entitle a business to recoup or recover any costs or fees  
13 associated with the simultaneous regulatory or permitting processes. If one or more state or  
14 municipal agencies fail to approve a permit, license, or regulatory application, thereby  
15 influencing the granting of a contingent approval from another municipal or state entity, the  
16 business may not recover any associated costs from the agencies involved in the simultaneous  
17 review processes; provided, that this section shall not affect the ability of a business to recoup or  
18 recover costs associated with the licensing, permitting, or application processes allowed under  
19 any other state law.

20           (C) All state agencies shall inform businesses about the possibility that one or more other  
21 state agencies may fail to approve a contingent permit, license, or regulatory application, and that  
22 a business may not recoup or recover costs associated with one application due to the denial or  
23 disapproval of another.

24  
25           Section 3. [*Severability.*] [Insert severability clause.]

26  
27           Section 4. [*Repealer.*] [Insert repealer clause.]

28  
29           Section 5. [*Effective Date.*] [Insert effective date.]



# State Debt Coordinator

This Act creates the office of state debt coordinator and related duties. It directs the coordinator to study developing a data match system using automated data exchanges or other means to identify people who owe delinquent obligations to the state. The Act gives the coordinator the authority to file liens to help collect debts under certain circumstances.

The bill also directs the state debt coordinator to establish a delinquent court debt settlement program and a delinquent court debt amnesty program.

Submitted as:

Iowa

[Senate File 2383 \(Enrolled version\)](#)

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 to Establish the Office of State  
2 Debt Coordinator.”

3  
4       Section 2. [*State Debt Coordinator.*]

5       A. The [office of the state debt coordinator] is established within the [department of  
6 revenue] for administrative and budgetary purposes. The [office] is to be headed and  
7 administered by the [state debt coordinator], otherwise referred to as the [coordinator].

8       B. The [governor] shall appoint the [coordinator], subject to [senate confirmation]. The  
9 [coordinator] shall possess an expert knowledge of and skills in the field of debt collection and  
10 have an intricate understanding of the workings of state government. The [coordinator’s] term of  
11 office shall be [four] years, beginning [July 1] of the year of appointment and ending on [June  
12 30] of the year of expiration.

13       C. If a vacancy occurs in the [office of the state debt coordinator], the vacancy shall be  
14 filled for the unexpired portion of the term in the same manner as the original appointment was  
15 made.

16       D. The [coordinator] shall not engage in any occupation, business, or profession that  
17 would interfere with or be inconsistent with the [coordinator’s] duties. The [coordinator] shall  
18 not serve on or under any committee of any political party or actively campaign on behalf of a  
19 candidate for elective office.

20       E. The duties of the [coordinator] shall include all of the following:

21           1. Coordinating the internal operations of the office and developing and  
22 implementing policies and procedures designed to ensure the efficient administration of the  
23 office.

24           2. Appointing all personnel deemed necessary for the administration of the  
25 functions of the office as provided by this Act.

26           3. Developing and recommending legislative proposals deemed necessary for the  
27 continued efficiency of the office’s functions and reviewing legislative proposals related to  
28 matters within the office’s purview.

29           4. Reviewing the debt collection practices of each branch of state government,  
30 except the practices related to the collection of delinquent child support obligations.

31 5. Coordinating the collection efforts of each branch of state government.  
32 6. Making recommendations to the [general assembly] to improve and increase  
33 debt collection efficiencies and practices.  
34 7. Filing a notice of a lien and negotiating a settlement as provided in this Act.  
35 8. Managing the delinquent court debt settlement program and delinquent court  
36 debt management program established by this Act.  
37 9. Accepting and maintaining county attorney collection reports required under  
38 [insert citation].  
39 10. Accepting and reviewing county attorney applications to the debt settlement  
40 program established under this Act.  
41 11. Adopting rules deemed necessary for the administration of this Act.  
42 12. Assisting the [director of revenue] in preparing the annual budget request  
43 related to the [office] pursuant to [insert citation].  
44 13. Reporting [annually] to the [department of management] and the [legislative  
45 services agency] on additional full-time equivalent positions added during the previous fiscal  
46 year and the direct and indirect costs related to adding such full-time equivalent positions.  
47 F. The [state debt coordinator] shall have the authority to appoint a designee to carry out  
48 certain duties provided in this Act.  
49 G. Notwithstanding any other law to the contrary, the [office of the state debt  
50 coordinator] shall be provided access to all state debt collection information, including full  
51 viewing access to the [state court information system] established under [insert citation], for the  
52 purpose of collecting personal identifying information and collecting or coordinating debt  
53 collection efforts. This section does not apply to debt collection information related to delinquent  
54 child support obligations. Personal identifying information or financial information obtained by  
55 the [state debt coordinator] or a designee shall not be divulged to any person or entity, other than  
56 to the debtor, unless the information is used in a matter related to the collection of a debt  
57 obligation owed the state.  
58 H. The [state debt coordinator], in consultation with the [superintendent of banking and  
59 the superintendent of credit unions], shall study the feasibility of developing a data match system  
60 using automated data exchanges or other means to identify people who owe delinquent debt  
61 obligations to the state. The [state debt coordinator] shall file a report detailing any  
62 recommendations related to the feasibility of developing a data match system to identify people  
63 owing delinquent debt obligations to the state. The report shall be filed by the [state debt  
64 coordinator] with the [chairpersons and ranking members of the appropriations committees of the  
65 senate and the house of representatives and with the legislative services agency] by [insert date].  
66

67 Section 3. *[Notice of Lien in Civil Action.]*

68 A. As used in this section, unless the context otherwise requires:

69 1. “Insurance company” means an insurer organized or operating under [insert  
70 citation], or authorized to do business in this state as an insurer or an insurance producer under  
71 [insert citation].  
72 2. “Third party” means an individual, institution, corporation, or public or private  
73 agency which is or may be liable to pay all or part of a debtor’s monetary claim. “Third party”  
74 does not include a financial institution as defined in [insert citation].

75 B. When a debt obligation is owed the state, the [state debt coordinator], on behalf of the  
76 state, shall have a right to a lien against all monetary claims arising from a civil action which the  
77 debtor may file against a third party. A lien under this section becomes effective once the [state  
78 debt coordinator] files a notice of lien with the clerk of the district court in the county where the  
79 civil action identified by the [state debt coordinator] is filed and sends notice of the lien to the

debtor and to the debtor's attorney or other representative, if applicable. To be effective against a monetary claim, the notice of lien must be filed before a third party has concluded a final settlement with the debtor, the debtor's attorney, or other representative. The lien shall only be effective against the monetary claim in the civil action against which the lien is filed. The third party shall obtain a written determination from the [state debt coordinator] concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including but not limited to a settlement, waiver, or release, of a monetary claim under this section does not defeat the [state debt coordinator's] lien except upon written agreement by the [coordinator] or the [coordinator's designee]. A settlement, award, or judgment structured in any manner that does not include a debt obligation owed the state does not defeat the [state court debt coordinator's] lien if there is any recovery by the debtor unless a written agreement has been entered into between the [state debt coordinator] or the [coordinator's designee] and the debtor.

C. The [judicial branch] shall cooperate with the [state debt coordinator] to determine the most efficient way to identify a debtor who has a claim against a third party. The [state debt coordinator] shall be provided viewing access to the [state court information system] established under [insert citation] to determine if a debtor owes a debt obligation to the state. The debtor's attorney shall not have the responsibility to notify the state that a debtor has filed a civil action against a third party.

D. The [state debt coordinator's] lien is valid and binding on an attorney, insurer, or other third party only upon actual notice given by the [state debt coordinator].

E. An insurer or attorney representing a debtor on a monetary claim upon which the [state debt coordinator] has a lien under this section shall notify the [state debt coordinator] of a negotiated settlement or verdict, if actual notice of the lien has been provided in the following manner:

1. The mailing and deposit in a United States Post Office or public mailing box of the notice, addressed to the debtor and to the debtor's attorney or other representative, if applicable, at the location used for service of original notice.

2. The mailing and deposit in a United States Post Office or public mailing box of the notice, addressed to a third party, at the location used for service of original notice.

F. Upon resolution of the civil action against which a lien has been filed and actual notice of the lien has been given, the court costs and reasonable attorney fees and expenses, hospital liens filed pursuant to [insert citation] and other subrogated medical expenses shall first be deducted from any total judgment or settlement obtained. At least [one-third] of the remaining balance shall then be deducted and paid to the debtor. From the remaining balance, the [state debt coordinator] shall have the authority to negotiate a settlement of any debt obligation owed the state that is noted in the lien, including forgiving the entire balance due, based upon the circumstances of the case, costs incurred in pursuing the matter, and the element of the damages awarded. After deducting payments in accordance with this subsection and negotiating a settlement of the lien, any payments to satisfy the lien shall be paid to the [state debt coordinator]. The [state debt coordinator] shall transfer any moneys collected to the appropriate accounts to satisfy the debt owed. The [state debt coordinator] shall file a satisfaction of the lien in the civil action if the [state debt coordinator], pursuant to this subsection, settles any part of the debt obligation owed the state.

G. In circumstances where a lien encompasses multiple claims by state entities, the priority of payment made to the [state debt coordinator] shall first be a credit against tax due as provided in [insert citation], and the remaining balance shall be distributed in accordance with [insert citation].

H. During the negotiation process pursuant to this section the [state debt coordinator] shall make a determination whether the amount to be received by the [coordinator] under paragraph (F) of this section shall be considered as full payment of the debt obligation owed the state. If the [state debt coordinator] settles any debt obligation owed the state that is for less than the actual amount owed the state, the [state debt coordinator] may determine that the debt obligation owed the state is paid in full. If settlement is reached that is for less than the amount of the debt obligation owed the state, and the [state debt coordinator] notifies the applicable state department, agency, or branch that the debt obligation is paid in full, the state department, agency, or branch receiving the notification shall indicate in the records of the state department, agency, or branch that the debt obligation owed the department, agency, or branch is paid in full.

I. Except as provided in subsection (J) of this section, the [state debt coordinator] may enforce its lien by a civil action against any liable third party if a judgment or settlement was paid to the debtor without notifying the [state debt coordinator] as provided in this section.

J. An insurance company that makes a payment to the debtor or the debtor's attorney in a civil action that is subject to a lien under this section shall have no further liability for the lien filed in the civil action.

#### Section 4. *[Delinquent Court Debt Settlement Program.]*

A. As used in this section, "eligible debt" means all delinquent court debt obligations defined pursuant to [insert citation] and owed the state, except as provided in subsection (C). "Eligible debt" includes any interest and penalties assessed against such debt obligations.

B. The [state debt coordinator], in consultation with the other branches of state government, shall establish a [debt settlement program].

C. The following debt obligations are ineligible for the program:

1. Delinquent debt obligations that were imposed less than [four years] prior to the date of the application.
2. Victim restitution as defined in [insert citation].
3. Civil penalties assessed pursuant to [insert citation].
4. Jail fees charged pursuant to [insert citation].

D. The following people are ineligible for the program:

1. A person whose income level exceeds [two hundred percent of the United States poverty level] as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

a. The [coordinator] may determine that a person whose income is at or below [two hundred percent of the United States poverty level] as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services, is ineligible for the program if the [debt coordinator] determines the person is able to pay the full amount of the delinquent debt.

b. In making the determination of a person's ability to pay the full amount of the delinquent debt, the [state debt coordinator] shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the eligible debt.

2. A person who is in jail, prison, or who is under supervision during the period of incarceration or supervision.

3. A person who has previously participated in the program.

E. A person paying a delinquent court debt obligation through an established payment plan with the clerk of the district court, with the [centralized collection unit of the department of revenue] or its [designee], with a county attorney or the county attorney's designee, or with a private collection designee, is eligible for the [debt settlement program] if the person and debt

are eligible and if the collecting entity is a debt settlement collection designee as defined under [insert citation]. The distribution of any moneys collected by the [debt settlement collection designee] shall be as provided in [insert citation].

F. Under the program the [state debt coordinator] is authorized to forgive not more than [fifty percent] of all eligible debt obligations due.

G. Payment to the [state debt coordinator] under the program shall be provided in a lump sum.

H. The program shall provide that upon written application and payment of the agreed upon percentage of eligible debt obligation due to the state, the state shall forgive any remaining balance of eligible debt obligation due and shall not seek any contempt or civil action or criminal prosecution against the person related to the eligible debt obligation forgiven under the program. Upon the forgiveness of the remaining balance of the eligible debt pursuant to the program, the eligible debt shall be considered by the state as paid in full.

I. [A written application to the program] shall contain all case numbers associated with the eligible debt obligation due and a general description of such debt.

J. Failure to pay the amount agreed upon by the date specified shall bar the person's participation in the program for life.

K. A person who participates in the program shall relinquish all administrative and judicial rights to challenge the imposition and the amount of the eligible debt obligation owed.

L. Upon paying the agreed upon amount required under subsection (G), the [state debt coordinator] shall provide the person with a certified document detailing the case numbers paid in full under the program. Any state department, agency, or branch shall, upon the filing of a certified document detailing the cases paid in full under the program, indicate in the records of the department, agency, or branch that the case is in fact paid in full with respect to the eligible debt obligations paid under the program.

M. The [coordinator] shall prepare and make available debt settlement application forms which contain requirements for approval of an application. The [coordinator] may deny an application that is inconsistent with this section.

N. Any department, agency, or branch shall cooperate with the [state debt coordinator] in administering the program.

O. The [director of revenue] shall establish an account and shall deposit in the account all receipts received under the program established by the [state debt coordinator]. Not later than the [fifteenth] day of each month, the [director] shall deposit amounts received with the [treasurer of state] for deposit in the [general fund] of the state.

P. The [state debt coordinator] shall submit an [annual] report by [January 1] to the [chairpersons and ranking members of the joint appropriations subcommittee on justice systems and the legislative services agency], detailing the amount of debt obligations settled under the program, including the classification of the debt settled and the county of residence of people who had debt settled under the program or with a debt settlement designee as defined under [insert citation].

#### Section 5. *[Delinquent Court Debt Amnesty Program.]*

A. A [debt amnesty program] is established within the [office of the state debt coordinator] for [insert dates], for any debt obligation eligible under Section 4 of this Act.

B. A person who is in jail or prison, or who is under supervision, is not eligible for the program during the period of incarceration or supervision.

C. A person who is paying delinquent court debt through an established payment plan enumerated in Section (4) (A) of this Act, is also not eligible for the program.

225 D. Under the program the [state debt coordinator] is authorized to forgive an amount  
226 equal to [fifty percent] of any eligible debt obligation due.

227 E. Payment to the [state debt coordinator] under the program shall be provided in a lump  
228 sum.

229 F. The program shall provide that upon written application and payment of an amount  
230 equal to [fifty percent] of eligible debt obligation due to the state, the state shall forgive any  
231 remaining balance of eligible debt obligation due and shall not seek any contempt or civil action,  
232 or criminal prosecution, against the person related to the eligible debt obligation forgiven under  
233 the program. Upon the forgiveness of the unpaid portion of the eligible debt pursuant to this  
234 program, the eligible debt shall be considered paid in full by the state.

235 G. The written application shall contain all case numbers associated with the eligible debt  
236 obligation due, and a general description of such debt.

237 H. Failure to pay the amount agreed upon by the date specified shall bar the person's  
238 participation in the program.

239 I. A person who participates in the program shall relinquish all administrative and judicial  
240 rights to challenge the imposition and the amount of eligible debt obligation owed.

241 J. Upon paying the amount required under subsection (E), the [state debt coordinator]  
242 shall provide the person with a certified document detailing the case numbers paid in full under  
243 the program. Any state department, agency, or branch shall, upon the filing of a certified  
244 document detailing the cases paid in full under the program, indicate in the records of the  
245 department, agency, or branch that the case is in fact paid in full with respect to the eligible debt  
246 obligations paid under the program.

247 K. The [state debt coordinator] shall prepare and make available debt amnesty application  
248 forms which contain requirements for approval of an application. The [state debt coordinator]  
249 may deny an application that is inconsistent with this section.

250 L. In order to promote and market this program, the [director of the state lottery] shall  
251 collaborate in the use of television, print, and radio advertising.

252 M. The [department of revenue] shall cooperate with the [state debt coordinator] in  
253 administering this program and shall cooperate with the [state debt coordinator] in establishing  
254 the [debt settlement program] under this Act.

255 N. The [director of revenue] shall establish an account and shall deposit in the account all  
256 receipts received under the [debt amnesty program]. Not later than the [fifteenth] day of each  
257 month, the [director] shall deposit amounts received with the [treasurer of state] for deposit in the  
258 [general fund] of the state.

259 O. The [state debt coordinator] by [insert date], shall provide a report to the [chairpersons  
260 and ranking members of the senate and house committee on appropriations and to the legislative  
261 services agency] that details the amounts collected under the program, including the  
262 classification of debt collected and the county of residence of people granted amnesty.

263  
264 Section 6. [*Severability*.] [Insert severability clause.]

265  
266 Section 7. [*Repealer*.] [Insert repealer clause.]

267  
268 Section 8. [*Effective Date*.] [Insert effective date.]

# Stays of Mortgage Foreclosure Proceedings against Military Service Members

This Act enables a court to stay mortgage foreclosure proceedings against members of the military under certain conditions. It also invalidates a foreclosure by advertisement or the sale of mortgaged property of members of the military under certain conditions. It prohibits a person from selling or foreclosing real estate owned by members of the military if the person knew the foreclosure or sale was invalid, and prescribes a civil fine of \$2,000 for a violation. The Act directs the Attorney General to deposit such fines in a Military Family Relief Fund established under state law.

Submitted as:

Michigan

[Public Act 138 of 2008](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Stay Foreclosing Mortgages  
2 Held by U.S. Military Service Members.”

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

5           (1) “Active duty” means full-time duty in the active military service of the United States.  
6 Active duty includes full-time training duty, annual training duty, and attendance, while in the  
7 active military service, at a school designated as a service school by law or by the secretary of  
8 the military department concerned. Active duty does not include full-time national guard duty.

9           (2) “Military service” means any of the following:

10               (a) Active duty.

11               (b) If the service member is a member of the national guard, service under a call  
12 to active service authorized by the President or Secretary of Defense of the United States for a  
13 period of more than [thirty] consecutive days under 32 USC 502(f) to respond to a national  
14 emergency declared by the President and supported by federal money.

15               (c) A period during which the service member is absent from active duty because  
16 of sickness, wounds, leave, or other lawful cause.

17           (3) “Period of military service” means the period beginning on the date on which the  
18 service member enters military service and ending on the date on which the service member is  
19 released from military service or dies while in military service.

20           (4) “Service member” means an individual who is in military service and is a member of  
21 the armed services or reserve forces of the United States or a member of the [insert state]  
22 national guard.

23  
24           Section 3. [*Court Authority to Stay Foreclosing On Mortgages or Land Contracts Held*  
25 *by Military Service Members.*]

26           (A) If a defendant in an action to foreclose a mortgage on real estate or a land contract is  
27 a service member and either the defendant entered into the mortgage or land contract before

28 becoming a service member or the defendant is deployed in overseas service, the court on its  
29 own motion may, or on motion of or in behalf of the service member shall, do either or both of  
30 the following, unless the court determines that the ability of the defendant to comply with the  
31 terms of the obligation secured by the mortgage or land contract is not materially affected by the  
32 service member's military service:

33 (1) Stay proceedings in the action until [six] months after the end of the service  
34 member's period of military service.

35 (2) Issue another order that is equitable to conserve the interests of the parties.

36 (B) If a mortgagor is a service member, either the mortgagor entered into the mortgage  
37 before becoming a service member or the mortgagor is deployed in overseas service, and, during  
38 the service member's period of military service or within [six] months after the end of the period  
39 of military service, the mortgage given by the service member is foreclosed by advertisement or  
40 the mortgaged real estate sold under a power of sale, the foreclosure or sale is invalid unless the  
41 foreclosure or sale was ordered by a court.

42 (C) A person shall not, individually or acting through another person, foreclose, sell, or  
43 attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid  
44 under this section. A person who violates this subsection is subject to a civil fine of [\$2,000].

45 (D) The [attorney general] may file an action in the [circuit court] to collect a civil fine  
46 under this section. A civil fine collected under this section shall be deposited in the [Military  
47 Family Relief Fund] created under [insert citation].

48 (E) This Act does not apply to a mortgage or land contract entered into before the  
49 effective date of this Act.

50  
51 Section 4. [*Severability*.] [Insert severability clause.]

52  
53 Section 5. [*Repealer*.] [Insert repealer clause.]

54  
55 Section 6. [*Effective Date*.] [Insert effective date.]



# Tax Credit for Qualified Plug-In Electric Vehicles

The Act generally defines qualified plug-in electric vehicles and allows a \$2,000 tax credit against the state motor vehicle excise tax for qualified plug-in electric drive vehicles.

Submitted as:

Maryland

[Chapter 490 of 2010](#)

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 to Establish a Credit against  
2 the Motor Vehicle Tax for Qualified Plug-In Electric Vehicles.”

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

5           (A) “Excise tax” means the tax imposed under [insert citation].

6           (B) “Qualified plug-in electric drive vehicle” means a motor vehicle that:

7                   (1) Is made by a manufacturer;

8                   (2) Is manufactured primarily for use on public streets, roads, and highways;

9                   (3) Has not been modified from original manufacturer specifications;

10                  (4) Is acquired for use or lease by the taxpayer and not for resale;

11                  (5) Is rated at not more than [8,500] pounds unloaded gross vehicle weight;

12                  (6) Has a maximum speed capability of at least [55] miles per hour;

13                  (7) Is propelled to a significant extent by an electric motor that draws electricity  
14 from a battery that:

15                           a. For a 4-wheeled motor vehicle, has a capacity of not less than [4  
16 kilowatt hours];

17                           b. For a 2-wheeled or 3-wheeled motor vehicle, has a capacity of not less  
18 than [2.5 kilowatt hours]; and

19                           c. Is capable of being recharged from an external source of electricity; and

20                  (8) Is titled by the taxpayer on or after [October 1, 2010], but before [July 1,  
21 2013].

22  
23           Section 3. [*Tax Credit for Qualified Plug-In Electric Vehicles.*]

24           (A) A credit is allowed against the excise tax imposed for a qualified plug-in electric  
25 vehicle.

26           (B) Subject to the limitations under subsections (C) through (E) of this section, the credit  
27 allowed under this section equals [one hundred percent] of the excise tax imposed for a vehicle.

28           (C) The credit allowed under this section may not exceed [\$2,000].

29           (D) The credit allowed under this section is limited to the acquisition of [one] vehicle per  
30 individual and [ten] vehicles per business entity.

31           (E) A credit may not be claimed under this section:

32                   (1) Unless the vehicle is registered in this state;

33 (2) Unless the manufacturer has already conformed to any applicable state or  
34 federal laws or regulations governing clean-fuel vehicle or electric vehicle purchases applicable  
35 during the calendar year in which the vehicle is titled; or

36 (3) For a vehicle that was originally registered in another state.

37 (F) The [state motor vehicle administration] shall administer the credit under this section.  
38

39 Section 4. [*Transfer Funds to Offset Reductions in Revenues from Tax Credit Granted by*  
40 *this Act.*] The following amounts shall be transferred from the state [Strategic Energy Investment  
41 Fund] established under [insert citation] to the state [Transportation Trust Fund] established  
42 under [insert citation] to offset a reduction in revenues from the [Vehicle Excise Tax Credit] for  
43 qualified plug-in electric drive vehicles established under this Act:

44 (1) For [fiscal year 2011], [insert amount];

45 (2) For [fiscal year 2012], [insert amount]; and

46 (3) For [fiscal year 2013], [insert amount].  
47

48 Section 5. [*Severability.*] [Insert severability clause.]  
49

50 Section 6. [*Repealer.*] [Insert repealer clause.]  
51

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

# Transplant Medication

The Act establishes conditions under which a health insurance policy or health service plan can require prescribing physicians to substitute immunosuppressant drugs for organ transplant patients that differ from the drugs the physicians originally prescribed for those patients. The Act requires that at least sixty days prior to making any formulary change that alters the terms of coverage for a patient receiving immunosuppressant drugs or discontinues coverage for a prescribed immunosuppressant drug that a patient is receiving, a policy or plan sponsor must, to the extent possible, notify the prescribing physician and the patient, or the parent or guardian if the patient is a child, or the spouse of a patient who is authorized to consent to the treatment of the patient. The notification must be in writing and disclose the formulary change, indicate that the prescribing physician may initiate an appeal, and include information about the procedure for the prescribing physician to initiate the policy or plan sponsor's appeal process.

The Act applies solely to cases of immunosuppressive therapy when an immunosuppressant drug has been prescribed to a patient to prevent the rejection of transplanted organs and tissues and a prescribing physician has indicated on a prescription "may not substitute." This Act does not apply to medication orders issued for immunosuppressant drugs for any in-patient care in a licensed hospital.

Submitted as:

Illinois

[Public Act 096-0766](#)

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 Organ Transplant Medication  
2 Act."

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

5           (1) "Health insurance policy or health care service plan" means any policy of health or  
6 accident insurance subject to the provisions of [insert citations].

7           (2) "Immunosuppressant drugs" mean drugs that are used in immunosuppressive therapy  
8 to inhibit or prevent the activity of the immune system. "Immunosuppressant drugs" are used  
9 clinically to prevent the rejection of transplanted organs and tissues. "Immunosuppressant drugs"  
10 do not include drugs for the treatment of autoimmune diseases or diseases that are most likely of  
11 autoimmune origin.

12  
13           Section 3. [*Applicability.*] This Act shall apply solely to cases of immunosuppressive  
14 therapy when an immunosuppressant drug has been prescribed to a patient to prevent the  
15 rejection of transplanted organs and tissues and as set forth in Section 4 of this Act, a prescribing  
16 physician has indicated on a prescription "may not substitute." This Act does not apply to  
17 medication orders issued for immunosuppressant drugs for any in-patient care in a licensed  
18 hospital.

19  
20           Section 4. [*Formulary Changes Concerning Immunosuppressant Drugs.*]

(A) In accordance with [insert citation], when a prescribing physician has indicated on a prescription “may not substitute,” a health insurance policy or health care service plan that covers immunosuppressant drugs may not require or cause a pharmacist to interchange another immunosuppressant drug or formulation issued on behalf of a person to inhibit or prevent the activity of the immune system of a patient to prevent the rejection of transplanted organs and tissues without notification and the documented consent of the prescribing physician and the patient, or the parent or guardian if the patient is a child, or the spouse of a patient who is authorized to consent to the treatment of the person.

(B) Except as provided by this Section, patient co-payments, deductibles, or other charges for the prescribed drug for which another immunosuppressant drug or formulation is not interchanged shall remain the same for the enrollment period established by the health insurance policy or plan.

(C) At least [60] days prior to making any formulary change that alters the terms of coverage for a patient receiving immunosuppressant drugs or discontinues coverage for a prescribed immunosuppressant drug that a patient is receiving, a policy or plan sponsor must, to the extent possible, notify the prescribing physician and the patient, or the parent or guardian if the patient is a child, or the spouse of a patient who is authorized to consent to the treatment of the patient. The notification shall be in writing and shall disclose the formulary change, indicate that the prescribing physician may initiate an appeal, and include information regarding the procedure for the prescribing physician to initiate the policy or plan sponsor’s appeal process.

(D) As an alternative to providing written notice, a policy or plan sponsor may provide the notice electronically if, and only if, the patient affirmatively elects to receive such notice electronically. The notification shall disclose the formulary change, indicate that the prescribing physician may initiate an appeal, and include information regarding the procedure for the prescribing physician to initiate the policy or plan sponsor's appeal process.

(E) At the time a patient requests a refill of the immunosuppressant drug, a policy or plan sponsor may provide the patient with the written notification required under subsection (C) of this Section along with a 60-day supply of the immunosuppressant drug under the same terms as previously allowed.

(F) Nothing in this Section shall prohibit insurers or pharmacy benefit managers from using managed pharmacy care tools, including, but not limited to, formulary tiers, generic substitution, therapeutic interchange, prior authorization, or step therapy, so long as an exception process is in place allowing the prescriber to petition for coverage of a non-preferred drug if sufficient clinical reasons justify an exception to the normal protocol.

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

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

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

# Uniform Military and Overseas Voters Act (UMOVA)

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery or ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. The federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

The Act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. "Uniformed service" includes the U.S. Army, Navy, Air Force, Marine Corp, Coast Guard, Merchant Marine, commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration of the U.S., National Guard and state militia units, and the spouses and dependents of these voters. The definition of "covered voter" is expanded from federal usage in the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff, to include overseas citizens who do not have a specifically established residence in the U.S. but who have demonstrable ties to a certain state; this includes U.S. citizens born abroad if their parents are eligible to vote in that state. Absent other existing law, the Act makes no distinction between overseas voters merely traveling abroad, voters temporarily living overseas, and voters permanently residing overseas, although some states have chosen to do so. The Act applies to primary, general, special, and runoff elections, or their equivalent, at the federal, state, and local levels for elected candidates and ballot issues; UOCAVA extends only to federal elections.

The Act establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. Importantly, the Act requires transmission of ballots and balloting materials to all covered voters who have applied no later than 45 days prior to the election, unless the state has received a waiver under the federal MOVE Act. A ballot is timely cast by the voter if received by the local election official before the close of polls on Election Day, or submitted for mailing or transmission no later than 12:01 AM on the date of the election. Requiring that the ballot be completed by 12:01 a.m. local time on Election Day ensures that covered voters will not be able to cast a vote with knowledge of the election night returns of the jurisdiction whose ballot the voter is voting. A ballot must be counted if it is delivered to the appropriate state or local election official by the close of business on the business day before the final deadline for completing the canvass or other tabulation to finalize election results. Allowing a valid ballot to be received by local officials through the close of the

polls and up until the day before canvassing will increase the time available to receive voted ballots where facsimile or electronic transmission of voted ballots is not permitted.

The Act precludes rejecting a military-overseas ballot for lack of a postmark (or for a late postmark), if the voter has declared under penalty of perjury that the ballot was timely submitted. Many pieces of military mail enter the postal system through delivery to a mail clerk in a remote location without a postmark, and are only postmarked some days later when they reach a more established facility. A declaration made under Section 13 should be structured as an affirmation that plainly subjects a covered voter to the perjury laws of the enacting state. Enacting states will need to ensure that the perjury laws of the enacting state cover a declaration or affirmation made by the voter under Section 13. Further, the Act requires votes to be counted where non-essential requirements are not complied with, and obviates any notarization and witnessing requirements.

The Act expands use of the Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) for registration and voting purposes in covered elections. Section 6 and Section 7 of the Act are designed to encourage the use of the FPCA, but they also allow military and overseas voters to use a state's pre-existing voter forms and permit states to develop alternative forms. They do not require revision of forms, or preparation of new forms for voters covered under this Act. Instead, to the extent that a state's existing forms do not collect sufficient information to properly classify overseas and military voters, Section 7(e) requires voters who use the state forms to affirmatively indicate their status as a covered voter. States that choose to revise their forms for whatever reason should ensure that the revised forms facilitate voting under this Act.

The Act allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of applications. Allowance of electronic submission of voted ballots is left to existing state law. The "electronic equivalent" of privacy envelopes and transmission envelopes means at a minimum a template or instructions to accompany the electronic delivery of an unvoted ballot that assist the voter to prepare and use appropriate envelopes to return the voter's marked ballot. The electronic transmission method established under subsection (c) of Section 4 of the Act should be designed to protect the integrity of the transmission and the privacy of the voter's personal data contained in the transmission. To a similar end, the recent amendments to UOCAVA include provisions requiring that "to the extent practicable," electronic transmission methods "shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter is protected" and also shall "protect the security and integrity of the transmission."

The Act defines the obligations of the state's primary election authority with regard to providing information on voting registration procedures, ballot casting procedures, and the form and content of necessary declarations to accompany such, for covered voters. If provided, a voter's e-mail address may not be disclosed to third parties, and may only be used by the election authority for communications about the voting process, transmission of ballots and materials, and necessary verifications related to the Act. The Act later ties a voter's ability to make a standing request for a military-absentee ballot to the voter's provision of an e-mail address. This approach is intended to reduce the large quantity of election material that was returned as undeliverable when sent out in hardcopy to an outdated physical address under the now repealed UOCAVA provision that had permitted voters to make a standing request for absentee ballots for two federal election cycles. In most states, the implementing authority specified in subsection (a) of Section 4 of this Act presumably already has authority to promulgate rules according to the existing rulemaking procedures of the state. States in which this rulemaking authority is not already established may wish to include additional language establishing authority to make rules to implement this Act.

This Act provides for the determination of the address that should be used for active-duty military and overseas voters. An eligible voter's voting address shall be the last residential address in the enacting state, or that of the eligible voter's parent or legal guardian for citizens born outside of the U.S. that have not established residency. If the address is no longer residential, then the voter must be assigned an address. When election officials must assign a voter a non-standard address, where possible they should place the voter in the same precinct or district as the last place of residence, were it still a recognized residential address.

The Act, in Section 16, ensures that election jurisdictions facilitate voting first by making readily available to overseas and military voters a list of the offices and issues to be contested at an upcoming election, and later by also making candidate names readily and quickly available to these voters, thereby permitting voters who have not received the printed ballot to make the most effective use of the federal write-in absentee ballot. The bracketed language "[ballot styles are certified]" in subsection (c) of Section 16 is intended to cover the event when the final ballot for candidates (and issues, when applicable) is available.

In addition to providing an enforcement mechanism for other provisions of this Act, Section 18 of the Act would also empower courts to adopt emergency rules or procedures in the event that exigent circumstances otherwise make compliance with the Act impossible or impracticable.

The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these Acts to voting in covered state and local elections. UMOVA will help to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and help to more fully and effectively enfranchise our military personnel and overseas civilians.

In December 2010, The Council of State Governments adopted a resolution urging "all member states consider and enact the 2010 Uniform Military and Overseas Voters Act (UMOVA), to help states comply with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and to extend the application of, and broaden the coverage of, the important principles of these laws with regard to state and local elections, for the benefit and enfranchisement of our military personnel and overseas civilians."

Submitted as: Uniform Law by the [National Conference of Commissioners on Uniform State Laws](#)

Status: As of December 2011, Colorado, Nevada, North Carolina, North Dakota, Oklahoma, and Utah have enacted a version of this Uniform Military and Overseas Voters Act.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This [Act] may be cited as the "Uniform Military and Overseas  
2 Voters Act."

3

4           Section 2. [*Definitions.*] In this [Act]:

5           (1) "Covered voter" means:

6                   (A) a uniformed-service voter or an overseas voter who is registered to vote in  
7 this state;

(B) a uniformed-service voter defined in paragraph (9)(A) whose voting residence is in this state and who otherwise satisfies this state's voter eligibility requirements;

(C) an overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements;

(D) an overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements; or

(E) an overseas voter who was born outside the United States, is not described in subparagraph (C) or (D), and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if:

(i) the last place where a parent or legal guardian of the voter was, or under this [Act] would have been, eligible to vote before leaving the United States is within this state; and

(ii) the voter has not previously registered to vote in any other state.

(2) "Dependent" means an individual recognized as a dependent by a uniformed service.

(3) "Federal postcard application" means the application prescribed under Section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff(b)(2).

(4) "Federal write-in absentee ballot" means the ballot described in Section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-2.

(5) "Military-overseas ballot" means:

(A) a federal write-in absentee ballot;

(B) a ballot specifically prepared or distributed for use by a covered voter in accordance with this [Act]; or

(C) a ballot cast by a covered voter in accordance with this [Act].

(6) "Overseas voter" means a United States citizen who is outside the United States.

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

(8) "Uniformed service" means:

(A) active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) the National Guard and state militia.

(9) "Uniformed-service voter" means an individual who is qualified to vote and is:

(A) a member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) a member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

(C) a member on activated status of the National Guard or state militia; or

(D) a spouse or dependent of a member referred to in this paragraph.



(10) “United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Section 3. [*Elections Covered.*] The voting procedures in this [Act] apply to:

(1) a general, special, [presidential preference,] [or] primary [, or runoff] election for federal office;

(2) a general, special, [recall,] [or] primary [, or runoff] election for statewide or state legislative office or state ballot measure; and

(3) a general, special, [recall,] [or] primary [, or runoff] election for local government office or local ballot measure conducted under [insert relevant state law] [for which absentee voting or voting by mail is available for other voters].

Section 4. [*Role of [Secretary of State].*]

(a) The [Secretary of State] is the state official responsible for implementing this [Act] and the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

(b) The [Secretary of State] shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The [Secretary of State] may delegate the responsibility under this subsection only to the state office designated in compliance with Section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-1(b)(1).

(c) The [Secretary of State] shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this [Act].

(d) The [Secretary of State] shall:

(1) develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state; and

(2) to the extent reasonably possible, coordinate with other states to carry out this subsection.

(e) The [Secretary of State] shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter’s identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this [Act]. The [Secretary of State] shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

Section 5. [*Overseas Voter’s Registration Address.*] In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

Section 6. [*Methods of Registering to Vote.*]

102 (a) To apply to register to vote, in addition to any other approved method, a covered voter  
103 may use a federal postcard application, or the application's electronic equivalent.

104 (b) A covered voter may use the declaration accompanying a federal write-in absentee  
105 ballot to apply to register to vote simultaneously with the submission of the federal write-in  
106 absentee ballot[, if the declaration is received by [insert this state's voter registration deadline for  
107 that election]]. [If the declaration is received after that date, it must be treated as an application to  
108 register to vote for subsequent elections.]

109 (c) The [Secretary of State] shall ensure that the electronic transmission system described  
110 in Section 4(c) is capable of accepting both a federal postcard application and any other  
111 approved electronic registration application sent to the appropriate election official. The voter  
112 may use the electronic transmission system or any other approved method to register to vote.

113  
114 Section 7. *[Methods of Applying for Military-Overseas Ballot.]*

115 (a) A covered voter who is registered to vote in this state may apply for a military-  
116 overseas ballot using either the regular [absentee ballot] application in use in the voter's  
117 jurisdiction under [reference state law on regular absentee ballots] or the federal postcard  
118 application or the application's electronic equivalent.

119 (b) A covered voter who is not registered to vote in this state may use a federal postcard  
120 application or the application's electronic equivalent to apply simultaneously to register to vote  
121 under Section 6 and for a military-overseas ballot.

122 (c) The [Secretary of State] shall ensure that the electronic transmission system described  
123 in Section 4(c) is capable of accepting the submission of both a federal postcard application and  
124 any other approved electronic military-overseas ballot application sent to the appropriate election  
125 official. The voter may use the electronic transmission system or any other approved method to  
126 apply for a military-overseas ballot.

127 (d) A covered voter may use the declaration accompanying a federal write-in absentee  
128 ballot as an application for a military-overseas ballot simultaneously with the submission of the  
129 federal write-in absentee ballot, if the declaration is received by the appropriate election official  
130 by [insert the later of the fifth day before the election or the last day for other voters in this state  
131 to apply for [an absentee ballot] for that election].

132 (e) To receive the benefits of this [Act], a covered voter must inform the appropriate  
133 election official that the voter is a covered voter. Methods of informing the appropriate election  
134 official that a voter is a covered voter include:

135 (1) the use of a federal postcard application or federal write-in absentee ballot;  
136 (2) the use of an overseas address on an approved voter registration application or  
137 ballot application; and

138 (3) the inclusion on an approved voter registration application or ballot  
139 application of other information sufficient to identify the voter as a covered voter.

140 [(f) This [Act] does not preclude a covered voter from voting under [insert state law on  
141 regular absentee voting].]

142  
143 Section 8. *[Timeliness and Scope of Application for Military-Overseas Ballot.]* An  
144 application for a military-overseas ballot is timely if received by [insert the later of the fifth day  
145 before the election or the last day for other voters in this state to apply for [an absentee ballot] for  
146 that election]. An application for a military-overseas ballot for a primary election, whether or not  
147 timely, is effective as an application for a military-overseas ballot for the general election. [An  
148 application for a military-overseas ballot is effective for a runoff election necessary to conclude  
149 the election for which the application was submitted.]

Section 9. [*Transmission of Unvoted Ballots.*]

(a) For an election described in Section 3 for which this state has not received a waiver pursuant to Section 579 of the Military and Overseas Voter Empowerment Act, 42 U.S.C. 1973ff-1(g)(2), not later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives.

Section 10. [*Timely Casting of Ballot.*] To be valid, a military-overseas ballot must be received by the appropriate local election official not later than the close of the polls, or the voter must submit the ballot for mailing[, electronic transmission,] or other authorized means of delivery not later than 12:01 a.m., at the place where the voter completes the ballot, on the date of the election.

Section 11. [*Federal Write-In Absentee Ballot.*] A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in Section 3.

Section 12. [*Receipt of Voted Ballot.*]

(a) A valid military-overseas ballot cast in accordance with Section 10 must be counted if it is delivered by the end of business on the business day before [the latest deadline for completing the county canvass or other local tabulation used to determine the final official results] to the address that the appropriate state or local election office has specified.

(b) If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

Section 13. [*Declaration.*] A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state.

Section 14. [*Confirmation of Receipt of Application and Voted Ballot.*] The [Secretary of State], in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

(1) the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

(2) the voter's military-overseas ballot has been received and the current status of the ballot.

Section 15. [*Use of Voter's Electronic-Mail Address.*]

(a) The local election official shall request an electronic-mail address from each covered voter who registers to vote after [the effective date of this [Act]]. An electronic-mail address provided by a covered voter may not be made available to the public or any individual or organization other than an authorized agent of the local election official and is exempt from disclosure under [the public records laws of this state]. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies[, including for any runoff elections that occur as a result of such elections]. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

Section 16. [*Publication of Election Notice.*]

(a) At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, an official in each jurisdiction charged with printing and distributing ballots and balloting material shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the official expects to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as [ballot styles are certified], and not later than the date ballots are required to be transmitted to voters under [insert state law on regular absentee voter authorization], the official charged with preparing the election notice under subsection (a) shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A local election jurisdiction that maintains an Internet website shall make the election notice prepared under subsection (a) and updated versions of the election notice regularly available on the website.

Section 17. [*Prohibition of Nonsubstantive Requirements.*]

(a) If a voter's mistake or omission in the completion of a document under this [Act] does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this [Act]. In a write-in ballot authorized by this [Act] [or in a vote for a write-in candidate on a regular ballot], if the intention of the voter is discernable under this state's uniform definition of

what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this [Act]. An authentication, other than the declaration specified in Section 13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this [Act]. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

Section 18. [*Equitable Relief*.] A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this [Act] on application by:

- (1) a covered voter alleging a grievance under this [Act]; or
- (2) an election official in this state.

Section 19. [*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 20. [*Relation to Electronic Signatures in Global and National Commerce Act*.] This [Act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

[Section 21. *Repeals*. The following are repealed:

- (1) .....
- (2) .....
- (3) .....]

Section 22. [*Effective Date*.] This [Act] takes effect . . . .

# Water Smart Homes

The Act requires residential home builders to offer home buyers certain water conserving technology, appliances, and landscaping practices. Examples include water-efficient toilets and dishwashers that meet federal Environmental Protection Agency Energy Star Program standards.

Submitted as:

Colorado

[HB 10-1358 \(Enrolled version\)](#)

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 to Encourage Installing Water  
2 Smart Technology in Homes.”

3  
4           Section 2. [*Water-Smart Homes Options.*]

5           (A) Every person who builds a new single-family detached residence for which a buyer is  
6 under contract shall offer the buyer the opportunity to select one or more of the following water-  
7 smart home options for the residence:

8               (1) Installation of water-efficient toilets, lavatory faucets, and showerheads that  
9 meet or exceed the following water-efficient standards: toilets shall use no more than one and  
10 twenty-eight one-hundredths of a gallon per flush, lavatory faucets no more than one and one-  
11 half gallons per minute, and showerheads no more than two gallons per minute;

12               (2) If dishwashers or clothes washers are financed, installed, or sold as upgrades  
13 through the home builder, the builder shall offer a model that is qualified pursuant to the federal  
14 Environmental Protection Agency’s Energy Star Program at the time of offering. Clothes  
15 washers shall have a water factor of less than or equal to six gallons of water per cycle per cubic  
16 foot of capacity.

17               (3) If landscaping is financed, installed, or sold as upgrades through the home  
18 builder and will be maintained by the home owner, the home builder shall offer a landscape  
19 design that follows the landscape practices specified in this subparagraph (3) to ensure both the  
20 professional design and installation of such landscaping and that water conservation will be  
21 accomplished. These best management practices are contained in the document titled [“Green  
22 Industry Best Management Practices (BMP) for the Conservation and Protection of Water  
23 Resources in Colorado, 3rd Edition,” and Appendix, released in May 2008], or this document’s  
24 successors due to future inclusion of improved landscaping practices, water conservation  
25 advancements, and new irrigation technology. The best management practices specified in this  
26 subparagraph (3), through utilization of the proper landscape design, installation, and irrigation  
27 technology, accomplish substantial water savings compared to landscape designs, installation,  
28 and irrigation system utilization where these practices are not adhered to. The following best  
29 management practices and water budget calculator form the basis for the design and installation  
30 for the front yard landscaping option if selected by the homeowner as an upgrade:

31                   (a) Xeriscape: To include the seven principles of Xeriscape which provide  
32 a comprehensive approach for conserving water;

(b) Water budgeting: To include either a water allotment by the water utility for the property, if offered by the water utility, or a landscape water budget based on plant water requirements;

(c) Landscape design: To include a plan and design for the landscape to comprehensively conserve water and protect water quality;

(d) Landscape installation and erosion control: To minimize soil erosion and employ proper soil care and planting techniques during construction;

(e) Soil amendment and ground preparation: To include an evaluation of the soil and improve, if necessary, to address water retention, permeability, water infiltration, aeration, and structure;

(f) Tree placement and tree planting: To include proper soil and space for root growth and to include proper planting of trees, shrubs, and other woody plants to promote long-term health of these plants;

(g) Irrigation design and installation: To include design of the irrigation system for the efficient and uniform distribution of water to plant material and the development of an irrigation schedule;

(h) Irrigation technology and scheduling: To include water conserving devices that stop water application during rain, high wind, and other weather events and incorporate evapotranspiration conditions. Irrigation scheduling should address frequency and duration of water application in the most efficient manner; and

(i) Mulching: To include the use of organic mulches to reduce water loss through evaporation, reduce soil loss, and suppress weeds.

(4) Installation of a pressure-reducing valve that limits static service pressure in the residence to a maximum of [sixty pounds per square inch]. Piping for home fire sprinkler systems shall comply with state and local codes and regulations but are otherwise excluded from this subparagraph (4).

(B) The offer required by paragraph (A) of this subsection (1) shall be made in accordance with the builder's construction schedule for the residence. In the case of prefabricated or manufactured homes, "construction schedule" includes the schedule for completion of prefabricated walls or other subassemblies.

(C) Nothing in this section precludes a person who builds a new single-family detached residence from:

(1) Subjecting water-efficient fixture and appliance upgrades to the same terms and conditions as other upgrades, including charges related to upgrades, deposits required for upgrades, deadlines, and construction timelines;

(2) Selecting the contractors that will complete the installation of the selected options; or

(3) Stipulating in the purchase agreement or sales contract that water-efficient fixtures and appliances are based on technology available at the time of installation, such upgrades may not support all water-efficient fixtures or appliances installed at a future date, and the person that builds a new single-family detached residence is not liable for any additional upgrades, retrofits, or other alterations to the residence that may be necessary to accommodate water-efficient fixtures or appliances installed at a future date.

(D) This section does not apply to unoccupied homes serving as sales inventory or model homes.

(E) The upgrades described in this Act shall not contravene state or local codes, covenants, and requirements. All homes, landscapes, and irrigation systems shall meet all applicable national, state, and local regulations.

82           Section 3. [*Severability*.] [Insert severability clause.]  
83  
84           Section 4. [*Repealer*.] [Insert repealer clause.]  
85  
86           Section 5. [*Effective Date*.] [Insert effective date.]



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